A Digest of Indian Law Cases Containing High Court Report 1862 - 1886 and Privy Council Report of Appeals from India 1836 - 1886 with An Index of Cases Vol. 4 (P-S)

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DIAN LAW CASES;

CONTAINING

HIGH COURT REPORTS, 1862-1886,

AND

PRIVY COUNCIL REPORTS OF APPEALS FROM INDIA, 1836-1886,

WITH AN INDEX OF CASES.

COMPILED UNDER THE ORDERS OF THE GOVERNMENT OF INDIA

BY

JOSEPH VERE WOODMAN,
MIDDLE TEMPLE, BARRISTER-AT-LAW, AND ADVOCATE OF THE HIGH COURT, CALCUTTA.

IN FIVE VOLUMES.

VOLUME IV. P—S.

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CORRIGENDA.

COL. 4395.—*Line 2 from top, for* "PRIVY COUNCIL, PRACTICE OF—OBJECTIONS, PRACTICE AS TO" *read* "PRIVY COUNCIL, PRACTICE OF—COSTS."

COL. 4489.—*Line 21 from top, for* "ABHAYA CHARAN CHOWDRY" *read* "ABHAYA CHOWDHRY."

A DIGEST

OF

THE HIGH COURT REPORTS,

1862—1886,

AND OF

THE PRIVY COUNCIL REPORTS OF APPEALS FROM INDIA,

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P

PANCHAYAT.

——— **District panchayat.**—*Mad. Reg. XII of 1816.—Mad. Reg. VII of 1816.—Madras Civil Courts Act, III of 1873.*—Neither the total repeal of Regulation VII of 1816 by Act III of 1813 (Madras Civil Courts Act) nor the partial repeal of Regulation XII of 1816, so far as it contained words of reference to Regulation VII of 1816, abolished the jurisdiction of district panchayats. A Collector cannot order a reference to a district panchayat under Regulation XII of 1816 unless there has been (1) an inquiry as to whether the parties will submit to the jurisdiction of a village panchayat; (2) an objection from either party to such reference, and a request in writing by one of the parties that the matter be referred to a district panchayat. CHIKATI ZEMINDAR (ZEMINDAR OF CHIKATI) *v.* PEDDAKIMEDI ZEMINDAR . **I. L. R., 8 Mad., 569**

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See CASES UNDER PRACTICE—CIVIL CASES —PAPER-BOOKS.

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See ATTACHMENT—ATTACHMENT OF PERSON . . . **I. L. R., 7 Calc., 19**
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PARDANASHIN WOMEN—*continued.*

1. ——— **Dealings with parda women.**—*Onus of proof.—Evidence of bona fides.*—A Hindu parda woman is entitled to receive in the Courts of this country that protection which the Court of Chancery in England always extends to the weak, ignorant and infirm, and to those who for any other reason are specially likely to be imposed upon by the exertion of undue influence, which is presumed to have been exerted unless the contrary be shown. In all dealings, therefore, with persons so situated, it is incumbent on the party interested in upholding the transaction to show that its terms are fair and equitable; the most usual mode of discharging such onus being to show that the lady had good independent advice in the matter, and acted therein altogether at arm's-length from the other contracting party. RUKHUN *v.* AHMED HOSSEIN . . **22 W. R., 443**

2. ——— **Execution of deed by pardanashin.**—*Registration of deed.—Evidence of execution.*—In cases of transactions by parda women, mere registration does not go far to corroborate the proof of their validity, unless a mutation of names takes place, which, if done under a mocktearnama, has not the same effect as against a parda woman as it has against a person capable of transacting his own business and acting for himself. Where the conveyance by a parda woman is impeached, there ought to be clear evidence, not of the mere signature by the party, but that the secluded woman had the means of knowing what she was about. FUZZUL HOSSEIN *v.* AMJUD ALI KHAN . **17 W. R., 523**

3. ——— *Registration.—Evidence of genuineness.*—The mere registration of a lease is no proof of its genuineness, especially in the case of a lease which was first produced as a valid instrument nearly nine years after its execution, and which was alleged to have been granted by a pardanashin lady, but no satisfactory evidence was given that she had put her signature and seal to it, and that she did so with a knowledge of the nature and

PARDANASHIN WOMEN.—Execution of deed by pardanashin—*continued.*

contents of the instrument. DOOLEE CHAND *v.* OOMBA KHANUM . . . **18 W. R., 238**

4. ——————— *Explanation of document.*—In order to charge a pardanashin woman upon an instrument or power purporting to have been executed by her, it is requisite that the person relying on such a document should give satisfactory evidence that it has been explained to and understood by her. SUDISHT LAL *v.* SHEOBHARAT KOER . . . . **I. L. R., 7 Calc., 245**

5. ——————— *Onus probandi.—Evidence of deed being explained.—Pardanashin without legal assistance.*—Where the defendant, who was shown to be an illiterate pardanashin lady, denied on her oath that in executing a wakfnama she had any intention of creating an absolute wakf, or that she understood the effect of the deed when she executed it, the onus was on the plaintiffs to show that she was fully aware of the character of the document and its legal effect, and that she had proper professional advice at the time of its execution. In the absence of such proof,—*Held* that the deed was not binding on her. DELROOS BANOO BEGUM *v.* ASHGAR ALLY KHAN **[15 B. L. R., 167: 23 W. R., 453**

Held, in the same case, on appeal to the Privy Council, who affirmed the judgment of the High Court: A Court, when dealing with the disposition of her property by a purdah woman, ought to be satisfied that the transaction was explained to her, and that she knew what she was doing; especially in a case where, without legal assistance, for no consideration, and without any equivalent, she has executed a document, written in a language she does not understand, which deprives her of all her property. In the case of a pardanashin woman who has no legal assistance, the ordinary presumption, that if a person of competent capacity signs a deed, he understands the instrument to which he has affixed his name, does not arise. ASHGAR ALI *v.* DELROOS BANEE BEGUM **[I. L. R., 3 Calc., 324**

See also the cases of MANOHAR DASS *v.* BHAGABATI DASI . . . **1 B. L. R., O. C., 28**

KANAILAL JOWHARI *v.* KAMINI DEBI **[1 B. L. R., O. C., 31, note**

THAKOORDEEN TEWARY *v.* ALI HOSSEIN KHAN **[13 B. L. R., 427: 21 W. R., 340 L. R., 1 I. A., 192**

SOONDUR KOOMAREE DEBIA *v.* KISHOREE LAL SEIN . . . . **5 W. R., 246**

ROOP NARAIN SINGH *v.* GUJADHUR PERSHAD NARAIN . . . . **9 W. R., 297**

6. ——————— *Death-bed disposition.—Proof of bonâ fide intention.*—Where a deed purports to have been executed by a parda woman, the Court should see that it was fairly taken from her, and that she was a free agent and duly informed of what she was about. When the disposition is in the nature of a death-bed disposition, the Court that upholds it ought, from whomsoever it proceeded, to be satisfied that it was the free voluntary act of the party by whom it purports to have been executed, and expressed her real intention. GRISH CHUNDER LAHOREE *v.* BHUGGOBUTTY DEBIA **[14 W. R., P. C., 7: 13 Moore's I. A., 419**

7. ——————— *Mooktearnamah, Validity of.*—The issue being as to whether a certain mooktearnamah, which purported to have been signed by the respondent, was valid or not, the validity of the mookhtearnamah was pronounced against, as there was no legal proof of its execution, and the absence of legal proof was not compensated by any legitimate inference arising out of or by any of the facts disclosed by the other parts of the case, the whole of the transactions relative to the execution thereof being of a very questionable character. SEETUL PERSHAD *v.* DOOLHIN BADAM KONWUR **[8 W. R., P. C., 22: 11 Moore's I. A., 268**

8. ——————— *Document obtained by chief male member of family.*—A document obtained by the chief male member of a family from a parda woman should receive a strict construction. SOOKYABOYE AMMAL *v.* LATCHMI AMMAL **[13 W. R., P. C., 3**

9. ——————— *Contract with pardanashin woman.—Proof as to knowledge of transaction before execution of document.*—Where two Nambudri females—a mother and daughter (plaintiff)—executed a document in favour of defendant, a male relative (nephew of the former), which purported to divest the plaintiff and her mother of the entire property of the illom of which they were the sole proprietors, and to vest it in the defendant in consideration of his promise to marry and raise up heirs to the illom to which the plaintiff and her mother belonged, and to maintain the plaintiff and her mother till death, and it was proved that plaintiff was well aware of what she was doing, and had subsequently clearly recognised the defendant as absolute proprietor of the property and was contented with his having assumed the position pointed out in the document,—*Held* that the transaction was valid, and could not be called into question on the suggestion that plaintiff was placed at a disadvantage and was not fully cognisant of the irrevocable nature of the deed; and that the rule laid down by the Privy Council in *Ashgar Ali* v. *Delroos Banoo Begam, I. L. R., 3 Calc., 324;* and in *Tacoordeen Tewarry* v. *Ali Hossein Khan, L. R., 1 I. A., 192,* had been complied with, and that defendant had discharged the burden of proof upon him. TAMARASHERRI SIVITHRIS ANDARJANOM *v.* MARANAT VASUDEVAN NAMBUDRIPAD **[I. L. R., 3 Mad., 215**

10. ——————— *Variance between pleading and proof.*—Judgment of the High Court dismissing a plaintiff's suit confirmed on the evidence, in a case in which plaintiff sought in the lower Court to set up a deed of alleged sale from a Mahomedan pardanashin lady in favour of her neice, which position he abandoned before the High Court, where he suggested that although it was not good as a deed

PARDANASHIN WOMEN.—Execution of deed by pardanashin—*continued.*

of sale it would be good as a deed of bounty, the sale being colourable for the purpose of giving effect to a gift which otherwise it might be difficult to make under the Mahomedan law. KUMEEROONISSA BEGUM *v.* SYUFFOOLLAH . **16 W. R., P. C., 32**

Affirming S. C. KUMUROONISSA BEGUM *v.* SYFOOLLAH KHAN . . **5 W. R., 198**

11. ——— *Gift by Hindu lady to mooktear.—Onus.*—Where a mooktear sued his client, a Hindu widow, upon a purwannah bearing the clients' seal and purporting to give away valuable properties without any substantial consideration,—*Held* that the onus was on the plaintiff to satisfy the Court fully as to the circumstances under which the clients' seal was obtained, and to prove that the gift was made advisedly. RAM PERSHAD MISSER *v.* PHOOLPUTTEE . . **7 W. R., 98**

12. ——— *Gift by Mahomedan lady to one in a fiduciary position.*—Where a Mahomedan lady conveyed to her confidential adviser and two other persons the house in which she dwelt by deed of gift, which (though read over and explained to her by a clerk who acted both for the donees and her) was executed by the lady without independent professional advice, and without the advice of the heads of her caste, it was decreed, at the instance of her heirs after her death, that the deed should be set aside. RUJABAI *v.* ISMAIL AHMED **[7 Bom., O. C., 27**

13. ——— *Proof of execution.—Evidence of knowledge of contents and of free agency.*—A suit was brought upon a bond purporting to have been executed on behalf of two Mahomedan pardanashin ladies by their husbands, and to charge their immoveable property. The bond was compulsorily registrable, and it was presented for registration by a person who professed to be authorised by a power-of-attorney in that behalf. The only proof given by the plaintiff that this power-of-attorney was executed by the ladies, or with their knowledge and consent, was the evidence of a witness who deposed that he was not personally acquainted with them nor did he know their voices; that he went to their residence; that there were two women behind a parda whom the executants of the bond said were their respective wives, and that these women acknowledged they had made the power-of-attorney. There was nothing to show that the ladies had ever benefited in any way from the money advanced under the bond. *Held* that, even if the ladies behind the parda were in fact the two defendants, this evidence would not be enough to bind them, and that it was for the plaintiff, who sought to bring their property to sale on the strength of a transaction with them, to show that they were free agents in the matter, and, having a clear knowledge of what they were doing, accorded their consent to it. *Buzloor Raheem* v. *Shumsoonnissa Begum, 11 Moore's I. A., 551; Ashgar Ali* v. *Debroos Banoo Begum, I. L. R., 3 Calc., 324;* and *Sudisht Lal* v. *Sheobarat Koer, I. L. R., 7 Calc., 245,* referred to by MAHMOOD, *J.* BEHARI LAL *v.* HABIBA BIBI . . . . **I. L. R., 8 All., 267**

PARDANASHIN WOMEN.—Execution of deed by pardanashin—*continued.*

14. ——— *Want of legal advice.—Misapprehension.*—A deed conveying the interest of a native married woman in land will not be set aside on the ground of want of legal advice or misapprehension, where the husband is aware of the alienation, and it is not shown that there is a gross inadequacy of price. MONOHUR DOSS *v.* KHOOLSUN BEGUM . . . . . **Cor., 121**

15. ——— *Loan for Mahomedan women on bond executed under mooktearnamah.—Onus on lender.—Necessity.*—Where *A.* wishes to charge Mahomedan ladies under a bond executed in their absence by *B.* under a mooktearnamah, even if there was no collusion between *A.* and *B.*, *A.* is bound to show that there was no negligence on his part; that the advance was made after satisfying himself that it was taken for their use, and was required by them for the purposes stated in the mooktearnamah (*viz.*, for the payment of their debts); and also that the money was applied to the use of the ladies. GOLAM SOBHAN *v.* MUDDUN MOHUN PAUL **[18 W. R., 257**

16. ——— **Attendance of pardanashin in Court.**—*Personal attendance of accused person.—Criminal Procedure Code, s. 205.—Held,* where a Magistrate had issued a summons to a "pardanashin" woman, alleged to be of good position, who was accused of an offence, that the Magistrate should have dispensed with the personal attendance of the accused and permitted her to appear by pleader, until such time as he had before him clear, direct, and reliable *primâ facie* proof that the accused had a real charge to answer. IN THE MATTER OF THE PETITION OF RAHIM BIBI . . . **I. L. R., 6 All., 59**

17. ——— **Examination of pardanashin.**—*Witness.—Right to be examined on commission.*—A pardanashin woman, summoned as a witness in a criminal case, has a right to be exempted from personal attendance at Court, and to be examined on commission. IN THE MATTER OF THE PETITION OF HORRO SOONDERY CHOWDHRAIN **[I. L. R., 4 Calc., 20: 3 C. L. R., 93**

18. ——— *Privileges of, as witnesses.—Attendance in Court.*—Privileges of pardanashin ladies when attending Court in palanquins as witnesses considered. The general rule is that the lady should be admitted into Court in her palanquin, and give her evidence in it, after being properly identified. QUEEN ON THE PROSECUTION OF ROOKIA BANU *v.* ROBERTS . . **1 B. L. R., S. N., 5**

19. ——— *Attendance in Court.*—The Court will extend the privileges of parda to women who, though not parda, are not accustomed generally to appear before the public. KISTOMOHUN MOOKERJEE *v.* ADARMONEY DABEE **[2 Hyde, 88**

20. ——— *Attendance in Court.—Identification.*—The examination by commission of a pardanashin woman is not necessary where she can be examined in Court in a palki or otherwise,

PARDANASHIN WOMEN.—Examination of pardanashin—*continued.*

on a proper identification. NUSRUT BANOO *v.* MAHOMED SAYEM **18 W. R., 230**

21. ——————— *Privileges of, as witnesses.—Civil Procedure Code, 1859, s. 21.*—In the case of an unmarried girl of some 12 years of age, without any distinguished rank or station, but belonging to that class of Hindu society the female members of which never go out in public, it was held that she was entitled to the privilege of Act VIII of 1859, section 21, even though it was essential to have her testimony in a case recorded by the Judge himself, and that her testimony should be taken out of Court under suitable precautions. MAINATH SINGH *v.* MOORTA KOOER . **24 W. R., 375**

22. ——————— *Irregularity in mode of examination prejudicing the accused.*—Where the complainants were pardanashin ladies, and the Deputy Magistrate went to their residence and took their depositions in the presence of the accused, who had no opportunity of cross-examining, inasmuch as the deponents were in a shut-up room,—*Held* that the Deputy Magistrate's procedure was unusual and uncalled for, and the accused was prejudiced by the way in which the examination was taken; and that the complainants should have been called upon to make their charge through some one who knew the facts. IN THE MATTER OF THE PETITION OF JUDOO NUNDON LALL . **24 W. R., Cr., 22**

23. ——————— **Exemption from arrest.**—*Execution of decree.—Civil Procedure Code, 1859, s. 21.*—Exemption from arrest on process of execution under section 21, Act VIII of 1859, does not extend to all women of rank, but is limited to the women therein described,—women, that is, "who, according to the custom and manners of the country, ought not to be compelled to appear in public." DAVIS *v.* MIDDLETON . . . . . **8 W. R., 282**

24. ——————— *Execution of decree.*—Pardanashin women, or women who, according to usage of the country, ought not to be compelled to appear in public, are not exempt from arrest in execution of a decree. MAHARANI OF BURDWAN *v.* BARADASUNDARI DEBI

[1 B. L. R., F. B., 31: 10 W. R., F. B., 21

RAJCHUNDER ROY *v.* SHAMA SOONDURI DEBI

[I. L. R., 4 Calc., 583

See also KADUMBINEE DOSSEE *v.* KOYLASH KAMINEE DOSSEE

[I. L. R., 7 Calc., 19: 9 C. L. R., 25

PARDON.

See APPROVERS . **I. L. R., 7 All., 160**

See EVIDENCE—CRIMINAL CASES—EXAMINATION AND STATEMENTS OF ACCUSED.

[I. L. R., 1 Bom., 610
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PARDON—*continued.*

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See APPROVERS . **I. L. R., 8 Calc., 560**
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7 C. L. R., 66
13 C. L. R., 326

1. ——————— **Application for pardon.**—*Prisoner duly convicted.—Fresh evidence sufficient for acquittal.—Procedure.*—Where a prisoner has been duly convicted of a criminal offence, and afterwards there turns up fresh evidence, which would, in the opinion of the Judge, if it had been available at the trial, have produced an acquittal, the proper course to take is not to acquit the prisoner, but to apply to the proper authority for a pardon. REG. *v.* HART . . . **1 Ind. Jur., N. S., 333**

S. C. NUSSUR ALI *v.* HART . **6 W. R., Cr., 42**

2. ——————— *Application for pardon for political offence.*—Application for pardon or mitigation of punishment for a political offence (*e.g.*, for waging war against a Power in alliance with the Queen) should be made to the Executive Government. QUEEN *v.* SAJOWPA

[7 W. R., Cr., 100

3. ——————— **Tender of pardon.**—*Power of Magistrate.—Witness.*—A Magistrate is competent to tender a pardon to any person. The fact of such party being directly or indirectly concerned in the offence does not preclude him from being admitted as a witness for the Crown under section 209 of the Code of Criminal Procedure, 1861. QUEEN *v.* CHUNDEE CHURN BANERJEE . . **6 W. R., Cr., 94**

4. ——————— *Criminal Procedure Code, 1861, s. 210.*—A Sessions Judge was held to be not competent before a trial to instruct a Magistrate to tender a pardon under section 210 of the Criminal Procedure Code. IN THE MATTER OF NISTARINEE DEBIA . . . **7 W. R., Cr., 114**

5. ——————— *Tender of conditional pardon.—Criminal Procedure Code, 1861, s. 209.—Power of Magistrate.*—The provisions of section 209, Criminal Procedure Code, applied to cases triable by the Magistracy concurrently with the Court of Session. ANONYMOUS . **3 Mad., Ap., 2**

6. ——————— *Criminal Procedure Code, 1861, s. 209.—Power of Magistrate.*—The power given to a Magistrate by section 209 of the Criminal Procedure Code could not properly be exercised, except with a view to the committal of a case for trial before a Court of Session. ANONYMOUS . . . . . **3 Mad., Ap., 4**

7. ——————— *Power of Magistrate.—Criminal Procedure Code, 1861, s. 209.*—On a reference by a Sessions Judge, where certain persons were found guilty of gaming by a full power Magistrate, solely on the evidence of a person supposed to have been concerned in the offence, whom the Magistrate had pardoned,—*Held* that the Magistrate had no power to tender a pardon in a case

PARDON.—Tender of pardon—*continued.*

which he tries himself; but only under section 209 of the Criminal Procedure Code, in the case of an offence triable by the Court of Session. REG. *v.* REMEDIOS . . . . **3 Bom., Cr., 59**

8. ——————— *Criminal Procedure Code (Act X of 1882, s. 337, read with s. 338).—Offences not exclusively triable by Court of Session.*—A Sessions Judge cannot tender a pardon to an accused under section 338 of the Criminal Procedure Code, where the offence for which he has been committed is not "triable exclusively by the Court of Session." QUEEN-EMPRESS *v.* SADHEE KASAL . . . **I. L. R., 10 Calc., 936**

9. ——————— *Prisoner.—Witness.—Procedure.*—Procedure as to tendering a pardon to a prisoner before examining him as a witness, discussed. QUEEN *v.* GAGALU **[4 B. L. R., Ap., 50: 12 W. R., Cr., 80**

PAROL EVIDENCE.

See CASES UNDER EVIDENCE—PAROL EVIDENCE.

PARSIS.

See HUSBAND AND WIFE. **[I. L. R., 2 Bom., 75**

1. ——— **Laws applicable to Parsis.**—*Statute of Frauds.—(29 Car. II., c. 3).*—The Statute of Frauds (29 Charles II., Cap. 3), except so far as it has been repealed, applies to Parsis in India. BAI MANECKBAI *v.* BAI MERBAI **[I. L. R., 6 Bom., 363**

2. ——————— *Act IX of 1837.—Immoveable property of Parsis.*—Statement of circumstances which led to the passing of Act IX of 1837 relating to the immoveable property of Parsis. Application of English law to Parsis in Bombay. NAOROJI BERAMJI *v.* ROGERS . **4 Bom., O. C., 1**

3. ——————— *Suit for redemption.—Parsi defendant.—Bom. Reg. IV of 1827, s. 26.*—In a suit brought by a Mahomedan to redeem from the defendant, who was a Parsi, certain property that had been conveyed by the ancestor of the latter by a by-al-wafa (deed of conditional sale),—*Held* that the law to be applied was, under section 26 of Regulation IV of 1827, that of the defendant. That in the absence of any specific law for Parsis in the mofussil, the rule of justice, equity, and good conscience should be observed, and the Court should follow, with certain necessary modifications, the practice of the Courts of Equity in England. MANCHARSHA ASHPANDIARJI *v.* KAMRUNISA BEGAM **[5 Bom., A. C., 109**

4. ——————— *Parsis in mofussil of Bombay Presidency.—English law.—Rule in Shelly's case.—Equity and good conscience.*—The law applicable to Parsis in the mofussil of the Presidency of Bombay is, in the absence of evidence of any specific law or usage applicable to the particular case, "justice, equity, and good conscience alone."

PARSIS.—Laws applicable to Parsis—*continued.*

In applying "justice, equity, and good conscience" to the facts of any particular case, the Courts will be guided by the general principles of English law applicable to a similar state of circumstances, and so as, if possible, to give effect to the intentions of the parties concerned, where such intentions are clearly expressed, and are not repugnant to any general principle of English law. The Courts will not, in such a case, apply rules of English law which, though well established and binding on English Courts, are yet so special in their nature and origin as to be inapplicable to the different circumstances of this country. The members of a Parsi family, the heirs of one Framji Cowasji Banaji, deceased, entered into an agreement with one another, bearing date the 24th May 1851, by which they agreed that the remaining income, after paying the deceased's debts, of a certain estate which had belonged to the deceased, called the Poway estate—an estate situated in the Island of Salsette, and, therefore, in the mofussil of the Presidency of Bombay—should be apportioned "to the heirs mentioned in clause 7 (of the agreement)"—*i.e.*, among the various heirs of Framji Cowasji Banaji, deceased, the parties to the agreement—"but, after their death, their shares are to be enjoyed and received by their heirs and children from generation to generation for ever." It was contended that Parsis being subject to English law, these words conferred an absolute estate in their respective shares upon the various parties to the agreement under the rule in *Shelley's case. Held per* BAYLEY, *J.*, that the plain intention of the parties to the agreement, appearing on the face of the agreement, was that they themselves should take only a life estate to the exent of their respective shares in the remaining income of the Poway estate; and that the rule in *Shelley's case* should not be applied so as to defeat that plain intention. *Held* on appeal (affirming the order of BAYLEY, *J.*) that, even assuming English law to be applicable, the English law so to be applied could not include the rule in *Shelley's case*, which is a law of property or tenure based on feudal considerations, and unsuited to the circumstances of India; that the rule of construction to be applied to the agreement must in any case be to give effect to the intention of the parties according to the plain meaning of the language; and that to construe the agreement as giving more than a life interest to the parties thereto, would be to defeat their obvious intention. MITHIBAI *v.* LIMJI NOWROJI BANAJI . . . **I. L. R., 5 Bom., 506**

S. C. on appeal . . **I. L. R., 6 Bom., 151**

5. ——————— *Marriage of Parsis.—Act XV of 1865, s. 30.—Bigamy.—Divorce.*—A Parsi residing in Bombay after the passing of Act XV of 1865, but before it came into operation, contracted a second marriage during the lifetime of his wife, from whom he had not been divorced, and whom he moreover wilfully deserted for two years. On appeal from an order by the Judge of the Parsi Chief Matrimonial Court rejecting a plaint for divorce by the first wife, on the ground that the subject-matter of the plaint did not constitute a cause of action under section 30 of Act XV of 1865, and

PARSIS.—Laws applicable to Parsis—*continued.*

Act VIII of 1859, section 32,—*Held* that the facts alleged in the plaint did not amount to "bigamy coupled with adultery," nor to "adultery coupled with wilful desertion," within the meaning of section 30 of Act XV of 1865, as a second marriage contracted by a Parsi husband during the lifetime of his first wife was not unlawful before the Act came into operation, nor did the provisions of the Act in any way affect the validity or the consequence of such a marriage. AVABAI *v.* JAMASJI JAMSHEDJI **[3 Bom., A. C., 113**

6. ——————— *Act XXI of 1865, s. 8.—Succession Act, s. 42.—Advancement.—Statute of Distribution.*—In excluding, by section 8 of the Parsi Succession Act, from application to Parsis, section 42 of the Succession Act, which repeals the English rule as to advancement contained in the Statute of Distribution, section 5, it was not the intention of the Legislature to preserve the last-mentioned rule in force for the Parsi community. DHANJIBHAI BOMANJI GUGRAT *v.* NAVAZBAI **[I. L. R., 2 Bom., 75**

7. ——— **Parsi succession.**—*Act XXI of 1865.—Effect of words excluding from inheritance.—Heir-at-law.*—*A.*, a Parsi inhabitant of Surat, died there on the 13th February 1879, leaving him surviving the following relations, *viz.:* A daughter *J.* (the respondent) by his first wife, who had predeceased him; his second wife, Dhanbai, who lived apart from him; his third wife, who had been divorced by him, and whose son *A.* did not recognise as his own; and his three sisters, *D.*, *S.*, and *G.*, the first-named of whom had been married to *K.*, and whose son, *E.*, was the appellant. By his will *A.* expressly directed that neither his daughter *J.* nor his widow Dhanbai should take any share of his property, the whole of which he bequeathed to his brother *R.*, who, however, predeceased him. On the 6th September 1879 *J.* applied to the District Court of Surat, that letters of administration to *A.'s* estate might be granted to her husband as her attorney, alleging that *A.* died intestate. Her application was opposed by *E.*, *D.*, and *S.* (the nephew and two sisters of *A.*), on the ground that *J.* was expressly excluded by *A.* from inheriting his property, and that neither she nor her husband resided permanently within the Presidency of Bombay. The District Judge granted limited letters of administration to *J.'s* husband as her attorney, under section 214 of Act X of 1865. On an appeal to the High Court by *E.* alone,—*Held* that *A.* had died intestate, not having made any bequest or devise of his property which could take effect, inasmuch as his sole devisee (*R.*) had predeceased him, and that the estate must, therefore, go in accordance with the law of succession. The use of mere negative words, unaccompanied by any effective disposition of his property, could not exclude his daughter *J.* or his widow Dhanbai from succeeding to their shares of the estate. Under the Parsi Succession Act (XXI of 1865), widows and children rank before brothers and sisters. Section 7, schedule II, article 2, of the Parsi Succession Act is applicable only where the deceased

PARSIS.—Parsi succession—*continued.*

leaves neither lineal descendants, nor a widow or widower. ERASHA KAIKHUSRU *v.* JERBAI **[I. L. R., 4 Bom., 537**

8. ——————— *Act XXI of 1865.—Childless widow of intestate son of Parsi.*—It is not a condition precedent to the application of section 5 of Act XXI of 1865 that the predeceased son of an intestate Parsi shall have left a widow *and* issue. Where an intestate Parsi left him surviving a widow, sons, daughters, children of a predeceased son, and the widow of another predeceased son, who had died without issue, and a posthumous daughter was afterwards born to the intestate,—*Held* that such last-mentioned widow was entitled to one moiety of the share in the intestate's estate which her husband would have taken had he survived the intestate, and that the other moiety of such share devolved on the surviving issue of the intestate, including the posthumous daughter, and the children of his other predeceased son. MANCHERJI KAWASJI DAVUR *v.* MITHIBAI . . . . **I. L. R., 1 Bom., 506**

9. ——— **Parsi will.**—*Evidence of genuineness of.—Adoption.*—An adoption made by a Parsi immediately before his death would render extremely improbable the execution of a will by him a very short time previous thereto, and therefore calls for very clear proof to establish its existence. HOMABHAEE *v.* PUNJEABHAEE DOSABHAEE **[5 W. R., P. C., 102**

10. ——————— *Usage among Parsis.*—The will of a Parsi in favour of his wife and daughter upheld, notwithstanding a rule or usage, set up by a brother of the testator to the effect that among Parsis no disposition could be made by will to the total disherison of the heir, such rule or usage not being proved. MODEE KAIKHOOSCROW HORMUSJEE *v.* COOVERBHAEE **[4 W. R., P. C., 94: 6 Moore's I. A., 448**

PARTICULARS OF PROPERTY FOR SALE, ALTERATION OF—

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1. PARTIES TO SUITS—*continued.* Col.

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1. PARTIES TO SUITS.

1. ——— Advocate General.—*Suit for account of endowed property on death of last surviving trustee.—Quære,*—Whether the Advocate General must not be made a party in all cases where an account is sued for of property left by will to a charitable institution of which the last surviving trustee has died. Notice of the decree directed to be given to the Advocate General, in case he should think fit, on behalf of the Crown, to propose a scheme for the management of the charity. Powers of the Advocate General. THAKOOR DOSS SETT *v.* HOGG . Cor., 68

2. ——— *Suit to administer funds of Hindu charity.*—A suit to administer the funds of a Hindu charity is properly brought in the name of the Advocate General, who should, however, only exercise a general control over such suit, and not interfere in the minute details of the religious charity to be administered. ADVOCATE GENERAL *v.* VISHVANATH ATMARAM . . . 1 Bom., Ap., 9

PARTIES—*continued.*

1. PARTIES TO SUITS—*continued.*

3. ——— **Agents.**—*Suits by agents brought in their own names.*—All suits should be brought by the person or persons in whom the legal right of suit is vested, and not by agents in their own names. The objection that a suit is not so brought is an important one materially affecting the regularity of procedure. LALA MANOHUR DASS *v.* KISHEN DYAL . . . . . **3 N. W., 175**

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4. ——— *Suit brought in agent's name.—Suit by agent for principal.*—Where an attorney sues for his principal, the suit should be brought in the name of the principal. CHOONEE SOOKUL *v.* HUR PERSHAD **[1 N. W., Ed. 1873, 277**

JUGGUNATH *v.* BECK . . **2 N. W., 60**

HURSARUN SINGH *v.* PURSHUN SINGH **[2 N. W., 415**

5. ——— *Suit as agent.—Act X of 1859, s. 69.—Held* (by MARKBY, *J.*) that no one can be plaintiff in a suit for rent except the person who has the right to recover; the only effect of section 69, Act X of 1859, being to enable the person who is employed in the collection of rents to sue as agent. MODHOOSOODUN SINGH *v.* MORAN & CO. **[11 W. R., 43**

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6. ——— *Suit against agent.—Liability of firm for act of gomashta.*—A gomashta of a firm should not be sued in respect of a debt due from the firm even if he contracted it with authority PHOOL CHUND *v.* SHIVA PERSHAD **[2 Agra, Mis., 4**

7. ——— *Gomashta.—Recognised agent.—Beng. Act VIII of 1869, s. 13.*—A gomashta holding a written authority from his employer, and suing for rent in the name and on behalf of the latter, should be admitted as the recognised agent of such employer within the meaning of section 13, Bengal Act VIII of 1869. RAM LALL KURFURMA *v.* RAM TARUN KOONDOO . . **16 W. R., 254**

8. ——— *Bengal Rent Act, 1869, s. 32.—Principal and agent.—Plaintiff.—Gomashta.*—Under section 32 of Bengal Act VIII of 1869, a gomashta has no right to bring a suit in his own name. He can only sue in the name of his employer, and conduct the suit for him like any other agent. KOONJO BEHARY ROY *v.* POORNO CHUNDER CHATTERJEE . **I. L. R., 9 Calc., 450: 12 C. L. R., 55**

9. ——— *Gomashta.—Plaintiffs.*—Where a gomashta sued on behalf of a firm, it was ordered that the parties themselves whom he

PARTIES—*continued.*

1. PARTIES TO SUITS—*continued.*

Agents—*continued.*

represented should be made parties, and a guardian appointed for such of them as were minors. GOBIND DASS *v.* JAYKISHEN DASS . . **2 Agra, 101**

10. ——— *Suit by manager of indigo concern.—Right to sue.*—In an action brought by the manager of an indigo concern, on the basis of a contract executed by defendant, and addressed to a previous manager, now deceased, it was held that, as the plaint did not disclose that the plaintiff had any interest of his own in the suit, and as the contract was not in terms with him personally, he could not maintain the action in his own name. GLASCOTT *v.* GOPAL SHEIKH . **9 W. R., 254**

11. ——— *Suit by Official Assignee.—Agent of assignee.*—In a suit by the Official Assignee of an Insolvent Court, such Official Assignee should be made the plaintiff, and the law then allows him to sue by his recognised agent; but the law does not allow the recognised agent to sue as plaintiff. In a suit so incorrectly instituted the plaint should be returned for amendment. CARTER *v.* MISREE LAL **[2 N. W., 179**

12. ——— *Agent suing instead of corporate body.*—Where a corporate body—*e.g.*, the East Indian Railway Company—is sued, not in its corporate capacity, but through an agent, the suit is brought in a wrong form. NUBEEN CHUNDER PAUL *v.* STEPHENSON . . **15 W. R., 534**

13. ——— **Benamidars.**—*Suit by benamidar.—Acquiescence in, or waiver of, objection.*—The real owner of property is the person who should institute a suit for it. A benami holder may sue as trustee on behalf of the beneficial owner, without disclosing the name of the real owner; and if the defendant does not object to the suit proceeding in that form, and raises no issue upon the real title of the plaintiff, the suit may proceed and be decided. PROSUNNO COOMAR ROY CHOWDHRY *v.* GOOROO CHURN SEIN. GOOROO CHURN SEIN *v.* OOJULMONEE CHOWDHRAIN **[3 W. R., 159**

14. ——— *Suit for land sold in execution of decree.—Actual purchaser.*—In a suit for possession of land sold in execution of a decree by a person who claimed to have bought the right, title, and interest of the judgment-debtor in the land, but who, in fact, was not the real purchaser,—*Held*, the suit must be dismissed because of the non-joinder as plaintiff of the real purchaser. KALLY PROSONNO BOSE *v.* DINONATH MULLICK **[11 B. L. R., 56: 19 W. R., 434**

15. ——— *Benami purchase.—Suit for possession.—Real purchaser.*—A suit for possession of property which has been purchased benami, cannot be maintained in the name of the nominal purchaser; the real purchaser should be made a plaintiff in the suit. FUZELUN BEEBEE *v.* OMDAH BEEBEE **[11 B. L. R., 60, note: 10 W. R., 469**

PARTIES—*continued.*

1. PARTIES TO SUITS—*continued.*

Benamidars—*continued.*

MEHEROONISSA BIBEE *v.* HUR CHURN BOSE [10 W. R., 220

TAMAOONNISSA *v.* WOOJJULMONEE DOSSEE [20 W. R., 72

16. ——— *Suit in name of benamidar.*—Where a suit is brought in the name of a benamidar only, the Court ought to direct that the beneficial owners should be made parties, and not to dismiss the suit. SITA NATH SHAHA *v.* NOBIN CHUNDER ROY . . . 5 C. L. R., 102

See GOPI NATH CHOBEY *v.* BHUGWAT PERSHAD [I. L. R., 10 Calc., 697

17. ——— *Suit by benami purchaser.—Civil Procedure Code, 1859, s. 260.—A.* purchased at a Sheriff's sale, in the name of his son, the interest of a mortgagee in certain property, and, before Act VIII of 1859 came into operation, instituted a suit in his own name to recover the possession of the mortgaged property. *Held* that the suit was rightly brought, if the son's consent could be shown. *Quære,*—What is the effect of section 260 of Act VIII of 1859 on suits of this character? BHAISHANKAR NARBHERAM *v.* HARIVALLABH [1 Bom., 20

18. ——— **Bonds, Suits on.**—*Suit by assignee of bond, after death of obligee.—Representative of obligee.*—In a suit by *A.* on a bond in favour of *B.*, the plaintiff may show by oral evidence that the money secured by the bond was his own; but where *B.* has died, *A.* must either entitle himself as *B.'s* personal representative, or make *B.'s* personal representative a party to the suit. DEVA RAU *v.* VENTESA ACHARIYAR . . . 1 Mad., 452

19. ——— *Indemnity bond.*—A bond of indemnity was given to five persons to secure the fidelity of a naib. The naib was afterwards employed by three only out of the five obligees in the bond.—*Held* that, on the naib misconducting himself, the three obligees could not sue alone on the bond. *Semble,*—Neither in such case could the five obligees have sued, as the faithful service intended to be secured by the bond was service to five persons and not to three only. PARBUTTINATH ROY *v.* TEJOMOY BANERJI . . I. L. R., 5 Calc., 303

20. ——— *Suit by assignee on bond.—Liability of obligee.*—The obligee of a common money-bond, of which a *bonâ fide* valid assignment has been made, is not liable to be made a defendant in a suit by his assignee to enforce payment of the bond, and to a decree against himself jointly with the obligor. ANONYMOUS *v.* MUTTUSAMIYA PILLAI . . . . . 1 Mad., 140

21. ——— **Contracts, Suits on.**—*Suit for specific performance.—Stranger to contract.—Civil Procedure Code (Act X of 1877), ss. 28 and 45.*—A stranger to a contract of which specific performance is sought, cannot be a party to the suit. Where, therefore, the plaintiff sued as against one defendant

PARTIES—*continued.*

1. PARTIES TO SUITS—*continued.*

Contracts, Suits on—*continued.*

for specific performance of a contract to sell land, and as against another for a declaration that he was not entitled to any charge upon the said lands,—*Held* that the latter defendant was improperly made a party to the suit. LUCKUMSEY OOKERDA *v.* FAZULLA CASSUMBHOY . . . I. L. R., 5 Bom., 177

22. ——— *Suit for specific performance.—Receiver.*—Where the receiver in a suit had, by order of Court, sold certain property in the suit, and had executed the contract of sale in his own name, a plaint praying for specific performance against the purchaser for refusing to complete the contract was admitted with the receiver as co-plaintiff, he having obtained leave to sue. WILKINSON *v.* GANGADHAR SIRKAR . . 6 B. L. R., 486

23. ——— *Suit for specific performance.*—In a suit for specific performance of a contract,—*Held* that the principle laid down in the cases of *DeHoughton* v. *Money, L. R., 2 Ch., App., 166;* and *Luckumsey Oorkerda* v. *Fazullah Cassumbhoy, I. L. R., 5 Bom., 177,—viz.,* that a stranger to the contract cannot be a party to the suit,—is only applicable where from the plaintiff's case it appears that a third party, not a party to the contract, has a distinct interest from that of the other parties to the contract, which interest is sought to be declared null and void. MOKUND LALL *v.* CHOTAY LALL [I. L. R., 10 Calc., 1061

24. ——— *Suit by mortgage without co-sharers.*—Where a mortgage-bond was executed in favour of the plaintiff alone, the fact that there were other persons members of the joint family co-sharers with the plaintiff did not render it necessary to make them parties to a suit on the mortgage, as the plaintiff might be regarded as contracting on behalf of himself and the other members of the family as undisclosed principals. HUNGSEE SINGH *v.* SOODIST LALL . . I. L. R., 7 Calc., 739 [10 C. L. R., 263

25. ——— **Co-sharers.**—*Joinder of parties.—Right of co-sharer to sue alone.*—Unless there is a special provision of the law, co-owners are not permitted to sue through some or one of their members, but all co-owners must join in a suit to recover their property. The defendant cannot be deprived of his right to insist on the other co-owners being joined on the record by the fact that they approve of the suit being brought by the plaintiff alone. BALKRISHNA MORESHVAR KUNTE *v.* MUNICIPALITY OF MAHAD . . . . I. L. R., 10 Bom., 32

26. ——— *Suit for arrears of rent.—Appeal, Amendment on.*—In a suit for arrears of rent of the plaintiff's share of a talook, it appeared that, in the year 1279, a butwara was effected of the zemindari in which the talook was situated, and that the talook ceased to be held exclusively by the plaintiff, but was divided between him and certain other persons, who were not made parties to the suit. *Held* that all the co-sharers should

PARTIES—*continued.*

1. PARTIES TO SUITS—*continued.*

Co-sharers—*continued.*

have been joined as parties, and that, as this had not been done, the suit was bad. OBHOY GOVIND CHOWDHRY *v.* HURYCHURN CHOWDHRY [I. L. R., 8 Calc., 277

27. ——— *Lease.—Suit by one of several joint lessors for his share of rent.*—One of several joint lessors of certain land sued the lessee for his share of the rent payable under the lease to all the lessors, making the other lessors defendants. *Held* that the suit was not maintainable, and the making of the other lessors defendants did not cure the defect in the suit. MANOHAR DAS *v.* MANZUR ALI . . . I. L. R., 5 All., 40

28. ——— *Suit for ejectment.—Landlord and tenant.—Possession, Suit for, by one of several proprietors.*—The owners of a 13-anna share of a julkur sued to eject a lessee on his refusal to pay an enhanced rent. *Held* that he could not be ejected by a suit brought by one only of several proprietors. A lease granted by all the proprietors cannot be varied or terminated at the suit of one. BOLLYE SATEE *v.* AKRAM ALLY [I. L. R., 4 Calc., 961

29. ——— *Suit for possession.—Lessors.*—Plaintiff sued to recover possession of certain land said to have been included in a talooka pottah given him by the zemindars, alleging that defendants were obstructing his possession. For the defence it was averred that these lands fell within a 9-anna share which belonged to one *D.*, and that by process of sale they became the right of other parties under whom defendants held as lessees. *Held* that it was unnecessary to make the lessors on either side parties in the case. NAGUR CHAND *v.* DOORGA DOSS CHOWDHRY [11 W. R., 137

30. ——— *Suit by co-sharer against mortgagee for share of profits.—Act XIV of 1863, s. 1.*—A co-sharer can only sue such persons in the Revenue Court, under clause 2, section 1, Act XIV of 1863, as are appointed or entitled by custom to make the collections of rent on behalf of the proprietary body of the estate or any part thereof, and who are bound to pay the revenue and village expenses, and to account to coparceners for receipts and expenditure as their representatives. SREE KISHEN *v.* ESHREE PURTAUB RAI . . . 2 Agra, 299

31. ——— **Debtor and creditor, Suits between.**—*Bond.—Suit for a share of a debt.*—*A.*, *B.*, and *C.* were uterine brothers, Mahomedans, to whom jointly a sum of money was due on a bond. *A.*, the elder brother, sued the debtor for recovery of the debt, and, after successfully resisting the claim of *B.'s* widow to be made a party to the suit, obtained a decree for the principal and interest to the date of decree, together with subsequent interest and costs. *A.* realised the decree for the principal and interest to the date of decree only. *B.'s* widow, on behalf of herself and two minor sons, sued *A.* for the

PARTIES—*continued.*

1. PARTIES TO SUITS—*continued.*

Debtor and creditor, Suits between—*continued.*

share of the decretal moneys which belonged to her husband's estate. She refused to join her daughters as parties. *Held* that she was entitled to recover a third share of the amount realised under *A.'s* decree, minus the share of her two daughters. NURUNNISSA *v.* ROUSHAN JAN . . . . 2 B. L. R., Ap., 1

32. ——— *Trustees for benefit of creditors.*—The creditor of an insolvent who has assigned all his property to trustees for the benefit of all his creditors generally, sued him for his debt, joining the trustees as defendants, on the ground that they had refused to register his claim. *Held* that they were rightly joined as defendants in the suit. AJUDHIA NATH *v.* ANANT DAS [I. L. R., 3 All., 799

33. ——— *Suit by trustees of deed for benefit of creditors to set aside attachment.*—To a suit by the trustees of an assignment for the benefit of his creditors by an insolvent trader to set aside an attachment by an execution-creditor who did not assent to the assignment, it is not necessary to make all the creditors parties. STEPHENSON *v.* BAUMGARTNER . 3 Agra, 104

34. ——— **Declaratory decrees.**—*Suit to declare pottahs forgeries.—Interested parties.*—In a suit by a superior holder (representing the zemindar by whom certain pottahs were alleged to have been granted) for a declaration that the pottahs were forgeries, against a party holding a portion of land by a title derived from lessees under those pottahs, it was held that all the parties interested in, and holding under, the pottahs should be made parties to the suit, on the principle that all persons who are interested in the question must be made parties to a suit in a Court of Equity. DUKHEENA MOHUN ROY *v.* AMEEROODDEEN MAHOMED . 12 W. R., 247

35. ——— *Suit for declaration of right against proprietor.—Agent.*—In a suit for declaration of right against a proprietor of an estate, it is necessary that the proprietor himself, and not his karindah only, be made a party to the suit. A decree against the karindah cannot bind the proprietor. MADHO RAO APA *v.* THAKOOR PERSHAD . . . . . 3 Agra, 127

36. ——— **Endowments.**—*Parties to suit on behalf of temple.*—The samudayi of a temple is not competent to bring a suit on its behalf. The proper parties to sue are the uralers (trustees). RAMA VARAR *v.* KRISHNEN NAMBUDRI [I. L. R., 3 Mad., 270

37. ——— *Suit to redeem lands belonging to temple.—Agent.—Persons in whom temple is vested.*—Plaintiff, alleging himself to be "karaima samudayam" of the Malamal Ayyappan devaswam, sued to redeem lands which had been mortgaged by the devaswam. *Held* that he was not entitled to maintain the suit; that the uralers are the persons in whom the estate and pro-

PARTIES—*continued.*

1. PARTIES TO SUITS—*continued.*

Endowments—*continued.*

perty of the temple is vested, and that the plaintiff was an agent accountable to the uralers and subject to be dismissed by them for misconduct. KUNJUNNEEI NAMBIAR *v.* NILAKUNDEN [I. L. R., 2 Mad., 167

38. ——— *Agent.—Person in whom temple is vested.*—A karayma samudayam of a Malabar devaswam is merely an agent or manager, with a proprietary and hereditary right in his office. The ownership of the property of the devaswam is vested in the uralers, who are the proper parties to sue the tenants of the devaswam lands. PATINHARIPAT KRISHNAN UNNI NAMBIAR *v.* CHEKUR MANAKKAL NILAKANDAN BHATTATHIRIPAD . . . . I. L. R., 4 Mad., 141

39. ——— *Suit for property belonging to.—Joint mutwallis,—Joint trustees*—Where property belonging to an endowment is sought to be recovered from a third party, who asserts that he is the owner thereof, all the mutwallis of the endowment should be made parties to a suit instituted for the recovery of such property. Such of the mutwallis as refuse to join as plaintiffs should be made defendants. BECHU LAL *v.* OLIULLAH [I. L. R., 11 Calc., 338

40. ——— *Non-joinder of a necessary party.—Suit to set aside alienation of debuttur lands.—Trust for religious purposes.*—The representatives of three out of four Hindus, who were joint sebaits, managing debuttur property, sued to have an alienation, made by the fourth sebait alone, set aside. They did not make the latter a party to the suit; nor did the plaintiffs ask the assistance of the Court to make him one, under section 73 of Act VIII of 1859. *Held* that he was a necessary party. It was not enough that he was a member of the body of sebaits; and although indirectly he might have gained advantage from the suit brought by the other sebaits, this did not suffice to connect him with the suit as a party to it. No ground for making an exception to the general rule was presented. RAJENDRONATH DUTT *v.* MAHOMED LAL [I. L. R., 8 Calc., 42

41. ——— Government.—*Suit to question act of State.—Suit against Government.*—To question an act of State, directly or indirectly, the contention must be raised in a suit duly constituted, to which the Government must be made a party. UMJAD ALLY KHAN *v.* MOHUMDEE BEGUM [10 W. R., P. C., 25: 11 Moore's I. A., 517

42. ——— *Suit for redemption of gatkuli tenure.*—Where, in accordance with a stipulation in a mortgage-deed of gatkuli land, the mortgagor gave in a razinama to Government by which he gave up all claim to the land which was granted to the mortgagee,—*Held*, in a suit to redeem the mortgage, the Government was not a necessary party: it is only a necessary party in cases where the nature

PARTIES—*continued.*

1. PARTIES TO SUITS—*continued.*

Government—*continued.*

of the tenure is in dispute. RANU VALAD AVAJI MALI *v.* RAMABAI KOM MAHADU MALI [6 Bom., A. C., 265

43. ——— *Collector.—Suit to get property registered in name of vendee.—Registering officer.*—To a suit against a vendor to compel him to procure the transfer by the revenue authorities to the name of the vendee of the registration of the property sold, the Collector (the registering officer) must be a party. MANGAMMA *v.* TIMMAPAIYA [3 Mad., 134

44. ——— *Collector.—Suit for partition.—Necessity of Collector as party.*—In a suit by a shareholder of a joint estate to establish a right to partition, the Collector need not be made a party, unless the public revenue is jeopardised by the contemplated partition. BAMA SOONDUREE DABEE CHOWDHRAIN *v.* KASHEE KISSORE ROY CHOWDHRY [22 W. R., 245

45. ——— *Suit to set aside sale for arrears of revenue.—Secretary of State.—Civil Procedure Code, 1877, ss. 32, 424.*—The Secretary of State is not a necessary party to a suit to set aside a sale for arrears of revenue, but the Government have such interest as would, on their application, entitle them to be made a party. Section 424 of the Civil Procedure Code does not preclude a Court from adding the Secretary of State as a necessary party under section 32 of the Code. BAL MOKOOND LALL *v.* JIRJUDHUN ROY [I. L. R., 9 Calc., 271: 11 C. L. R., 466

46. ——— *Suit to recover chur lands claimed by Government as an island and settled with defendants.*—Plaintiff brought a suit for recovery of possession of land which had been thrown up by a large navigable river, and which he alleged formed an accretion to his estate. The defendant who was in possession claimed to hold the lands under a settlement which the Government had made with his predecessors in title, the Government having three years previously taken up the lands as forming an island. *Held* that the Government, as claiming a proprietary right in the disputed land, was a necessary party to the suit. CANNON *v.* BISSONATH ADHICARI [5 C. L. R., 154

47. ——— *Suit to set aside settlement.*—In a suit by a person claiming certain lands which had been resumed by the Government and settled with another party, the Government should be made a party. MAHOMED ISRAILE *v.* WISE . 13 B. L. R., F. B., 118: 21 W. R., 327

KRISHNO LALL NAG *v.* BHYRUB CHUNDER DEB [22 W. R., 52

48. ——— *Suit for possession of land settled by Government with successive owners.*—Where a piece of land has been surveyed and settled at one time as an accretion to the estate of *A.* and at an another as an accretion to the estate

PARTIES—*continued.*

1. PARTIES TO SUITS—*continued.*

Government—*continued.*

of *B.*, in a suit by *A.* against *B.* for possession of the land it is not, as a rule, necessary that the Government should be made a party. *Mahomed Israile* v. *Wise*, 18 B. L. R., 118: 21 W. R., 327, considered and explained. GIRDHAREE SAHOO v. HERA LALL SEAL . . . 2 C. L. R., 467

49. ——— *Suit for possession and declaration of right to participate in a permanent settlement of a mehal resumed under Reg. II of 1819.*—Chur land was held by the proprietors of the adjoining estate. The chur was resumed by Government in 1835, and declared to be liable to assessment under Regulation II of 1819. The recorded proprietors of the adjoining permanently-settled estate, to which the chur was a contiguous accretion, refused to make a permanent settlement with Government at the rent demanded. The chur was then held khas by Government for some time, and subsequently leased out for temporary periods to strangers. In these temporary leases Government reserved the proprietor's rights to come in and take a permanent settlement on the expiry of the temporary settlements, and also reserved an allowance of 10 per cent. on the rent as malikanah on their account, which sum had been kept in deposit in the Collectorate treasury. In 1867 the Government made a permanent settlement with the defendant, one of the recorded proprietors of the contiguous estate, of the entire chur, and refused the application of other shareholders in the estate to be joined in the settlement. The Collector, at the request of the defendant, applied the deposit in his treasury in satisfaction of the Government revenue. An unsuccessful shareholder brought a civil suit against the defendant for possession, and a declaration of his right to participate in the settlement. *Held* that it was not necessary to make the Government a party. KRISHNA CHANDRA SANDYAL CHOWDHRY v. HARISH CHANDRA CHOWDHRY . . 8 B. L. R., 524

S. C. KRISTO CHUNDER SANDYAL v. KASHEE KISHORE ROY CHOWDHRY . 17 W. R., 145

50. ——— *Political Agent.—Superintendent of Raj.*—A suit for property belonging to the Raja of Kota was brought in the name of the "Political Agent and Superintendent of the Kota State, on the part of the Government of India." *Held* that, if the Raja was the proprietor of the property, he should have been the plaintiff, or, if his right and interest therein had passed to Government, the Government should have been the plaintiff, but the Political Agent and Superintendent of the Kota State was not entitled to sue for the property. GIRDHARI DAS v. POWLETT [I. L. R., 2 All., 690

51. ——— *Suit against Government.—Local Government.*—In suits brought against the Government *eo nomine* under the Code of Civil Procedure, the Local Government must be considered as the party sued. SUBBARAYA MUDALI v. GOVERNMENT . . . . 1 Mad., 286

PARTIES—*continued.*

1. PARTIES TO SUITS—*continued.*

52. ——— Husband and wife.—*Right to sue.—Hindu woman.*—A Hindu woman may at all times sue either alone or jointly with her husband. BHOYRUB CHUNDER DOSS v. MADHUB CHUNDER PARAMANICK . . . . 1 Hyde, 281

53. ——— *Married Woman's Property Act, 1874, s. 8.—Suit for separate property.*—In a suit against a woman married before 1865, in respect of her separate property, it is not necessary to make her husband a co-defendant. STEPHEN v. STEPHEN . . 10 C. L. R., 536

54. ——— *Wife added as party.—Portion of estate purchased with her separate property.*—Wife made party to the suit, on the ground that a building on the estate was erected by her husband with money forming her separate estate. GOURGOPAL DUTT v. BISHONATH GHOSE . Cor., 41

55. ——— Joint family.—*Suit by one member for specific share.*—To a suit by one member of a Hindu joint family, living under the Mitakshara law, for a specific share of the joint family property, all the members of the family are necessary parties. NATHUNI MAHTON v. MANRAJ MAHTON [I. L. R., 2 Calc., 149

See PAHALADH SINGH v. LUCHMUNBUTTY [12 W. R., 256

SUDABURT PERSHAD SAHOO v. LOTF ALI KHAN. PHOOLBAS KOOER v. LALLA JUGGESSUR SAHI [14 W. R., 339

S. C. on review PHOOLBAS KOOER v. LALLA JUGGESSUR SAHOY . . . 18 W. R., 48

GOKOOL PERSHAD v. ETWARI MAHTO [20 W. R., 138

56. ——— *Suit to establish right belonging to Hindu family.—Necessary parties*—No member of an undivided Hindu family, except the manager of the family, as such, is entitled to bring a suit to establish a right belonging to the family without making the other members of the family parties to the suit. ARUNACHALA PILLAI v. VYTHIALINGA MUDALIYAR . I. L. R., 6 Mad., 27

57. ——— *Suit to set aside alienation of ancestral property.—Mitakshara.—Legal necessity.*—*J. L.* and *H. N.*, brothers, members of a joint Hindu family subject to the Mitakshara law, borrowed money by absolute and conditional sales of their joint estate. After the death of *J. L.*, his son, *L. P.*, brought a suit against the alienees to recover possession of the lands by reversal of the deeds, as to one half share thereof, which he claimed as the share of his father, *J. L.*, on the ground that there had existed no legal necessity justifying *J. L.* and *H. N.* in alienating the property. Neither *H. N.*, nor any one representing him, had been made a party to the suit. There was nothing to show that the family had been separated, or the property partitioned. *Held*, the suit should have been brought by all the joint members to set aside the deeds. If the other members refused to join as plaintiffs, they

PARTIES—*continued.*

1. PARTIES TO SUITS—*continued.*

Joint family—*continued.*

should have been made defendants. RAJARAM TEWARI *v.* LACHMAN PRASAD

[4 B. L. R., A. C., 118: 12 W. R., 478

SHRO CHURN NARAIN SINGH *v.* CHUKRABEE PERSHAD NARAIN SINGH . 15 W. R., 436

58. ——————— *Contract made by member of joint family in individual capacity.—Right to sue alone.*—The firm of *S. & Co.*, the partners of which were *W. S.* and *F. E.*, took a contract from Government on 12th November 1877 to construct a barrel-house at the Gunpowder Manufactory at Kirkee; and on the 28th November 1877 the plaintiff agreed to advance money "up to R15,000" for the purpose of enabling the firm to carry out the contract. Under the agreement the plaintiff was to receive all sums to become due from the Government on the contractors' bills, and to pay the balance to the firm after repaying himself all advances with interest. On the same day the firm executed a power-of-attorney to the plaintiff, authorizing him to receive from the Government Engineer all such sums to become due to the firm under the contract, which power-of-attorney was deposited by plaintiff in the office of the Executive Engineer at Poona. In March or April 1878 *W. S.* left for England, up to which time R34,900 had been advanced by the plaintiff, and a balance of R14,942-5-10 still remained due to him after giving credit for the sums received on the bills passed by the Executive Engineer. On 24th July 1878 the plaintiff entered into a fresh agreement with *F. E.* similar to the former one, to make further advances to the firm up to R16,000 in addition to R15,000 on the same terms as those mentioned in the previous agreement; and by means of these advances the contract was completed at the end of 1879. In 1878 the defendant obtained a decree against *W. S.*, and attached the right, title, and interest of *W. S.* in a sum of R5,034-11-9 in the hands of the Executive Engineer, which was then due to the firm on the contract. The plaintiff, who alleged that R13,700-1-11 were due to him from the firm, applied to have the attachment removed, which application was refused on 30th September 1879, and the sum attached was paid to the defendant. The plaintiff sued the defendant to recover from him R5,034-11-9. *Held* that, although the plaintiff might be a member of an undivided Hindu family, still, as the contract was entered into with the plaintiff in his individual capacity, and as there was nothing on the face of the contract to show that the plaintiff was acting on behalf of the family, the plaintiff was entitled to sue alone. JAGABHAI LALLUBHAI *v.* RUSTAMJI NASARWANJI

[I. L. R., 9 Bom., 311

59. ——————— *Suit for compensation for wrong.—Member of joint family suing alone.*—A member of a joint undivided Hindu family is not precluded from suing alone to obtain compensation in respect of a loss to himself personally caused by wrongful destruction of property in which he had a definite share. GOPEE KISHEN GOSSAIN *v.* RYLAND

[9 W. R., 279

PARTIES—*continued.*

1. PARTIES TO SUITS—*continued.*

60. ——————— Landlord and tenant.—*Suit for possession.*—Where a lessor, who had never been in possession, granted a pottah of lands to which his title was disputed, and the lessee was kept out of possession by the defendants, who disputed the lessor's title,—*Held* that the lessee could maintain his action for possession of the lands, and need not make his lessor a co-plaintiff. PRANKRISHNA DEY *v.* BISWAMBHAR SEN

[2 B. L. R., A. C., 207: 11 W. R., 80

61. ——————— Legacy, Suit for.—*Act IX of 1850, s. 32.—Suit for legacy or distributive share under intestacy.—Deposit.*—*K.* died leaving a will directing a certain sum to be paid to *M.*, his widow, the unexpended balance of such sum to go at the death of *M.* to his heirs. *M.* brought a suit against the executors of *K.'s* will, which was compromised on the payment by them to her of a certain sum. This sum she deposited with *N.*, one of the members of a firm, to be invested in *N.'s* own name, he paying her such interest as it yielded him. On the dissolution of the firm the sum deposited by *M.* was made over to *N.* alone, and on the death of *N.*, his estate, and with it the sum deposited by *M.*, came into the hands of the sons of *N.* On the death of *M.*, the plaintiff and two others were the heirs of *K.* In a suit brought by the plaintiff against the sons of *N.* for a third share of the sum deposited by *M.*,—*Held* that such a suit was not a "suit for a distributive share under an intestacy, or of a legacy under a will," within section 32, Act IX of 1850. All the parties claiming to be entitled to any interest in the sum deposited should have been made parties to the suit. HARAN CHANDRA MOOKERJEE *v.* NANDAGOPAL MUTTYLALL

[13 B. L. R., 142: 22 W. R., 71

62. ——————— Maintenance, Suits for.—*Civil Procedure Code, 1882, s. 32.—Suit for maintenance by member of Malabar tarwad.—Necessary parties.—Joinder of parties on appeal.*—Where a member of a Malabar tarwad sued the karanavan for an increased rate of maintenance,—*Held* that all the members of the tarwad were necessary parties to the suit. *Held*, also, the Appellate Court having reversed the decree on the ground of non-joinder of such persons and directed the plaint to be returned for amendment, that the proper course was for the Appellate Court to have added the necessary parties. MAMMALI *v.* PAKKI

[I. L. R., 7 Mad., 428

63. ——————— *Right of illegitimate son to maintenance.*—The right of an illegitimate son to maintenance out of his deceased father's property cannot be decided in a suit which concerns a portion only of that property and to which all persons in possession of the rest of the father's property are not parties. NARAYAN BHARTHI *v.* LAVING BHARTHI . . . I. L. R., 2 Bom., 140

64. ——————— Malicious prosecution, Suit for.—*Defendants not sued on same ground of action.*—In a suit claiming damages for an unsuccessful criminal prosecution of the plaintiff by the first defendant, and sanctioned by the second defendant as

PARTIES—*continued.*

1. PARTIES TO SUITS—*continued.*

Malicious prosecution, Suit for—*continued.*

a Subordinate Judge, it was doubted whether the first and second defendants could properly be joined in such an action. GIRDHARLAL DYALDAS *v.* JAGANNATH GIRDHARBHAI . . **10 Bom., 182**

65. ——— **Minor, Suit by.**—*Suit on behalf of minor.—Manager.*—Where the trusts of manager and guardian are vested in different persons, an action instituted on behalf of the minor with the sanction of the Court of Wards is properly brought by the manager. MODHOO SOODUN SINGH *v.* PRITHEE BULLUB PAUL . . . . **16 W. R., 231**

66. ——— *Minor contesting will.—Misjoinder of, as plaintiff.*—A minor interested in contesting the execution and validity of an alleged will by her father, having been improperly joined with the alleged executors of the said will as co-plaintiff, the decrees of the Courts below were reversed and the suit remanded, in order that the minor might be made a defendant, and a guardian *ad litem* appointed to protect her interests. KRISHNABAI *v.* SONUBAI . . **2 Bom., 327: 2nd Ed., 310**

67. ——— **Mortgages, Suits concerning.**—*Mortgage by agent.—Suit for possession.*—When a mortgage was made by the lumberdar for himself and as agent for the other sharers,—*Held* that in a suit for possession they should have been made parties as well as the lumberdar. PUNCHUM SINGH *v.* MUNGLE SINGH . **2 Agra, Pt. II, 207**

68. ——— *Suit for redemption.—Third parties claiming redemption.*—In a suit for redemption of a mortgage the plaintiff may implead other persons who claim the right of redemption in opposition to him. BHOOP SINGH *v.* NURSINGH RAI . . . **3 Agra, 144**

69. ——— *Suit for redemption.—Suit by one co-sharer.*—Where joint family property, though held in certain shares by the several coparceners, was mortgaged as a whole and redeemable on payment of the whole sum,—*Held*, in a suit by one of the joint tenants, or tenants-in-common, to redeem the whole estate, that all persons in whom portions of the equity of redemption were vested must be made parties to the suit. NARO HARI BHAVE *v.* VITHALBHAT . . **I. L. R., 10 Bom., 648**

70. ——— *Suit for redemption of share of estate.*—*Held* that any one of the mortgagors or his legal representatives is, if the mortgage-debt has been repaid, entitled to sue for redemption, and to be put in possession of his own share of the estate, whatever his coparceners may choose to do in the matter; and that the Judge should not have dismissed the suit merely on account of the majority of the mortgagors who disavowed their claim not being parties thereto, but should have proceeded to dispose of the case according to law. HURDEO *v.* GUNESHEE LALL . **1 Agra, 36**

PARTIES—*continued.*

1. PARTIES TO SUITS—*continued.*

Mortgages, Suits concerning—*continued.*

Contra,—All the mortgagors ought to be joined in such a suit. RAM BAKSH SINGH *v.* RAM LALL DOSS . . . . . **21 W. R., 428**

And *see* cases under MORTGAGE—REDEMPTION—REDEMPTION OF PORTION OF PROPERTY.

71. ——— *Suit by mortgagee for share of mortgaged property.*—A mortgagee cannot maintain a suit for khas possession of an undefined area of the mortgaged land without making his fellow-mortgagees parties to the suit. MAHOMED ISMAIL *v.* LALLA DHUNDUR KISHORE NARAIN **[25 W. R., 39**

72. ——— *Suit for foreclosure against assignee of mortgaged property.—Representatives of mortgagor.*—In a suit for foreclosure,—*Held* that it was not necessary to make the personal representatives of the mortgagor parties. He who has the equity of redemption is the only necessary party. BLAQUIERE *v.* RAMDHONE DOSS . . . . **Bourke, O. C., 319**

73. ——— *Suit by mortgagee.—Putnidar under mortgagor.*—Where the mortgagee of a zemindari brings a suit on his mortgage against a mortgagor who, previously to the mortgage, has granted a putni lease of the zemindari to a third party, the latter should be made a defendant in order to give him an opportunity to redeem. KASIMUNNISSA BIBEE *v.* NILRATNA BOSE **[I. L. R., 8 Calc., 79: 9 C. L. R., 173 10 C. L. R., 113**

74. ——— *Suit for possession by mortgagee against third party.*—In a suit for possession as mortgagee against a third party, where the mortgagee's (plaintiff's) title is denied, it is necessary that the mortgagee should show the extent of the rights and interests of the mortgagor in the property sued for. But it is sufficient for this purpose to make the mortgagor a defendant in the suit, and there is no necessity for a separate suit against such mortgagor. DOOLAY SINGH *v.* GOOLAM HOSSEIN . . . . . **2 N. W., 72**

75. ——— *Suit by mortgagee where property is alienated.*—When a mortgagee sues to enforce his lien on property which has intermediately passed by sale into other hands, he is bound to bring his action, not against the mortgagor alone, but also against the parties in possession. RAM YAD SINGH *v.* LALLA SALIGRAM SINGH **[16 W. R., 98**

76. ——— *Purchaser at sale of mortgaged property.*—*A.* mortgaged to his brother *B.* his twelfth share in the immoveable estate of the family. *C.* at *B.'s* request became surety for *A.* to Government. *A.* having become a defaulter, *C.* became liable to Government in respect of his defalcations. *B.* with a view to indemnify *C.*, transferred to him *A.'s* mortgage, *C.* at the same time assigning to *B.* a debt due by *D.* to *A.*,

PARTIES—*continued.*

1. PARTIES TO SUITS—*continued.*

Mortgages, Suits concerning—*continued.*

which had been previously assigned by *A.* to *C.* Government sold *A.'s* interest in the twelfth share, which was purchased at the sale by *B.'s* son, *E.* In a suit brought by *C.* against *B.* to obtain possession of *A.'s* share,—*Held* that *E.*, to whom only the equity of redemption passed by the purchase at the Government sale, was necessarily a party to the suit, which was accordingly remitted to the Court below, in order that he might be made a defendant, and a new decree passed upon the merits. YASHAVANT SUBAJI KULKARNI *v.* GOPAL LADKO BHANDARKAR [2 Bom., 202: 2nd Ed., 194

77. ——————— *Purchaser under execution against assets of testator.— Suit for foreclosure.*—A creditor who purchases under an execution against the general assets of a testator's estate, takes subject to a mortgage created in pursuance of a power contained in the will; and in a suit to foreclose the purchaser is rightly made a party. NILKANT CHATTERJEE *v.* PEARY MOHUN DAS [3 B. L. R., O. C., 7: 11 W. R., O. C., 21

78. ——————— *Suit by second mortgagee to recover premises when first mortgagee is paid off.—Administrator General.—Representative of deceased mortgagor.—Act XXIV of 1867, s. 17.*—In a suit brought by a second mortgagee against first mortgagees (admittedly overpaid) to compel the first mortgagees to convey to him the mortgaged premises, the heir or legal representative of the deceased mortgagor is, according to the balance of authority, a necessary party. Cases bearing on the above question collected and considered. Where it was uncertain who was the heir and legal representative of the deceased mortgagor, and the circumstances attending the execution of the second mortgage were not free from doubt, the cause was allowed to stand over, for the purpose of enabling the plaintiff to apply for an order to the Administrator General (under section 17 of Act XXIV of 1867) directing him to apply for letters of administration to the estate and effects of the mortgagor; and the plaintiff was allowed (in the event of letters of administration being granted to the Administrator General) to amend his plaint by making the Administrator General a party to represent the deceased mortgagor. The plaintiff was, however, ordered to give security for the probable costs of the Administrator General in the suit. VITHALDAS NAROTAMDAS *v.* KARSANDAS KESHAVDAS . . . . 5 Bom., O. C., 76

79. ——————— *Suit against mortgagee of administrator for property given by deceased.*—Where *M. H.*, in consideration of *K. N.* carrying on litigation concerning a piece of land claimed by *M. H.* at his own expense, agreed that after he should have recovered the land they should jointly erect buildings on it, the rents and profits of which should be jointly enjoyed by them during the life of *M. H.*, after whose death the property was to be the sole and absolute property of *K. N.*,—*Held*, in a suit by *K. N.* claiming to recover the property from the mortgagee of the administrator of *M. H.* who was in possession of it, that the representatives of the mortgagor were not necessary parties to the suit. DAMODHAR MADHAVJI *v.* KAHANDAS NARANDAS [8 Bom., O. C., 1

80. ——————— *Suit on mortgage-bond.—Alienation of property to different alienees.*—In a suit on a single mortgage-bond, where part of the property concerned is conveyed, or alleged to be conveyed, to different persons, all these are entitled to notice and to be made parties. Such a suit is not multifarious. KRISHNA GOPAL GHOSE *v.* HURRY NATH DUTT . . . . 25 W. R., 60

81. ——————— *Suit by Mahomedan heir of zur-i-peshgi mortgagee to recover advance.*—In a suit between Mahomedans by the heirs of a zur-i-peshgi mortgagee to recover the amount advanced, all the heirs of the mortgagee must be represented either as plaintiffs or defendants, or those who sue must claim in proportion to what they are entitled to under the Mahomedan law. MUJEEDOONISSA *v.* DILDAR HOSSEIN [14 W. R., 216

82. ——— **Nawab Nazim's Debts Act, Suit under.**—*Suit brought to recover property of nizamut.—Held* that a suit brought by a claimant against the Government and the grantee to recover property, which the commissioners appointed under the Nawab Nazim's Debts Act had certified to be nizamut property, but which had before the passing of the Act been conveyed by the Nawab to his son, could not proceed without the Nawab Nazim having been joined as a party. OMRAO BEGUM *v.* GOVERNMENT OF INDIA [I. L. R., 9 Calc., 704: 12 C. L. R., 595 L. R., 10 I. A., 39

83. ——— **Negotiable instruments.**—*Bill of exchange, Suit on.—Drawer and acceptor.—Joinder.—Civil Procedure Code, 1877, s. 29.*—The drawer and acceptor of bills of exchange can be joined as co-defendants in a suit brought by the holder of such bills. PESTONJEE EDULJEE GURDUR *v.* MAHOMED ALI . . I. L. R., 3 Calc., 541

84. ——————— *Bill of exchange.—Drawer and payee.*—Plaintiff, as payee of an order drawn by defendant at Ahmedabad, where he (defendant) resided, on a firm at Bankok in Siam, and dishonoured on presentation, sued defendant and an agent of the Bankok firm, who resided at Surat, in the Subordinate Judge's Court at Surat. Permission to proceed with the suit against the defendant (the drawer) having been refused by the High Court, plaintiff withdrew his plaint and filed his suit in the Court at Ahmedabad against the drawer alone. *Held* that plaintiff ought not to have joined the drawer (defendant) and the Bankok firm as defendants in the same suit. SHETH KAHANDAS NARANDAS *v.* DAHIABHAI . . I. L. R., 3 Bom., 182

PARTIES—*continued.*

1. PARTIES TO SUITS—*continued.*

Negotiable instruments—*continued.*

85. ——— *Hundi, Suit on.—Endorser, acceptor, and drawer.—Held* that a purchaser of a hundi on its being dishonoured is at liberty to sue his endorser alone, and it is not absolutely necessary to implead the acceptor and drawer in the same suit; and if he does so, he does not lose his right of suing them so long as his action is within the period of limitation. GOPAL DAS *v.* SEETA RAM **[3 Agra, 268**

86. ——— *Civil Procedure Code, 1877, s. 61.—Suit on lost cheque.*—The endorsees of a cheque sued the endorser, stating in their plaint that the cheque had been lost, and that the defendant refused to give them a duplicate of it, and claiming a duplicate of it or the refund of the money they had paid the defendant on the cheque. *Held* that the plaint should be amended by joining the drawer of the cheque as a defendant in the suit. BALDEO PRASAD *v.* GRISH CHANDRA BHOSE **[I. L. R., 2 All., 754**

87. ——— **Partition, Suit for.**—*Shareholders in joint property.*—A suit which is in the nature of a partition suit, cannot be properly dealt with unless all who are admittedly shareholders in the joint property are before the Court. PAHALADH SINGH *v.* LUCHMUNBUTTY . . **12 W. R., 256**

SADABURT PERSHAD SAHOO *v.* LOTF ALI KHAN.

PHOOLBAS KOOER *v.* LALLA JUGGESSUR SAHI **[14 W. R., 339**

S. C. on review PHOOLBAS KOOER *v.* LALLA JUGGESSUR SAHOY . . . **18 W. R., 48**

GOKOOL PERSHAD *v.* ETWARI MAHTO **[20 W. R., 138**

NATHUNI MAHTON *v.* MANRAJ MAHTON **[I. L. R., 2 Calc., 149**

88. ——— *Joint family property.—Assignee of member of family.*—In a suit by the mother and guardian of two minors to obtain a partition of joint family property free from the encumbrances which the father and sons had put upon it, wherein a third party was co-plaintiff by virtue of an alleged conveyance from the plaintiff, the Court did not allow such party to remain on the record as co-plaintiff, holding that the mother and guardian could not give him a right of suit against the other members of the family, and that the proprietary interests of the minors might ultimately be prejudiced. MUDDUN GOPAL LALL *v.* GOWURBUTTY **[21 W. R., 190**

89. ——— *Suit for partition after father's death.—Sons' wives.*—In a suit for partition, after the father's death, between brothers, the sons of different wives, who are alive at the time when such suit is instituted, such wives are necessary parties to the suit, as they are entitled to share with their sons. TORIT BHOOSUN BONNERJEE *v.* TARAPROSONNO BONNERJEE **[I. L. R., 4 Calc., 756: 4 C. L. R., 161**

PARTIES—*continued.*

1. PARTIES TO SUITS—*continued.*

Partition, Suit for—*continued.*

90. ——— *Share of joint zemindari.*—The owner of a 12 annas share in a joint zemindari granted to the plaintiff a mokurrari lease of his share in a small portion of land within the zemindari. The owners of the remaining 4 annas share granted a putni of his share in the whole zemindari to the defendants. The plaintiff brought a suit against the defendants for partition of the small plot of land. *Held* that such a suit would not lie, because the zemindars were not made parties. PARBATI CHURN DEB *v.* AIN-UD-DEEN **[I. L. R., 7 Calc., 577: 9 C. L. R., 170**

91. ——— **Partnership, Suits concerning.**—*Death of old proprietors of firm.—Suit by agent.*—A firm becomes dissolved when the original proprietors die, and if somebody comes in their place and carries on the business of the firm, the business, whether carried on under the old name or not, is not that of the old firm, but of an entirely new firm. A suit brought on behalf of such new firm must be brought in the names of the persons who are at the time of the institution of the suit carrying on its business. GOSSAIN GUNGA DUTT BHARUTEE *v.* DABEE DASS BABOO . . . **25 W. R., 118**

92. ——— *Suit by one member for debt due to family firm.*—In a suit for money lent, brought by the father of a joint Hindu family who carried on jointly an ancestral money-lending business, the plaintiff stated, in examination, that he had ceased to take an active part in the management of the affairs of the firm, and that the control of its business was in the hands of his sons, whom he described as "maliks." *Held* that, under the circumstances, the plaintiff could not maintain the suit in his individual capacity, and without joining his sons as plaintiffs with him, his sons being his partners in the ancestral business, and he not being the managing member or proprietor. JUGAL KISHORE *v.* HULASI RAM . **I. L. R., 8 All., 264**

93. ——— *Representatives of a deceased partner.*—The representatives of a deceased partner are not necessary parties to an action for damages under a guarantee to the original firm. BURKINYOUNG *v.* BHOOBUN MOHUN BONERJEE **[Cor., 90**

94. ——— *Suit for dissolution of partnership and account of dealings of deceased partner.*—To a suit for an account of dealings and transactions of a deceased partner in a Hindu family bank, and for a dissolution of the partnership, the heir or legal representative of the deceased partner is a necessary party. JANOKEY DOSS *v.* BINDABUN DOSS . **3 Moore's I. A., 175**

95. ——— *Suit for dissolution on basis of compromise in absence of representative of deceased partner.*—Where the surviving partners of a firm in the absence of a representative of a deceased partner, adjusted the partnership

PARTIES—*continued.*

1. PARTIES TO SUITS—*continued.*

Partnership, Suits concerning—*continued.*

accounts and agreed to hand over a portion of the partnership property to one of the partners in compromise of his claim, and the partner whose claim was so agreed to be compromised prayed for a dissolution of the firm upon the basis of such compromise, it was held that a representative of the deceased partner was a necessary party to the suit. RAMLAL THAKURSIDAS *v.* LAKHMICHAND MUNIRAM [1 Bom., Ap., 51

96. ——————— *Suit for the administration of the estate of a deceased partner.*—The fact that surviving partners are made parties to an administration suit of the estate of a deceased partner does not of itself alone enable the Court to direct such surviving partners to render an account of the partnership estate. Surviving partners cannot be made co-defendants with the executors in such a suit merely by reason of their partnership. They can be made co-defendants in certain special cases, as where the relation between the executors or administrators of the deceased partner and the surviving partners is such as to present a substantial impediment to the prosecution by the executors or administrators of the rights of the parties interested in the estate against the surviving partners. ELIAS *v.* HUBOOB MOOSHER MOOSHEE . . . . Bourke, O. C., 350

97. ——————— *Purchase of share by mortgagee.*—In a suit in respect of a partnership, the rights and interests in which of *T.*, one of the partners, had been purchased by the Delhi and London Bank, who had been mortgagees of some of the partnership property pledged to them by *T.* for money borrowed for purposes of the property,—*Held* that the Bank, as *T.'s* representative by purchase, had been properly joined as a defendant in the suit. HARRISON *v.* DELHI AND LONDON BANK [I. L. R., 4 All., 437

98. ——————— *Partners.—Refusal to join as plaintiffs.*—*A.*, *B.*, and *C.*, and others were partners in a firm, and had transactions as such partners with another firm in which also *C.* was a partner. In a suit by the former firm against the latter, *C.* and other partners in the former firm refused to join as plaintiffs. *Held* (reversing the decision of the Court below) that *C.* and the other partners of the former firm were rightly made defendants. BISSONATH RUCKITT *v.* GUNNESH CHUNDER DEY . . . 2 Ind. Jur., N. S., 203

RUSTUM ALLY *v.* AMEER ALLY SOUDAGUR [10 W. R., 487

99. ——————— *Practice.—Contract Act (IX of 1872), s. 43.*—In a suit brought upon a contract made by a firm, the plaintiff may select as defendants those partners of the firm against whom he wishes to proceed, allowing his right of suit against those whom he does not make defendants to be barred. LUKMIDAS KHIMJI *v.* PURSHOTAM HARIDAS . I. L. R., 6 Bom., 700

PARTIES—*continued.*

1. PARTIES TO SUITS—*continued.*

Partnership, Suits concerning—*continued.*

100. ——————— *Suit for contribution by one member of dissolved partnership against others.—Adjustment of accounts.*—In a civil action by one or more members of a defunct firm against another member for contribution to recover money paid in liquidation of a debt due by the firm, if there has been no adjustment of accounts it is necessary to make all the partners parties to the suit. PEAREE MOHUN ROY *v.* CHUNDER NATH ROY [18 W. R., 408

101. ——— **Principal and agent.**—*Suit against principal for acts of agent.*—Where a person sues another as liable for the acts of the accredited agent of the latter, it is not necessary that the alleged agent should be made a party to the suit. HATHI RAM *v.* GOBIND RAM . . 3 Agra, 131

102. ——————— *Suit to recover possession under Specific Relief Act, s. 9.—Necessary parties.—Principal and agent.—Suit for ejectment by party dispossessed.*—The plaintiffs sued, under section 9 of the Specific Relief Act (I of 1877) to recover possession of certain land which they alleged had been in their possession since 1856. They alleged that while retaining possession of the said land through care-takers appointed by them, they had been in the habit of yearly selling the grass of the land to purchasers who themselves cut the grass so purchased; that in 1878 the grass of the land for the ensuing year was sold to *T.*; that in the month of August 1879 the defendants forcibly dispossessed the plaintiffs of the said land, and prevented them and their servants and *T.* from entering the same. Defendant No. 2 denied the dispossession, and disclaimed any interest in the land. Defendants Nos. 1 and 3 denied that the land in question belonged to the plaintiffs, and alleged that it was the property of *A.*, of whom defendant No. 1 was manager, and No. 3 the lessee of the said land. They also alleged that the plaintiffs had tried to take forcible possession of the said land, and that defendant No. 1, acting on *A.'s* behalf, prevented them. They submitted that *A.* was a necessary party to the suit. *Held* that the three defendants were properly made parties to the suit, and that *A.* was not a necessary party. Defendant No. 1 (the lessee) had the physical occupation of the land sued for; but all three defendants not having made any declaration, in taking possession, that it was taken for one or two of their number, acquired it jointly, and handed on a derivative possession to the actual occupant, which as against third parties ranked as their own. If it was properly assumed, they all had a right to defend it; if not, they might all be called on for restitution. As to *A.*, he was not actually in possession, and had taken no personal part in the dispossession. He was said to be owner, but that did not imply that he committed the alleged acts of defendants, or insisted on his ownership. As he had not the physical possession of the land, it could not be assumed that he had the jural possession merely on the assertion of the defendants. He, therefore, having done no palpable wrong, was

PARTIES—*continued.*

1. PARTIES TO SUITS—*continued.*

Principal and agent—*continued.*

not a necessary party. *Held*, also, that defendant No. 2 was properly made a defendant, and that, in case the dispossession should be established, he should be retained as a defendant notwithstanding his disclaimer. It was possible that No. 3 held the land on terms beneficial to No. 2, and the disclaimer in the present suit would not estop No. 2 from enforcing these terms in a subsequent suit against No. 3. Where under a contract between *A.* and *B.* an exclusive occupation of immoveable property is given to *A.*, he is the proper plaintiff in a suit for possession brought under section 9 of the Specific Relief Act (I of 1877). If *B.* desires to sue immediately on the possessory right, he should sue in *A.'s* name, though for an injury to the reversion he (*B.*) may properly sue in his own name. The intention of the Specific Relief Act (I of 1877), section 9, is not to be frustrated by any private arrangement under which the ejector has acted, or by which he may consent to hold on behalf of some other person. As between him and that person, his possession may be that of an agent, but to the former holder he is the dispossessor: possession derived from him cannot be superior to his, and (the right of suit being given in general terms) is equally subject as his to the result of proceedings taken within the prescribed six months. A person who has been ejected from his property, in suing to recover it under section 9 of the Specific Relief Act (I of 1877), may sue the actual ejector, or the person under whose orders or by whose authority the actual ejector has acted, or he may sue both; but the wrong-doer who has taken possession is the one from whom primarily it is to be reclaimed. If a third party desire to maintain the expulsion as an act done on his behalf, it is for him to come forward and avow it. He may claim to be admitted as a defendant; but if he had himself a right to do what his agent has done, his right and his authority may be pleaded by the agent, and will be an effectual answer. The alleged owner or principal, therefore, is not a necessary party for the protection of the agent. The suit against the latter will fail if he acted on due authority where that authority is shown. VIRJIVANDAS MADHAVDAS *v.* MAHOMED ALI KHAN . . . **I. L. R., 5 Bom., 208**

103. ——— **Purchasers.**—*Purchaser pendente lite.*—A grantee or vendee of the defendant during the pendency of a suit need not be made a party to the suit. GULABCHAND MANICKCHAND *v.* DHONDI VALAD BHAU . . . **11 Bom., 64**

104. ——— *Purchaser pendente lite.*—The purchaser *pendente lite* of property actually in litigation need not be made a party to the suit. The title acquired by the purchaser is subservient or subject to the right of the parties in litigation. UMAMOYI BURMONEA *v.* TARINI PRASAD GHOSE . . . . . **7 W. R., 225**

105. ——— *Suit for arrear of rent and ejectment after sale of ryot's interest in execution of decree.—Purchaser.*—A talookdar in

PARTIES—*continued.*

1. PARTIES TO SUITS—*continued.*

Purchasers—*continued.*

executing a decree for rent sold his ryot's right and interest in the tenure. He afterwards instituted a suit against the same ryot for arrears and ejectment. *Held* that the execution-purchaser should have been made a party to the latter suit. PROSUNNO MOYEE DOSSEE *v.* BHUBO TARINEE DOSSEE **[10 W. R., 494**

reversing on review, BHUBO TARINEE DOSSIA *v.* PROSUNNO MOYEE DOSSIA. . **10 W. R., 304**

106. ——— **Registration, Suits for.**—*Suit to compel registration.—Registrar.*—To a suit to compel registration of a document under section 77 of the Registration Act, 1877, after denial of execution, the Registrar is not a necessary party. RADHAKISSEN ROWRA DAKNA *v.* CHOONEELOLL DUTT **[I. L. R., 5 Calc., 445 : 5 C. L. R., 172**

107. ——— *Registration Act, III of 1877, ss. 72, 77.—Suit to compel registration.—Necessary party.—Jurisdiction.*—To a suit under section 77 of the Registration Act (No. III of 1877) to obtain registration of a document, the registering officer or the Government is not a necessary party, and the proper *forum* for it is the Court of the lowest competent jurisdiction. WISHWAMBHAR PANDIT *v.* PRABHAKAR BHAT . . **I. L. R., 8 Bom., 269**

108. ——— **Rent, Suits for, and intervenors in such suits.**—*Suit by one of several dur-putnidars.*—Where a tenant held lands in six villages under a putnidar at an admitted rent, and the putnidar subsequently granted dur-putnis to two different parties of two and four of the said villages respectively, the tenant having admitted a certain sum to be the rent payable in respect of the lands situated in the two villages,—*Held*, the dur-putnidar of the other four villages could sue the tenant for the rent payable in respect of the lands situated in the four villages comprised in his dur-putni, without joining as co-plaintiff in the action the dur-putnidar of the two villages. BRAJA LAL ROY *v.* SAYAMA CHARAN BHUTTO . . **6 B. L. R., 523 : 15 W. R., 20**

109. ——— *Assignment of interest.—Consent of assignees for assignors to sue.*—In a suit by putnidars for arrears of rent, where parties who had subsequently acquired an interest in the putni appeared and petitioned the Court assenting to the suit being carried on in the names of the plaintiffs,—*Held* that there was a sufficiently constituted suit and a sufficient array of parties to enable the Court to give a decree. SREENATH MOOKERJEE *v.* WHITE. . . . . **13 W. R., 126**

110. ——— *Suit for rent of puttidari estate.—Act XIV of 1863, s. 7.*—In a suit for the rent of a puttidari estate, the lumberdar is ordinarily the proper party to be sued as being the collector of the rents; but under section 7, Act XIV of 1863, the several puttidars can be sued for their respective shares of rent instead of recovering it through the lumberdar. BHOLANATH *v.* BISHESHUR TEWAREE . . . **2 Agra, Pt. II, 165**

PARTIES—*continued.*

PARTIES TO SUITS—*continued.*

Rent, Suits for, and intervenors in such suits—*continued.*

111. ——————— *Suit for rent of property surrendered to pre-emptor.*—To a suit by a purchaser of land who had had to surrender it to a pre-emptor, for the rents accruing between the date of his purchase and the subsequent transfer, the pre-emptor ought to be made a party. BULDEO PERSHAD *v.* MOHUN . . **1 Agra, Rev., 30**

112. ——————— *Person preferring claim to rent opposed to plaintiff.*—In any suit for rent against a tenant by a person claiming as landlord, the Court ought not to put on the record a person who prefers opposing claims to the plaintiff, unless it sees that his position, as such opponent, would be seriously compromised by the result of a decree in favour of the plaintiff,—*e.g.*, as when the opposing party claims to be in actual possession by receipt of rents. CHOOLIE LALL *v.* KOKIL SINGH **[19 W. R., 248**

Nor where it would change the scope and character of the suit. GOOROO PROSUNNO BANERJEE *v.* GUGUN CHUNDER DUTT . . **20 W. R., 383**

HUBREBUL HOSSEIN v. MUNEERAM **[24 W. R., 357**

PROTAP CHUNDER ROY CHOWDHRY *v.* JOGENDRO CHUNDER GHOSE . **4 C. L. R., 168**

and make it otherwise than a *bonâ fide* suit for rent. RADHA MALAKAR *v.* SRISHTEE NARAIN SHAHA **[21 W. R., 88**

BYKUNT KYBURTO DOSS *v.* SHUSHEE MOHUN PAUL CHOWDHRY . . **22 W. R., 526**

ISSUR CHUNDER SEIN *v.* BIPEEN BEHAREE ROY **[16 W. R., 132**

KATTYANEE DEBIA *v.* GIRISH CHUNDER BANERJEE . . . . . **23 W. R., 168**

113. ——————— *Question of title.* In a suit for rent against a ryot, the defendant contended that the plaintiff had no interest in the tenure and had never received rent from him, but that he had paid rent to a third party. *Held* that the third party might be added as an intervenor in order to try the question who was actually the beneficial owner of the tenure and entitled to the rent. RADHAMONEE *v.* RAM NARAIN DEY . . . **22 W. R., 440**

114. ——————— *Beng. Act VIII of 1869, s. 31.*—In a suit for rent, where an intervenor on his own account, who pleads a deposit in Court made under Bengal Act VIII of 1869, is made a defendant by the Court, the fact of his being a defendant does not give rise to any equity as between the plaintiff and the other defendants so as to allow them to have the advantage of section 31, Bengal Act VIII of 1869, although, if the intervenor had been sued jointly with the other defendants, they might have had the benefit of it. GIRDHAREE LALL SINGH PASBAN *v.* CHUNDEE PERSHAD . . **21 W. R., 277**

PARTIES—*continued.*

1. PARTIES TO SUITS—*continued.*

Rent, Suits for, and intervenors in such suits—*continued.*

115. ——————— *Question of title.*—In a suit for rent, an intervenor who claims to have acquired a share of the property for which the rent is claimed, may be made a defendant at the discretion of the Court. If a question of title legitimately arises between the parties to a rent suit, the Court is not compelled to dismiss the suit, but is bound to determine the question for the purposes of the suit. CHOWRASEE KOOER *v.* BOKHOOREE SINGH **[24 W. R., 350**

116. ——————— *Title of third party alleged by defendant.—Civil Procedure Code (Act X of 1877), s. 28.—Per* FIELD, *J.*—Where a person sued for rent sets up the title of a third party, and alleges that he holds under and pays rent to him, such third party ought not to be made a party to the suit, so as to convert a simple suit for arrears of rent into one for the determination of the title to the property in respect of which the rent is claimed. Such a suit raises only two issues, *viz.:* (1) Does the relation of landlord and tenant exist between the plaintiff and defendant? (2) Are the alleged arrears of rent due and unpaid? And these are questions in which the plaintiff and defendant are alone concerned, and no third party claiming a title adverse to the plaintiff can properly be made a party to the trial of these issues. Section 28 of the Civil Procedure Code is not imperative, but allows a discretion to be exercised; and in such a suit it is better, both in the interests of Government and for the proper adjudication of the question of title, that it should be tried by a competent Court in a suit directly framed and brought for that purpose. LODAI MOLLAH *v.* KALLY DASS ROY **[I. L. R., 8 Calc., 238: 10 C. L. R., 581**

117. ——————— *Question of title.*—An intervenor in a suit for rent has no right to be made a defendant, or to introduce into the suit an entirely new issue,—*e.g.*, one concerning title between himself and the plaintiff; still less is he entitled singly to appeal against the judgment in the case. BIRESSUR PANREY *v.* JOGENDRO CHUNDER DEB . . . . . **24 W. R., 261**

118. ——————— *Adding parties in rent suits.*—Where Act X of 1859, section 77, was no longer in force, the effect of adding a party, under Act VIII of 1859, section 73, in a rent suit, was the same as in any other kind of suit. Whatever be the class of suit, the party added cannot raise an issue which would entirely change the nature and scope of the suit; the Court being bound to limit its inquiry to the issues necessary in order to try the plaintiff's right to the special relief sought;—*e.g.*, where the relief sought is the recovery of arrears of rent, the intervenor is competent to raise all questions, whether of title or otherwise, which bear upon the issue, is the plaintiff entitled to recover the rent claimed? TILLESSUREE KOOER *v.* ASMEDH KOOER **[24 W. R., 101**

PARTIES—*continued*

1. PARTIES TO SUITS—*continued.*

Rent, Suits for, and intervenors in such suits—*continued.*

119. ——————— *Suit for arrears of rent.—Question of title.*—In a suit for arrears of rent, in which an intervenor, alleging that plaintiff was merely his benamidar, was added as a defendant under the Code of Civil Procedure, section 73,—*Held* that it was wrong to introduce him into the case, and that any issue as to the alleged benami was foreign to the suit. RUGHOO NATH PERSHAD SINGH *v.* BYJNATH SAHOY . . . **24 W. R., 349**

120. ——————— *Question of benami title.*—Plaintiff, who derived title from *A.*, who was the ostensible purchaser of certain immoveable property at an auction sale in execution of a decree against *B.*, brought a suit to recover the rent of such property from the talookdars. The appellant was allowed to intervene, alleging that *A.* was the benamidar of a third person from whom he himself had purchased the property. The lower Court, however, refused to try the question of benami as not being admissible in a rent suit. On appeal,—*Held* that the question of benami was properly raised in the suit, and ought to have been tried. *Rughoo Nath Pershad* v. *Byjnath Sahoy, 24 W. R., 349,* cited and distinguished. TARINI KANT LAHIRI *v.* KRISHNA MONI CHOWDRAINI . **5 C. L. R., 179**

121. ——————— *Question of title.*—In a suit for rent in which an intervenor appeared, the Munsif raised the question, Who had up to that time been in the actual and *bonâ fide* receipt and enjoyment of rent? and on deciding this question in favour of the intervenor, dismissed the suit. On appeal the Judge tried the question of title. *Held* that the Judge was wrong in raising the question of title at all, and thus proceeding on a basis other than that on which, whether right or wrong, the parties had chosen to litigate the matter, and which the original Court had accepted. *Quære,*—Is the Munsif's procedure in this case the right one, now that Act X of 1859, section 77, has been repealed, and not re-enacted in the new law? AULUCK MONEE DEBEE *v.* DINO NATH GHOSE . . **24 W. R., 421**

See WOOMA TARA *v.* BHUROSA RAM DASS **[24 W. R., 409**

122. ——————— *Intervenor irregularly added in lower Court.—Civil Procedure Code, 1859, s. 73.*—In a suit for rent before the Munsif, the special appellant petitioned and was irregularly admitted into the suit as intervenor, as if the suit were being tried under Act X of 1859 in a Revenue Court. Defendants having admitted their liability to plaintiff under a kabuliat set up by the latter, the suit was decreed in the lower Appellate Court. *Held,* on special appeal by the intervenor, that he was not entitled to be treated as a party added under section 73, Act VIII of 1859. CHUNDER KALEE GHOSE *v.* SHIBNATH BHUTTACHARJEE **[17 W. R., 176**

See OOGNEE CHOWDHRAIN *v.* KERAMUTOOLLAH **[17 W. R., 219**

PARTIES—*continued.*

1. PARTIES TO SUITS—*continued.*

Rent, Suits for, and intervenors in such suits—*continued.*

BIRESSUR PANDEY *v.* JOGENDRO CHUNDER DEB **[24 W. R., 261**

123. ——————— *Intervenors in suit for registration of names as proprietors.—Civil Procedure Code, 1859, s. 73.*—Plaintiffs having succeeded in a suit for a foreclosure of a mortgage, by a conditional bill of sale, of a share of two mouzahs, then sued for possession and registration of names as proprietors. Whilst this suit was pending, certain parties intervened and asked to be made parties under section 73, Code of Civil Procedure, on the ground that plaintiffs' vendors were not entitled to the full share claimed, as they themselves had purchased a portion thereof. *Held* that the Court exercised a wise and proper discretion in allowing the intervenors to be made parties, for a decree in plaintiffs' favour, though not legally binding on them, would nevertheless have caused them great difficulty in all matters of rent. SALIGRAM SINGH *v.* GHEENOO SINGH **[16 W. R., 19**

124. ——————— *Unregistered tenants.*—Parties who have not been registered in the zemindari serishta are not entitled to intervene and question the decree passed against the registered tenants. AMATAL FATIMA KHANUM *v.* TARANATH CHAND . . . . . **24 W. R., 151**

125. ——————— *Appeal.—Reversal of whole decree on appeal by one defendant.*—*D. C. S.*, the zemindar, brought a suit against *B.*, a ryot, for recovery of arrears of rent, value below R100. *B.* set up in defence that the rent was not payable to *D. C. S.*, but to *N. C. A.*, the mokurraridar. *N. C. A.*, who claimed under a mokurrari title, and alleged that he was in the receipt of the rents from the ryot, was made a party under section 73, Act VIII of 1859. The Munsif passed a decree in favour of the plaintiff. On appeal by *N. C. A.*, which was heard and decided by the Subordinate Judge, on reference by the District Judge, the decree of the first Court was reversed, and the suit dismissed. On appeal to the High Court,—*Held* that the only issue to be tried was whether the relationship of landlord and tenant subsisted between *D. C. S.* and *B.*, and that *N. C. A.* was properly made a party defendant to the suit. DOYAL CHAND SAHOY *v.* NABIN CHANDRA ADHIKARI **[8 B. L. R., 180: 16 W. R., 235**

KUNJAL SAHU *v.* GURU BAKSH KOER **[8 B. L. R., 184, note: 13 W. R., 362**

KANHYE ROY *v.* HYDER BUKSH . **25 W. R., 29**

126. ——————— *Adding plaintiff.—Civil Procedure Code (Act X of 1877), s. 32.*—In a suit for rent, where the defendant alleged that a person not on the record had a joint interest with the plaintiff in the property in respect of which the rent was due,—*Held,* where the plaintiff disputed this and objected to such course being taken, that it was improper to add such person as co-plaintiff, and that, if

PARTIES—*continued.*

PARTIES TO SUITS—*continued.*

Rent, Suits for, and intervenors in such suits—*continued.*

added at all, it should be as defendant, in order that the issue between him and the plaintiff might be properly tried. GOOGLEE SAHOO *v.* PREMLALL SAHOO [I. L. R., 7 Calc., 148

127. ———— *Striking out name of intervenor, Effect of, on record of suit.*—Directly an intervenor's name has been struck off on the ground that he has no interest in the case, all the evidence he had put in should be removed from the record. BUCHA SINGH *v.* MASHOOK ALI BEG [15 W. R., 572

128. ———— **Reversioners.**—*Declaratory suit by reversioner.—Non-joinder of other reversioners.*—A suit having been brought by a Hindu reversioner for a declaration that an adoption alleged to have been made by the mother of *K.*, the owner of the estate, after the estate had vested in the widow of *K.*, was invalid,—*Held* that the non-joinder of a reversioner of equal grade with the plaintiff was no bar to the suit. THAYAMMAL *v.* VENKATARAMA [I. L. R., 7 Mad., 401

129. ———— *Suit to recover property from Hindu widow.—Reversioner.*—In a suit to recover possession of property held by a widow, the reversioner was held to have been erroneously made a co-defendant. KRISTO SUNKUR DUTT ROY *v.* KOYLASH NATH DUTT ROY . 15 W. R., 6

130. ———— **Sale in execution.**—*Suit under s. 246, Civil Procedure Code, 1859, by owner against purchaser of property wrongly sold in execution.—Execution-creditor.*—In a suit under the latter portion of section 246 of the Civil Procedure Code brought by the owner against the purchaser of property which has wrongfully been attached and sold in execution of a decree, the execution-creditor is properly made a party, the object being to restore all parties to the position which they occupied previously to such attachment and sale. BANK OF HINDUSTAN, CHINA, AND JAPAN, *v.* PREMCHAND RAICHAND. AHMEDBHAI HABIBHAI *v.* PREMCHAND RAICHAND . . . . 5 Bom., O. C., 83

131. ———— **Sale-proceeds, Suit for, after distribution.**—*Suit by attaching creditor dissatisfied with share of sale-proceeds allotted to him.*—Where an attaching creditor, dissatisfied with the share allotted to him on a distribution of sale-proceeds under Act VIII of 1859, section 270, brings a suit against the other attaching creditors, and claims to have made the first attachment, he is bound to include as defendants all who have shared in the distribution. BROJOKANTH CHUCKERBUTTY *v.* BANEE MADHUB DISCHIT . . . 23 W. R., 434

132. ———— **Sureties.**—*Act X of 1859.—Arrears of rent.—Benami lease.*—Some of the defendants had taken a lease in the benami name of *C P. B.*, and were in actual possession of, and had paid rent for, the lands demised. The other defendants

PARTIES—*continued.*

1. PARTIES TO SUITS—*continued.*

Sureties—*continued.*

were sureties for *C. P. B.* A suit was brought in the Court of the Deputy Collector against those who were actually in possession of the land, together with the sureties, for arrears of rent. It did not appear from the lease how far each defendant was interested in or entitled under it. *Held* by both Judges that the suit should be dismissed as against the sureties, who could not as such be sued under Act X of 1859. ROY PRIYANATH CHOWDHRY *v.* BEPINBEHARI CHUCKERBUTTY [2 B. L. R., A. C., 237: 11 W. R., 120

2. SUITS BY SOME OF A CLASS AS REPRESENTATIVES OF CLASS.

133. ———— **Suits on behalf of community.**—*Some suing for whole body of persons.—Decree, Effect of.*—Convenience requires that in suits where there is community of interest amongst a large number of persons, a few should be allowed to represent the whole; and if the whole body be represented in the suit, then it is proper that the whole body should be bound by the decree, though some members of the body are not parties named in the record. *Venkata Swami Nayakkan* v. *Subha Rau, 2 Mad., 1,* distinguished. SRIKHANTI NARAYANAPPA *v.* INDUPURAM RAMALINGAM . . 3 Mad., 226

134. ———— **Civil Procedure Code, 1882, s. 30.**—*Suit for right to worship in mosque.*—Section 30 of the Civil Procedure Code applies only to cases in which many persons are jointly interested in obtaining relief, and not to a case in which individual right has been violated. Every Mahomedan who is entitled to use a mosque for purposes of devotion is entitled to sue any one who interferes with his exercise of that right. *Zafaryab Ali* v. *Bakhtawar Singh, I. L. R., 5 All., 497,* referred to. *Jan Ali* v. *Ram Nath Mundul, I. L. R., 8 Calc., 32,* dissented from. JAWAHRA *v.* AKBAR HUSAIN [I. L. R., 7 All., 178

See THAKERSEY DEVRAJ *v.* HURBHUM NURSEY [I. L. R., 8 Bom., 432

135. ———— *Suits by individuals for general public.*—Section 30 of the Code of Civil Procedure was not intended to allow individuals to sue on behalf of the general public, but to enable some of a class having special interests to represent the rest of the class. ADAMSON *v.* ARUMUGAM . . . I. L. R., 9 Mad., 463

136. ———— *Suit against Malabar tarwad.*—If it is sought to make a decree in a suit binding on a Malabar tarwad, the procedure laid down in section 30 of the Code of Civil Procedure, 1877, should be followed if the members are numerous. A decree against a person who happens to be the karanavan of a Malabar tarwad is not necessarily binding on the tarwad in the absence of fraud. ELAYACHANIDATHIL KOMBI ACHEN *v.* KENATUMKORA LAKSHMI AMMA . I. L. R., 5 Mad., 201

PARTIES—*continued.*

2. SUITS BY SOME OF A CLASS AS REPRESENTATIVES OF CLASS—*continued.*

Civil Procedure Code, 1882, s. 30—*continued.*

137. ——————— *Suit by legatees on behalf of themselves and other legatees.—Costs against next friend.*—A legatee cannot sue on behalf of himself and other legatees without an order of the Court obtained under section 30 of the Civil Procedure Code enabling him so to sue. Where a legatee, a minor, sued in that form by her next friend without such an order, the next friend was held liable for costs on his adducing no evidence to show that the suit was for the benefit of the minor. GEREEBALLA DABEE *v.* CHUNDER KANT MOOKERJEE [I. L. R., 11 Calc., 213

138. ——————— *Suit to have land declared wukf.*—In a suit to have certain property declared wukf, alleging that it was dedicated as wukf, and the profits applied to lighting a mosque and shrine, the expenses of devotion, and the feeding of wayfarers and travellers, it appeared the plaintiff was not alone interested in the subject-matter of the suit. *Held*, therefore, that she could only sue on behalf of those interested after having first obtained leave of the Court and otherwise complied with the provisions of section 30 of the Procedure Code. LUTIFUNNISSA BIBI *v.* NAZIRUN BIBI [I. L. R., 11 Calc., 33

139. ——————— *Non-joinder of parties.—Civil Procedure Codes, Act VIII of 1859 and X of 1877, s. 30.—Representatives of a certain caste.—Chitpavans.*—Four persons of the Chitpavan caste brought a suit in 1876, alleging that they and the members of their caste, in common with certain other castes, possessed the exclusive right of entry and worship in the sanctuary of a temple, and that the defendants, members of the Palshe caste, not being of the privileged castes, infringed that right in 1871 and thereafter by entering the sanctuary and performing worship therein. They prayed for a declaration of their right and an injunction restraining the defendants from interfering with it. *Held* that the plaintiffs could maintain the suit for the personal injury alleged to have been suffered by themselves by the pollution of their sanctuary, whether under the Civil Procedure Code of 1859 or that of 1877, section 30 of the latter being merely regulative, not constitutive. Whether or not it could be contended that they and the defendants so represented their respective castes that the decree in this suit should bind all members of the two castes, would be open to argument in any future case; but it might well be consistent with general principles to hold that certain judicial proceedings taken by or against a select number as representing a large class, might, if fairly and honestly conducted, bind or benefit the whole class. ANANDRAV BHIKAJI *v.* SHANKAR DAJI . . I. L. R., 7 Bom., 323

140. ——————— *Suit for dismissal of dhurmakarta.—Members of District Committee.*—In a suit brought for the dismissal of a dhurmakarta all the members of the District Committee should join as parties. The District Committee cannot divest themselves of their rights in favour of a few of their number. VIRASAMI NAYUDU *v.* ARUNACHELLA CHETTI . I. L. R., 2 Mad., 200

141. ——————— *"Mahomedan Association."—Suit by some members for all.*—The "Majlis Islama" or "Mahomedan Association" of Meerut instituted a suit in its own name by its secretary. *Held* that as such association had not, *per se*, any status in law so to sue, the suit was not maintainable. *Semble*,—Had such association empowered one or more of its members to act for it in the matter of the suit in the manner provided by section 30, Civil Procedure Code, 1882, the permission mentioned in that section might have been granted. MAHOMEDAN ASSOCIATION *v.* BUKSHI [I. L. R., 6 All., 284

3. ADDING PARTIES TO SUITS.

(*a*) GENERALLY.

142. ——— Discretion of Court.—*Civil Procedure Code, 1859, s. 73.*—Section 73, Act VIII of 1859, was permissive, not imperative. Discretion is vested in a Court to make persons not before it parties to a suit. PORAN MUNDUL MOLLAH *v.* SHAM CHAND GHOSE . . . . 1 W. R., 228

GYARAM SEAL *v.* ISSUR CHUNDER CHUCKERBUTTY . . . . . 2 W. R., 158

143. ——— Power of Court.—*Suit for share of estate of deceased.—Power to change to one for administration.*—Where one son of a deceased party sued in the Recorder's Court another son, who had obtained a certificate under Act XXVII of 1860, for his share of the deceased's estate, it was held that the Recorder had no power to transform the suit into a general administration suit. The Court may, under section 73, Act VIII of 1859, order all necessary parties who claim a share in the subject-matter of the suit to be made parties. OH LING TEE *v.* AWKINIFEE . . . . . 10 W. R., 86

144. ——— Ground for adding party.—*Likelihood of being affected by result of suit.*—A person cannot be made a party to a suit unless he is likely to be affected by the result of the suit. JOY GOBIND DOSS *v.* GOUREEPROSHAD SHAHA [7 W. R., 201

145. ——————— *Likelihood of being affected by result of suit.—Civil Procedure Code, 1859, s. 73, Construction of.*—The words in section 73 of Act VIII of 1859, "who may be likely to be affected by the result," construed to mean "likely to be affected, if added as parties." NGA THA YA *v.* MI KHAN MHAW [5 B. L. R., 371: 13 W. R., 443

PARTIES—*continued.*

3. ADDING PARTIES TO SUITS—*continued.*

(*a*) GENERALLY—*continued.*

Ground for adding party—*continued.*

146. ——————— *Likelihood of being affected by result of suit.—Interest in suit.—Civil Procedure Code, 1859, s. 73.*—Under section 73, Act VIII of 1859, a person was not liable to be added as a party to the suit, although he might be "likely to be affected by the result," unless he was also entitled to, or claimed some interest in, the subject-matter of the suit. KOEGLER *v.* PROSONNO COOMAR CHATTERJEE . . . **I. L. R., 2 Calc., 472**

147. ——————— *Community of interest with plaintiff or defendant.—Civil Procedure Code, 1877, ss. 28, 29, 32.—Held*, reading sections 28, 29, and 32 of Act X of 1877 together, that, where an application is made under section 32 for the addition of a person, whether as plaintiff or defendant, such person should, as a general rule, be added only where there are questions directly arising out of and incidental to the original cause of action, in which such person has identity or community of interest with the original plaintiff or defendant. Two suits against *K.* for possession of the property of *B.*, deceased, were instituted in the Court of a Subordinate Judge by parties claiming adversely to one another as heirs to *B.* The Subordinate Judge, on the application of the plaintiffs in these suits, under section 32, Act X of 1877, added the plaintiffs in the first suit as defendants in the second, and the plaintiffs in the second suit as defendant in the first. *Held*, on appeal by the defendant *K.* from the orders of the Subordinate Judge, applying the rule stated above, that such additions of parties, not being necessary to enable the Subordinate Judge "effectually and completely to adjudicate upon and settle all the questions involved in the suits," were not proper. The principles on which section 73 of Act VIII of 1859 should be interpreted enunciated by SIR BARNES PEACOCK in *Joy Gobind Doss v. Gouree Proshad Shaha, 7 W. R., 202; Raja Ram Tewari v. Luchman Prasad, B. L. R., Sup. Vol., 731: 8 W. R., 15;* and *Ahmed Hossein v. Khadija, 3 B. L. R., A. C., 28: 10 W. R., 369;* and the remarks of PONTIFEX, *J.*, in *Mahomed Badsha v. Nicol, I. L. R., 4 Calc., 355*, followed and applied. NARAINI KUAR *v.* DURJAN KUAR. NARAINI KUAR *v.* PIAREY LAL . . . **I. L. R., 2 All., 738**

148. ——————— *Civil Procedure Code, 1877, s. 32.*—Th object of section 32 of the Code of Civil Procedure, which enables a Court to add parties whose presence before the Court may be necessary to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, is, to enable the Court to try and determine, once for all, material questions common to the parties, and to third parties, and not merely questions between the parties to the suit. VYDIANADAYYAN *v.* SITARAMAYYAN . **I. L. R., 5 Mad., 52**

149. ——— **Application to be added as a party.**—*Civil Procedure Code, 1882, s. 32.*—Section 32 does not contemplate any application to the Court by the person proposed to be added. MOHINDROBHOOSUN BISWAS *v.* SHOSHEEBHOOSUN BISWAS **[I. L. R., 5 Calc., 882**

PARTIES—*continued.*

3. ADDING PARTIES TO SUITS—*continued.*

(*a*) GENERALLY—*continued.*

Application to be added as a party—*continued.*

150. ——————— *Civil Procedure Code, s. 32.—Power of Court to add party.*—A Court may, in the exercise of its discretion under section 32 of the Civil Procedure Code, add a party to a suit upon his own application. RABBABA KHANUM *v.* NOORJEHAN BEGUM *alias* DALIM SHAHIBA **[I. L. R., 13 Calc., 90**

151. ——— **Power to add parties.**—*Adding parties after reference to Commissioner to take Accounts.*—After a decree has been made whereby a suit has been referred to the Commissioner's office to have accounts taken and property sold, the Court has still power (if it should be found necessary) to add, as fresh parties to the suit, persons who are interested in its subject-matter and are likely to be affected by its results. VAKATCHAND LAKHMICHAND *v.* ADVOCATE GENERAL **[8 Bom., O. C., 96**

152. ——————— *Civil Procedure Code, ss. 30, 32.—Party added after decree.*—A Subordinate Judge having permitted the junior widow of a Hindu to be made a party to the proceedings in execution of a decree obtained by the senior widow against a debtor of their deceased husband, the High Court declined to interfere under section 622 of the Code of Civil Procedure. *Quære,*—Whether section 32 of the Code of Civil Procedure does not give a Court a discretionary power to add parties after adjudication of the question raised in the suit. LINGAMMAL *v.* CHUNIA VENKATAMMAL . **I. L. R., 6 Mad., 227**

(*b*) POWER OF REVENUE COURT TO ADD PARTIES.

153. ——————— *Civil Procedure Code, 1877, s. 32.—Act XVIII of 1873 (N.-W. P. Rent Act).*—*B.* and *N.*, the mortgagees of a mehal, granted the mortgagors a lease of the mehal, the mortgagors agreeing to pay "the mortgagees" a certain rent half-yearly "on account of the right they held in equal shares," and that, on default of payment of such rent, "the mortgagees" should be entitled to sue for payment. The mortgagors having made default in payment of the rent, and *N.* refusing to join in a suit against the mortgagors to enforce payment, *B.* sued them alone for a moiety of the rent due. The Revenue Court of first instance held, with reference to section 106 of Act XVIII of 1873, that *B.* could not sue separately. *Held* by the High Court that the order of the Revenue Court of first appeal directing, *inter alia*, that the Court of first instance should re-try the suit after making *N.* a defendant in the suit was not illegal, notwithstanding that the provisions of section 32 of Act X of 1877 were not made applicable to the procedure of the Revenu e Court by Act XVIII of 1873. SHIR GOPAL *v.* BALDEO SAHAI . . **I. L. R., 2 All., 264**

PARTIES—*continued.*

3. ADDING PARTIES TO SUITS—*continued.*

(c) PLAINTIFFS.

154. ———— Time for adding plaintiff. —*Civil Procedure Code, 1877, s. 27, Exercise of power under.—Per* PONTIFEX, *J.*—The power given by section 27 of the Code, of substituting or adding a plaintiff, ought to be exercised before the first hearing of the case. CHUNDER COOMAR ROY *v.* GOCOOL CHUNDER BHUTTACHARJEE

[I. L. R., 6 Calc., 370

155. ———— Right of plaintiff barred by limitation.—*Civil Procedure Code, 1859, s. 73.*—No person ought, under section 73, to be added as a plaintiff whose right of action is barred by the Law of Limitation. KISHEN LALL CHOWDHRY *v.* CHUNDER COOMAR ROY . W. R., 1864, 152

GOPAL KASHI *v.* RAMABAI SAHEB PATVARDHAN [12 Bom., 17

156. ———— *Joinder when too late.—Rejection of plaint.—Joint cause of action.—Limitation Act, XV of 1877, s. 22.*—*A.*, who with his three brothers composed a joint Hindu family, brought a suit in his own sole name to recover a joint debt. When the objection was taken to the form of the suit on the ground of the non-joinder of *A.'s* three brothers, it was too late to add them as co-plaintiffs, by reason of section 22 of the Limitation Act, XV of 1877,—a suit on the debt being by that time time-barred. The three brothers at the hearing expressed their willingness that *A.* should sue alone. *Held* that such assent did not obviate the necessity of joining all the proper parties as co-plaintiffs, and that the suit therefore, as framed, would not lie. *Held*, further, that *A.* would have been in no better position had he joined his three brothers as co-plaintiffs after the suit was, as regards them, time-barred; since such a suit would have been virtually a suit by himself alone, and therefore bad. *Boydonath Bag* v. *Grish Chunder Roy, I. L. R., 3 Calc., 26,* dissented from. KALIDAS KEVALDAS *v.* NATHU BHAGVAN

[I. L. R., 7 Bom., 221

157. ———— *Suit by members of joint Hindu family carrying on business in partnership.—Joint co-contractors.*—Two of the sons out of a joint Mitakshara family, consisting of a father and three sons and the widow and sons of a deceased son, and carrying on business in partnership, sued to recover money due on a hath-chitta, dated the 11th December 1876; the last payment made and entered by the defendant being on the 20th July 1877. No time was fixed for payment of the money, so that it became payable on the date of the hath-chitta. The suit was instituted on the 19th July 1880, and came on for hearing on the 26th July, when an objection was taken, that all the parties who ought to sue were not on the record. On the application of the original plaintiffs, the names of the father and the third son were then added, and the plaintiffs were described as surviving partners of the deceased son. At the time the additional plaintiffs were made parties, the suit was, as regards them, barred by limitation. *Held* that the additional plaintiffs were rightly made parties to the suit, notwithstanding that the suit was, as far as they were concerned, barred. In actions of contract it is the right of the defendant, if he takes the objection in proper time, to insist upon all the persons with whom he contracted being joined as plaintiffs; and if, after the objection has been raised, the plaintiff proceeds with the suit without taking steps to add the person or persons whose non-joinder has been objected to, and the Court finds that the objection is well founded, the suit must be dismissed. *Held* that, inasmuch as the original plaintiffs could only enforce their claim in conjunction with the added plaintiffs, and the added plaintiffs were barred by section 22 of Act XV of 1877, the claim of the original plaintiffs was also barred. *Boydonath Bag* v. *Grish Chunder Roy, I. L. R., 3 Calc., 26,* dissented from. There is no equity, but often much injustice, in allowing one joint contractor out of many to sue a defendant, notwithstanding an objection duly made by the latter; and the Court has no right to allow one contractor to recover under such circumstances, though he may, no doubt, afterwards adjust the sum which he recovers with his co-contractors. RAMSEBUK *v.* RAMLALL KOONDOO

[I. L. R., 6 Calc., 815 : 8 C. L. R., 457

158. ———— Suit by one partner on joint cause of action.—*Consent of other partners to suit proceeding.—Refusal to amend plaint on appeal.*—A suit was instituted by one only of the partners of a firm in respect of a cause of action which had accrued to all jointly. Notwithstanding that objection to the non-joinder of the other partners was duly taken, the plaintiff contented himself with putting in a petition on behalf of the other partners intimating their willingness that the suit should proceed in the sole name of the plaintiff, instead of applying to the Court to add the other partners as plaintiffs. On appeal the High Court admitted the objection, and refused, under the circumstances, to add the other partners as plaintiffs. DULAR CHAND *v.* BALRAM DAS . . I. L. R., 1 All., 453

159. ———— Addition of plaintiff where original plaintiff has no right to sue.—*Civil Procedure Code, 1877, s. 32.*—*A.* sued as only son and heir of his father, *B. C.*, the widow of *B.*, having, with the concurrence of *A.*, taken out letters of administration to *B.'s* estate, was, on the application of *A.* at a hearing of the suit, made a co-plaintiff under section 32 of the Civil Procedure Code. *Held* that *C.* ought not to have been joined as a plaintiff in the suit, inasmuch as *A.* had no right at all to sue. Section 32, as far as the addition of plaintiffs is concerned, only applies to those cases in which the original party who brought the suit had some title to sue. CHUNDER COOMAR ROY *v.* GOCOOL CHUNDER BHUTTACHARJEE . I. L. R., 6 Calc., 370

PARTIES—*continued.*

3. ADDING PARTIES TO SUITS—*continued.*

(c) PLAINTIFFS—*continued.*

Addition of plaintiff where original plaintiff has no right to sue—*continued.*

160. ——————— *Action for slander.*—Plaintiff sued first defendant for damages for slander of plaintiff's sister. The Court, regarding the suit as defective for want of parties, made plaintiff's sister a co-plaintiff under section 73, Act VIII of 1859. *Held* that the defect was one not to be remedied under that section, and that as there was no right of suit in the plaintiff, the suit should have been dismissed. SUBBAIYAR *v.* KRISTNAIYAR **[I. L. R., 1 Mad., 383**

161. ——————— *Procedure.*—In a suit by reversioners to set aside an alienation by the widow, where the Court finds that not the plaintiffs but another reversioner not represented on the suit had such right, it should not adjudicate on the propriety or otherwise of the alienation, but the suit should be dismissed. GOSAIEN SHIVA RAM *v.* RUGHO RAI . . . . . **2 Agra, 44**

162. ——————— *Suit to cancel under-tenures.—Act XI of 1859, s. 37.*—On the 13th January 1871 *A* and *B*. purchased an estate sold for arrears of Government revenue. The original proprietors asserted their right to collect the rents of a portion of the property by virtue of holding two shikmi talooks and a howla tenure. This right was affirmed by the High Court in April 1875. *B*. had previously sold his interest to *C*. On the 29th May 1876 *A*. created a putni of his eight annas in favour of *D*. and *E*., and on the 4th July 1876 *C*. purchased all the rights of the original proprietors. On the 18th January 1877 *A*. sued under Act XI of 1859, section 37, to cancel or vary the tenures, making the original proprietors, *C*. and various tenants, defendants. *C*. objected that *A*. had no right of suit or cause of action, as he had parted with all his rights to *D*. and *E*.; and that as his entire interest in the estate was only 8 annas, he could not sue to cancel a part only of the sub-tenures. *D*. and *E*. then applied to be added as parties, and were made plaintiffs. *Held* that *A*. had no cause of action, as he had previously parted with all his rights as zemindar, to cancel these tenures in favour of *D*. and *E*.; nor could *D*. and *E*. sue, as they were not "purchasers of an entire estate." That *A*. having no cause of action, it was not competent to the lower Court to add *D*. and *E*. as plaintiffs, and so introduce a right of action which did not previously exist. DWARKANATH PAL *v.* GRISH CHUNDER BANDOPADHYA. **I. L. R., 6 Calc., 827**

163. ——— **Consent to be added as plaintiff**—*Civil Procedure Code (Act X of 1877), s. 32.*—Under section 32 of the Code of Civil Procedure, no person can be added as a plaintiff unless he has previously consented thereto; and if a person objects to be added as a plaintiff, the proper course is to make him a defendant. UMA SUNDARI DASI *v.* RAMJI HALDAR . . **I. L. R., 7 Calc., 242 9 C. L. R., 13**

PARTIES—*continued.*

3. ADDING PARTIES TO SUITS—*continued.*

(c) PLAINTIFFS—*continued.*

Consent to be added as plaintiff—*continued.*

See TARA CHUNDER BANERJEE *v.* AMREE MUNDUL . . . . . **22 W. R., 394**

where it was held, under section 73 of Act VIII of 1859, that persons might be made co-plaintiffs without their consent.

164. ——— **Application to add plaintiff.**—*Suit for partition.*—A party holding a miras or perpetual lease of some debuttur lakhiraj property to the extent of 12 annas under co-sharers who covenanted in the pottah that he should be entitled to claim partition, sued the owner of the other 4 annas for a partition, making his lessors co-defendants. *Held* that they might properly have been made co-plaintiffs, and that the Court of first instance should, under Act VIII of 1859, section 73, make them such. GOUR CHURN SOOR *v.* JUGOBUNDHOO SEN **[22 W. R., 437**

165. ——————— *Adoption after suit by widow.—Co-plaintiff.*—Where a Hindu widow instituted a suit in respect of rights inherited by her from her deceased husband, and then adopted a son, —*Held* that, under section 73 of the Code of Civil Procedure, the adopted son might be made a co-plaintiff. PARAVARTANI *v.* AMBALAVANA PILLAI. EX PARTE PARAVARTANI . . . **1 Mad., 197**

166. ——————— *Widow as guardian and in her own right.*—Where the son of a Hindu widow died after her re-marriage, and she sued as guardian of her daughter by her first husband claiming the estate of her son, an application by her to be joined as co-plaintiff in her own right was allowed. KEMP, *J.* OKHORAH SOOT *v.* BHEDEN BARIANEE **[10 W. R., 34**

167. ——————— *Suit for work done ignoring power given to another to sue.—J. M.* executed in favour of *P*. an instrument (authorising *P*. to recover, by suit or otherwise, from *Messrs. W. and N.*, a sum of R22,500 or thereabouts) which contained this clause: "From whatever sum *P*. may recover from *Messrs. W. and N.*, he is to pay himself the sum of R8,640, which is due to himself, and also the expenses he may incur in making recovery, and he is to hand over the surplus to me." *J. M.*, ignoring the above instrument, sued *N*. for the R22,500 mentioned in it. *P*. thereupon applied to be made a party to the suit, under Section 73 of the Code. His application was granted, and he was joined as a co-plaintiff. *Held* that *P*. was properly made a party; but, as the validity of the instrument was disputed by *J. M.*, *P*. should rather have been joined as a defendant than as a plaintiff. PESTANJI MANCHARJI WADIA *v.* MATCHETT . . . **7 Bom., A. C., 10**

168. ——————— *Suit on behalf of minor without certificate.—Adding party—Costs.*—A suit having been instituted by a guardian in the name of an infant, without a certificate under Act XL

PARTIES—*continued.*

3. ADDING PARTIES TO SUITS—*continued.*

(*c*) PLAINTIFFS—*continued.*

Application to add plaintiff—*continued.*

of 1858, was dismissed by the lower Appellate Court. The minor on coming of age applied to have his name substituted on the record. The High Court, under section 73, Act VIII of 1859, ordered that his name should be added as plaintiff, and that the suit should be proceeded with. But as the dismissal by the lower Court was correct so far as the materials before the Court enabled it to deal with the suit, the order of remand was not to take effect until all the costs of the defendant had been paid by the plaintiffs. MADHUBCHUNDER CHOWDHRY *v.* BUKTESSUREE DEBEA . . . . **12 W. R., 102**

169. ——————— *Suit by father for joint property.—Transportation of father.—Sons added as plaintiffs.*—*V.* sued his brothers for his share of the estate of their deceased father, the father and sons being divided. *V.* having been transported for life, his sons applied to be made plaintiffs in the suit, on the ground that they had a joint interest with their father in their grandfather's estate. *Held* that, under the circumstances, the application was properly granted. BYREDDI NARAKKA *v.* CHINNA NARAYANA REDDI . . **I. L. R., 6 Mad., 331**

(*d*) DEFENDANTS.

170. ——— **Ground for adding defendants.**—*Claims opposed to that of plaintiff.*—Only persons whose claims must necessarily be taken into consideration before deciding on the plaintiff's title, should be joined as defendants in a suit. GOVERNMENT *v.* FERGUSSON . . . **9 W. R., 158**

171. ——————— *Prevention of unnecessary litigation.—Discretion of Judge.*—The object of section 73, Act VIII of 1859, is to prevent needless litigation; and there are cases—*e.g.*, as when it is necessary to make plaintiff's coparceners defendants—when a Judge should exercise the discretion vested in him by that section, even if the plaintiff omits to ask him to do so. MOTEE CHUND DOSS *v.* MOORULEE DHUR DOSS . . **15 W. R., 432**

172. ——————— *Likelihood of being affected by result of suit.—Civil Procedure Code, 1859, s. 73.—Raising unnecessary issues.*—Section 73 of the Civil Procedure Code enables the Court to bring in as parties to the suit any person whose rights appear to be involved, and who may be affected by the result of the suit. It does not enable parties who are not liable to be affected by the result, to come in and raise altogether new issues which do not properly arise. Where the parties, however, all acquiesced in the irregularity, and the suit went to trial on the issues raised by the added defendant, the High Court did not think it necessary to quash the proceedings. PADMALOCHAN SEN *v.* LAL CHAND GUPTA **[1 B. L. R., S. N., 26: 10 W. R., 283**

173. ——————— *Likelihood of being affected by result of suit.—Civil Procedure*

PARTIES—*continued.*

3. ADDING PARTIES TO SUITS—*continued.*

(*d*) DEFENDANTS—*continued.*

Ground for adding defendants—*continued.*

Code, 1859, s. 73.—Discretion of Court. Suit for possession.—Form of decree.—In a suit to recover possession of a certain mouzah claimed by the plaintiff as a portion of his dur-putni talook, which was brought against several defendants, four other persons applied to be made defendants, on the ground that they were co-sharers with the defendants on the record in the property in dispute. The application was granted; the added defendants were found to be possessed of the share which they claimed, and on the proofs which they adduced the plaintiff's claim was dismissed. The plaintiff's claim as against the original defendants, who made no opposition, was decreed. In special appeal, on the ground that they should not have been made defendants, and that the plaintiff was not bound to prove his case against anybody else but the person against whom he had brought the suit,—*Held* that section 73, Act VIII of 1859, leaves to the Courts of original jurisdiction a discretion in such cases; that the section is not limited entirely to cases where the suit as framed cannot proceed; that the words "persons who may be likely to be affected by the result" do not mean persons on whom the result would be legally binding. KALIPRASHAD SING *v.* JAINARAYAN ROY **[3 B. L. R., A. C., 24: 11 W. R., 361**

174 ——— **Application to add defendant.**—*Suit to set aside certificate and for possession.*—The plaintiff claimed to be entitled, as cousin of one *M.*, to 12 annas of the estate left by *M.*, and brought a suit against the two widows of *M.*, to whom a certificate had been granted, under Act XXVII of 1860, to set aside the certificate, and for possession of the estate with mesne profits from the death of *M.* to the institution of this suit. *N.* and others, who claimed to be entitled to a portion of the property specified in the plaint, intervened, and asked to be made defendants under section 73 of Act VIII of 1859. *Held* that they were not parties likely to be affected by the result, within section 73, of the suit, and should not have been made parties to the suit AHMED HOSSEIN *v.* KHADIJA **[3 B. L. R., A. C., 28, note: 10 W. R., 369**

175. ——————— *Civil Procedure. Code, 1859, ss. 73, 350.—Act XXVII of 1860, s. 4.—Certificate of administration.—Suit by co-heir against holder of certificate.*—In a suit against a co-heir, who had obtained a certificate under Act XXVII of 1860, for an account of the estate of the deceased proprietor, a third party was added as a defendant under section 73 of Act VIII of 1859, "it appearing from the accounts put in that a large portion of the assets had been disposed of by him as agent" of the holder of the certificate. On appeal,—*Held* that a co-heir is entitled to follow property of the deceased into the hands of any person who has misappropriated it, and such right is not taken away by the certificate. Therefore, any person who, with the consent of the holder of the certificate, has improperly possessed

PARTIES—*continued.*

3. ADDING PARTIES TO SUITS—*continued.*

(*d*) DEFENDANTS—*continued.*

Application to add defendant—*continued.*

himself of property belonging to the deceased, and misappropriated it, may be joined as a co-defendant. The third party was rightly so joined in this case. NGA THA YA *v.* MI KHAN MHAW [5 B L R., 371: 13 W. R., 443

176. ——— *Corporate body sued by an agent.—Civil Procedure Code, 1859, s. 73.*—Where a corporate body—*e.g.*, the East Indian Railway Company—is sued, not in its corporate capacity but through an agent, the corporate body is not likely to be affected by the result of the suit. A Court is justified in refusing an application to make such corporate body a party in the suit under section 73, Act VIII of 1859. NUBEEN CHUNDER PAUL *v.* STEPHENSON . . . . 15 W. R., 534

177. ——— **Adding defendant.**—*Civil Procedure Code, 1859, s. 73.—Suit for partition.—Adverse title.*—In a suit for a butwarra on the allegation that defendant had encroached upon certain ijmali lands, the latter urged that the said lands were not ijmali but the self-acquired lands of his (defendant's) son, who ought to be made a party. *Held*, on review of a previous decision, that as the son's interest was not adverse both to himself and defendant, unless the point raised was cleared up, the butwarra could not stand, and the son must therefore be made a party under section 73, Act VIII of 1859. JOY KISHEN MOOKERJEE *v.* RAJ KISHEN MOOKERJEE . . . . . 16 W. R., 101

178. ——— *Suit for possession after foreclosure.—Civil Procedure Code, 1859, s. 73.*—An intervenor claiming under a title adverse to that set up both by the plaintiff and the defendant, might be made a defendant, under section 73, Act VIII of 1859, if his interest in the subject-matter of dispute was likely to be affected by the decision between them, as in a suit for possession by foreclosure of a mortgage, in which the defendant admitted the fact of the mortgage, but the intervenor came in declaring the mortgage to be false and collusive between the alleged mortgagor and mortgagee, for the purpose of depriving him of a mokurrari tenure which he held in the alleged mortgagor's estate. SARODA PERSHAD MITTER *v.* KYLASH CHUNDER BANERJEE . . . . . 7 W. R., 315

179. ——— *Persons likely to be affected by result of suit.—Intervenor.—Civil Procedure Code, 1859, s. 73.*—A person could not be made a party to a suit under section 73, Act VIII of 1859, unless he was likely to be affected by the result of the suit. Where an intervenor claimed a portion of the subject-matter of the suit, it was held that it would be most inconvenient and contrary to all principle if every person claiming a title adverse to those set up by the plaintiff and defendant in the suit should intervene and be introduced into the suit, so that as soon as the plaintiff's title was determined against him the intervenor might take up the case as a fresh

PARTIES—*continued.*

3. ADDING PARTIES TO SUITS—*continued.*

(*d*) DEFENDANTS—*continued.*

Adding defendant—*continued.*

claimant. JOY GOBIND DOSS *v.* GOUREEPROSHAD SHAHA . . . . . 7 W. R., 201

180. ——— *Intervenors.—Civil Procedure Code, 1859, s. 73.*—Plaintiff sued to recover possession of a share of an estate which he alleged he purchased from the principal defendant, who denied plaintiff's title on the ground that the purchase-money had not been paid. Subsequently certain persons prayed to be made defendants, as they held a dur-mokurrari, and were not liable to be turned out. They were accordingly added as defendants under section 73, Civil Procedure Code. It then appeared that the possession sought by plaintiff was khas possession. *Held* that, although it was *primâ facie* necessary for these intervenors to be made defendants, yet, after the intention of the plaintiff became apparent, nothing would be gained by removing them from the record, even if the Court had power to do so in special appeal. KEWUL SAHOO *v.* ISSUR DYAL ROY . . . . 12 W. R., 334

181. ——— *Suit for ejectment by landlord.—Intervenor.*—In a suit by a landlord to eject his tenant, persons alleging a title adverse to the landlord should not be made parties under section 73, Act VIII of 1859. Their introduction could not change the character of the suit, and if they wish to establish their own title otherwise than through the tenant they should bring a separate suit. GANU BIN HANMANTRAV *v.* MORO GANESH [10 Bom., 429

KARTICK NATH PARRAY *v.* CHUMMUN ROY [21 W. R., 51

182. ——— *Suit for declaration of title to portion of land.*—In a suit for establishment of title to a portion of land with which defendants repudiated all connection, alleging the land to be in the possession of third parties, who were in consequence made defendants by an order of the Court under section 73, Civil Procedure Code,—*Held* that these parties were rightly made defendants, as having been interested both in the subject-matter and in the result of the suit; and even if they had been wrongly made defendants, the onus would, under the circumstances, remain on the plaintiffs. RAM TARUCK GHOSSAL *v.* RADHA BULLAB SIRCAR [15 W. R., 97

183. ——— *Intervenor in application for attachment before judgment.—Civil Procedure Code, 1859, ss. 86, 246.*—Where a plaintiff applied for attachment of certain property before judgment under section 81, and a third party intervened, claiming to hold the property by purchase on his own account,—*Held* that such intervenor ought not to have been made a party under section 73 of the Code, but that his objection should have been entertained under sections 86 and 246 of the Procedure Code. RAM RUTTUN DASS v. GOBIND DASS [2 Agra, 141

PARTIES—*continued.*

3. ADDING PARTIES TO SUITS—*continued.*

(*d*) DEFENDANTS—*continued.*

Adding defendant—*continued.*

184. ——————— *Intervenor.—Suit for specific performance.*—In a suit to enforce the performance of a contract on the allegation that defendant had received the consideration-money, but refused to execute the conveyance, a third party intervened alleging a subsequent conveyance of the same property by an instrument which had been registered. The first Court dismissed the plaint, but the lower Appellate Court gave plaintiff a decree against both parties. *Held* that it was irregular to place an intervenor upon the record and decide an issue between him and the other parties to the suit. GUDADHUR CHATTERJEE *v.* RAJ KRISTO ROY

[13 W. R., 73

185. ——————— *Joint creditor.*—Where one of several joint creditors who has no rights separate from that of the others refuses to join in the suit as plaintiff, and there is no averment of collusion on his part with the defendant, he cannot rightly be made a defendant in the suit. KRISHNARAV RAMCHANDRA *v.* MANAJI BIN SAYAJI

[11 Bom., 106

GURU PRASHAD ROY *v.* RAS MOHUN MUKHOPADHYA . . . . . 1 C. L. R., 431

186. ——————— *Civil Procedure Code (Act X of 1877), ss. 28 and 32.—Judicature Act, Order xvi, Rules 3 and 6.*—The plaintiffs brought a suit to recover certain sums of money from the defendants due to them under certain contracts which they alleged had been entered into by themselves and one *A. D.* as agent of the defendants, and asked for an account. The defendants, in their written statement, contended that there was no privity of contract between themselves and the plaintiffs, and denied the alleged agency of *A. D.* The plaintiffs, before the hearing, applied to the Court to have *A. D.* added as a party defendant under sections 28 and 32 of Act X of 1877, asking to be allowed to amend their plaint so as to pray for relief in the alternative against the original defendants or the said *A. D.*, or both against the original defendants and the said *A. D.* *Held* that under section 28 they were entitled to the order on the authority of the case of *Child* v. *Stenning, L. R., 5 Ch. D., 695.* BUDDREE DOSS *v.* HOARE, MILLER, & Co. . . . . I. L. R., 8 Calc., 170

187. ——————— *Vendor and purchaser.—Joinder.—Civil Procedure Code, 1877 s. 32.* In a suit by the purchaser of goods by sample against the vendors for damages, on the ground that the bulk did not correspond with the sample, the vendors applied, under section 32 of the Civil Procedure Code, to add the vendor to them, on the same samples of the goods, as a defendant, alleging that the question between the plaintiff and themselves was the same as that between themselves and their vendor. *Held,* refusing the application, that the plaintiff "ought" not to have made the vendor to the defendants a party to the suit, and that his presence was

PARTIES—*continued.*

3. ADDING PARTIES TO SUITS—*continued.*

(*d*) DEFENDANTS—*continued.*

Adding defendant—*continued.*

not "necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit." MAHOMED BADSHA *v.* NICOL, FLEMING, & Co.

[I. L. R., 4 Calc., 355: 2 C. L. R., 330

188. ——————— *Mortgagees of property.—Suit to recover title-deeds.*—In a suit by a father against a son to recover the title-deeds of certain property alleged to have been purchased by the plaintiff in the name of the defendant when the latter was about two or three years old, which title-deeds were said to be fraudulently retained by the son, the defendant did not appear, but two other persons, who alleged that they were mortgagees from the son, were made parties. *Held* that they should not have been made parties under section 73 of the Civil Procedure Code, 1859, simply on the ground that they had lent money to the son on the security of the property. AKBUR ALI *v.* MAHOMED FAIZ BUKSH

[15 W. R., 12

189. ——————— *Suit for partition.—Mortgagee of interest of co-owner.—Civil Procedure Code (Act X of 1877), s. 32.*—In a suit for the partition of joint family property, the mortgagees of the right, title, and interest of the plaintiff applied under section 32 of the Civil Procedure Code to be added as parties. *Held* that their presence was not necessary in order "to enable the Court effectually and completely to adjudicate and settle all the questions involved in the suit" within the meaning of section 32. MOHINDRO BHOOSUN BISWAS *v.* SHOSHEEBHOOSUN BISWAS

[I. L. R., 5 Calc., 882

190. ——————— *Civil Procedure Code (Act XIV of 1882), ss. 32 and 372.—Mortgagee added as party.—Purchaser pendente lite. Mortgage before suit of defendant's interest.*—*A.* sued *V.* and *S.* to establish his right to attach a certain house in execution of a decree obtained by him in a previous suit. In their written statement the defendants alleged that *A.* had obtained the decree in question by fraud. Shortly before the present suit, *V.* had mortgaged the house to *H.* for R33,000. About three weeks after the suit had been filed, *H.* advanced a further sum of R5,000 to *V.* on the same security, and on the same day (12th December 1881) entered into an agreement with *V.* by which he agreed to buy the house for R45,000, the sale to be completed immediately after the decision of the present suit. The agreement provided that *V.* should defend the suit; but, if the result of the suit should be to establish the plaintiff's right to seize the house in execution, then that *H.* should be at liberty to cancel the contract of sale. Subsequently *V.* wrote to *H.* delaring his intention of abandoning his defence. *H.* thereupon applied to be made a defendant to the suit, in order to protect the house from the plaintiff. *Held* that *H.* was entitled to be made a party under sections 32 and 372 of the Civil Procedure Code

PARTIES—*continued.*

3. ADDING PARTIES TO SUITS—*continued.*

(*d*) DEFENDANTS—*continued.*

Adding defendant—*continued.*

(Act XIV of 1882). AHMEDBHOY HUBIBHOY *v.* VULLEEBHOY CASSUMBHOY. EX PARTE HASSANBHOY VISRAM . . **I. L. R., 8 Bom., 323**

191. ——— *Suit for possession after rejection of claim under s. 246, Civil Procedure Code, 1859.*—*M* divided her estate among her children, retaining for herself one seventh, which was afterwards increased by a portion of what had been given to one of the sons, who died. *M.'s* rights in the estate were sold in execution to *D.*, who sold them to *N.*, who sold them to *K. K.* brought a suit against certain parties, who held the estate in zur-i-peshgi from *M* and her family, for possession of the whole estate, but obtained a decree for one seventh only, giving him possession conditionally on his paying to the zur-i-peshgidars *M.'s* proportion of the loan. This decree was confirmed on appeal, and *K.* made liable for the costs of those defendants in respect of whom his claim had been dismissed. Meantime *B.*, an old judgment-creditor of *K.'s* father, took out execution against *R.*, and applied for sale of *K.'s* rights in the estate, which were accordingly sold, the purchaser being *K.* himself. Subsequently one of *M.'s* daughters, a successful defendant in the suit brought by *K.*, took out execution of her decree for costs, and put up *K.'s* rights for sale. The sale was opposed, under section 246, Civil Procedure Code, 1859, by *R.*, a son of *B.*, whose claim was summarily rejected, and *K.'s* rights were bought by one *A.* *R.* then brought a suit within one year to set aside the sale, and to have his own title declared. The suit was against the purchaser and against the representatives of the zur-i-peshgidars; but on the petition of *L.*, one of *M.'s* heirs, her name was added to the list of defendants. The first Court gave *R.* a decree, but the lower Appellate Court found that his claim was barred by limitation against *L.*, on the ground of non-possession within twelve years, and in respect of the zur-i-peshgidar because *K.'s* decree had lapsed by delay in execution. *Held* that *L.* was interested in the result of the suit, and the lower Courts committed no error in law in admitting her to be a defendant under section 73, Civil Procedure Code, 1859. RAM SURUN SINGH *v.* MAHOMED AMEER . . . . **13 W. R., 78**

192. ——— *Official Assignee.*—*Suits against insolvent pending at time vesting order is made.*—The Official Assignee has no legal right under the Insolvent Act to apply to be made a party to suits against the insolvent pending at the time of a vesting order being made, nor has he the power, after judgment and decree have been pronounced in a suit against the insolvent prior to his vesting order, to get himself made a party to such suit with a view of setting aside the judgment or appealing therefrom. IN RE HUNT, MONNET, & CO. EX PARTE GAMBLE *v.* BHOLAGIR MANGIR **[1 Bom., 251**

193. ——— *Power of Court.*—*Limitation.*—*Civil Procedure Code (Act XIV of 1882), ss. 23, 363, 364.*—No question of limitation can arise with respect to the Court's power to make an order adding a party defendant to a suit. ORIENTAL BANK CORPORATION *v.* CHARRIOL **[I. L. R., 12 Calc., 642**

Nor a respondent. MANICKYA MOYEE *v.* BORODA PROSAD MOOKERJEE . **I. L. R., 9 Calc., 355 [11 C. L. R., 430**

(*e*) APPELLANTS.

194. ——— **Adding appellants.**—*Persons not parties originally.*—Persons not parties in the original suit are not entitled to have themselves added as appellants in the Appellate Court. WATON *v.* SURNOMOYEE . . **9 W. R., 259**

195. ——— *Civil Procedure Code, ss. 32, 382.*—There is no power in the Code of Civil Procedure (Act XIV of 1882) to make a party to the suit a co-appellant. Sections 32 and 582 of the Code give to an Appellate Court power only to strike out the name of a party, or to direct new parties to be added to the suit, whether as plaintiffs or defendants. VASUDEB BALKRISHNA *v.* SALUBAI . . . . **I. L. R., 10 Bom., 227**

196. ——— *Assignment of interest pending suit.*—*Adding assignee as party.*—After the dismissal of the plaintiffs' suit, and pending a regular appeal to the High Court, the plaintiffs applied for leave to add the name of a party to whom a share of their right in the subject-matter had been assigned subsequently to the dismissal of the suit in the Court below. The Court refused the application. JAMEELA *v.* MAHOMED HOSSEIN **[Marsh., 251: 2 Hay, 111**

(*f*) RESPONDENTS.

197. ——— **Adding respondent.**—*Civil Procedure Code, 1882, s. 559.*—*Limitation Act, 1877.*—The discretionary power of directing a person to be made a respondent, conferred on the Appellate Court by section 559 of the Civil Procedure Code, is not limited by any provision in the Limitation Act (Act XV of 1877). MANICKYA MOYEE *v.* BORODA PROSAD MOOKERJEE . . **I. L. R., 9 Calc., 355 [11 C. L. R., 430**

Nor in the case of the addition of a defendant. ORIENTAL BANK CORPORATION *v.* CHARRIOL **[I. L. R., 12 Calc., 642**

198. ——— *Appellate Court.*—*Civil Procedure Code (XIV of 1882), s. 559.*—The Court of first instance gave the plaintiff in a suit for money a decree against the defendant *Y.*, exempting the defendants *A.* and *H.* *B.* appealed, making the plaintiff the respondent to the appeal. The plaintiff did not appeal from the decree of the Court of first instance in respect of the exemption of *A.* and

PARTIES—*continued.*

3. ADDING PARTIES TO SUITS—*continued.*

(*f*) RESPONDENTS—*continued.*

Adding respondent—*continued.*

H. The Appellate Court made *A.* a respondent to the appeal, under section 559 of the Civil Procedure Code, and, exempting *B.*, gave the plaintiff a decree against *A.* *Held* that, inasmuch as section 559 does not empower an Appellate Court virtually to make an appeal for an appellant, who has refrained from availing himself of his privileges under the law, by introducing for him other respondents than those he has included in his petition of appeal, and it could not be said that *A.* was "interested in the result of the appeal," as, having the unappealed decree of the Court of first instance behind him, his position was secure, the Appellate Court had improperly made *A.* a respondent to the appeal and given a decree against him. ATMA RAM *v.* BALKISHEN . . **I. L. R., 5 All., 266**

4. SUBSTITUTION OF PARTIES.

(*a*) GENERALLY.

199. ——— Power of Court to substitute parties.—*Civil Procedure Code, 1859, s. 73.*—A Court has no power under section 73, Act VIII of 1859, to substitute one party for another, by striking one off and putting another on the record. BAL GOBIND TEWAREE *v.* HUREENATH PERSHAD SAHOO **[16 W. R., 183**

See JUDOOPUTTEE CHATTERJEE *v.* CHUNDER KANT BHUTTACHARJEE . **9 W. R., 309**

(*b*) PLAINTIFFS.

200. ——— *Purchaser of plaintiff's interest.*—The Court has no power to allow the purchaser of the rights of the plaintiff in a suit to be substituted for him on the record. JUDOOPUTTEE CHATTERJEE *v.* CHUNDER KANT BHUTTACHARJEE . . . . . **9 W. R., 309**

SAHEB ROY *v.* CHOONEE SINGH . **9 W. R., 487**

BEER CHUNDER ROY *v.* TUMEEZOODEEN **[12 W. R., 87**

See BAL GOBIND TEWAREE v. HUREENATH PERSHAD SAHOO . . . **16 W. R., 183**

201. ——— Substitution of plaintiff.—*Assignee of plaintiff.—Waiver of objection.—Ground of special appeal.*—It is not correct to substitute the assignee of the original plaintiff as the plaintiff on the record, the proper course being to add him as a party plaintiff if he desires it. Where, however, the substitution is made before judgment in the first Court, and is not objected to, and there is no allegation that any party had been prejudiced thereby, the error will not be considered in special appeal. *Juddoputtee Chatterjee* v. *Chunder Kant Bhuttacharjee, 9 W. R., 309; Saheb Roy* v. *Choonee Singh, 9 W. R., 487,* considered and explained. SUSHEE BHUSAN v. MUDDON MOHUN CHOTTOPADHYA . **2 C. L. R., 297**

202. ——— *Consent of parties.—Irregularity.—Death of plaintiff.*—During the pendency of a suit brought by a Hindu widow to recover possession of her husband's estate, the widow died, and two claimants (first a female on the strength of a will executed by the widow, and afterwards the heir of the deceased husband) were made co-plaintiffs. *Held* that, although it was not strictly regular or usual to allow the two claimants to come upon the record as co-plaintiffs, the irregularity had been cured by the consent of the parties, it being for their advantage that the trial should proceed, and that the co-plaintiffs should be left in possession of any decision which they might obtain against the defendants, and allowed to settle the question arising between themselves in other proceedings. PARBUTTY *v.* HIGGIN **[17 W. R., 475**

S. C. PARBATTI *v.* BHIKUN **[8 B. L. R., Ap., 98**

(*c*) DEFENDANTS.

203. ——— Substitution of defendant.—*Death of defendant.*—As soon as it is shown that a defendant was dead at the time the plaint was filed, the Court ought to refuse to proceed further in the suit, and to leave it to the plaintiff to begin *de novo* against the proper person. SURNOMOYEE v. BYKUNT CHUNDER MUSTOFEE . . . **25 W. R., 17**

204. ——— *Death of defendant.—Representative of deceased defendant.*—Where the plaintiff in a suit prays that a person may be substituted on the record as the heir of a defendant who has died, the Judge should raise an issue as to whether the person sought to be substituted is the heir of the deceased defendant. KANAI LALL KHAN *v.* SASHI BHUSON BISWAS . **I. L. R., 6 Calc., 777 [8 C. L. R., 117**

205. ——— *Procedure.—Death of debtor after attachment and before sale.—Representatives not made parties.—Sale illegal.*—Where a judgment-debtor died after his land had been attached and the creditor brought the land to sale without making the representatives of the deceased parties to the proceedings,—*Held* that the sale was illegal and must be set aside. RAMASAMI AYYANGAR *v.* BAGIRATHI AMMAL **[I. L. R., 6 Mad., 180**

(*d*) APPELLANTS.

206. ——— Substitution of appellant.—*Right of lessor after lease has expired to represent lessee.*—A lessor cannot, after the expiration of the lessee's lease, appeal from the dismissal of the lessee's suit concerning a boundary dispute. COMMISSIONER OF THE SOONDERBUNDS *v.* CHUNDER COOMAR GHOSE . . . . **3 W. R., 175**

"Plaintiff" was held to include an appellant in RAJMONEE DABEE *v.* CHUNDER KANT SANDEL **[I. L. R., 8 Calc., 440: 10 C. L. R., 437**

PARTIES—*continued.*

4. SUBSTITUTION OF PARTIES—*continued.*

(*e*) RESPONDENTS.

207. ——— Substituting respondent. —*Discretion of Court to add parties as respondents.*—A Judge has discretion in the matter of adding a fresh respondent to the record, the latter having been a party to the original suit. SHOWDAMINEE DOSSEE *v.* RAM ROODRO GANGOOLY [8 W. R., 367

208. ——— *Civil Procedure Code (1882), ss. 3, 368, 582.—Respondent, Death of.—Practice.* —Having regard to section 3 of Act XIV of 1882, it is clear that the word "Code" in schedule II, article 171 *B* of Act XV of 1877, applies to the present Code of Civil Procedure, Act XIV of 1882; and that, therefore, the word "defendant" in section 368 of that Code when read with section 582 must be held to include "respondent." IN THE MATTER OF THE PETITION OF SOSHI BHUSAN CHAND. SOSHI BHUSAN CHAND *v.* GRISH CHUNDER TALUQDAR . . . I. L. R., 11 Calc., 694

209. ——— *Co-sharer of plaintiff in suit.* —When a co-defendant (a co-sharer with the plaintiff in the property in dispute) was thought by the Judge to be a necessary party as respondent in the appeal,—*Held* that the Judge should, under section 73, Act VIII of 1859, and otherwise, have caused him to be made a respondent, instead of dismissing the appeal. ACHUMBAH PAUREY *v.* RAMSAHOY PAUREY . . W. R., 1864, 136

210. ——— *Procedure in case of the death of respondent pending an appeal.—Civil Procedure Code (Act X of 1877), ss. 368, 582.* —Procedure analogous to that laid down in section 368 of the Civil Procedure Code (Act X) of 1877 in respect of the death of a defendant, must be applied in the case of the death of a respondent. Where, therefore, a respondent dies during the pendency of an appeal, it is for the appellant to take the initiative, and he is at liberty to select one or more persons to defend the appeal; and no person other than the person so selected has a right to force himself into the proceedings and to claim to have his name entered as representative of the deceased respondent against the appellant's consent. Persons so introduced on the record may or may not be the real representatives of the deceased respondent; but the merits of their claim to be such, on the ground of any right or status, such as that of adoption, is immaterial to the determination of the appeal. LAKSHMIBAI *v.* BALKRISHNA . . I. L. R., 4 Bom., 654

See RAJMONEE DABEE *v.* CHUNDUR KANT SANDEL [I. L. R., 8 Calc., 440: 10 C. L. R., 437

211. ——— *Civil Procedure Code, 1882, ss. 365, 368, and 582.—Deceased sole respondent.—Practice.* —Under section 368 of the Civil Procedure Code (XIV of 1882), a plaintiff may have the representatives of a deceased sole defendant placed on the record so that he may continue his suit against them, but there is no section which allows the representatives of a sole defendant who has died to be placed on the record at their own request. Consequently section 582 gives no authority to a Civil Court to place on the record at their own request the representatives of a deceased sole respondent. Such an application cannot be entertained. BAI JAVER *v.* HATHISING . . . I. L. R., 9 Bom., 56

PARTIES—*continued.*

4. SUBSTITUTION OF PARTIES—*continued.*

(*e*) RESPONDENTS—*continued.*

Substituting respondent—*continued.*

212. ——— *Civil Procedure Code, ss. 32, 368.—Death of respondent in appeal.—Rival claims to represent deceased.* —Although a Court is bound by section 368 of the Code of Civil Procedure to place on the record the name of the person alleged by the appellant to be the legal representative of a deceased respondent, nevertheless, where a person, other than the person alleged by the appellant to be such representative, claims, on good *primâ facie* grounds, to be the representative of the deceased respondent, and the interests of the person entitled to the estate of the deceased may be prejudiced, the Court should, under section 32 of the Code of Civil Procedure, proceed to make such claimant also a party to the appeal. ATHIAPPA *v.* AYANNA [I. L. R., 8 Mad., 300

213. ——— *Purchasers of share in property after decree.* —On appeal to the High Court from the decree of the Court of first instance, the plaintiff appellant made respondents certain persons who, after the passing of that decree, had purchased at execution sales the rights and interests of the plaintiff in portions of the landed estate of the family. *Held* that such persons not being affected by that decree, the Court could not make any order respecting their claims, and they had been unnecessarily made parties to the appeal RADHA KISHEN MAN *v.* BACHAMAN . . I. L. R., 3 All., 118

214. ——— *Civil Procedure Code (Act XIV of 1882), ss. 368, 369, and 372.—Death of a respondent pending appeal.—Right of assignee of his interest to be substituted in his place.* —At an auction sale held in execution of a decree passed against one *G. A.*, certain property put up for sale was purchased by one *K. M.*, the husband of the opponent. Subsequently *K. A.*, the brother of *G. A.*, brought a suit against the opponent to establish his right to the property purchased by the opponent's husband. On the 17th February 1882 he obtained a decree declaring that he (*K. A.*) was entitled to a half share of the property in dispute, and an order was made that he should have joint possession with the opponent of one moiety of the property. On the termination of the above suit, which had been brought by *K. A. in formâ pauperis*, he was required to pay the Court fees. For that purpose he procured an advance of R290 from the applicant on the security of the moiety of the property which was awarded to him by the decree. He passed a deed of sale to the applicant, on the understanding that the property should be reconveyed to him by the applicant on the repayment of the advance with interest. In the

PARTIES—*continued.*

4. SUBSTITUTION OF PARTIES—*continued.*

(*e*) RESPONDENTS—*continued.*

Substituting respondent—*continued.*

meantime cross appeals were filed against the above-mentioned decree passed in favour of *K. A.*, and at the hearing of the appeal the lower Appellate Court varied the decree of the Subordinate Judge, holding that *K. A.*, was entitled to the possession of the property as sought for. From this decree the opponent preferred a second appeal to the High Court, which, at the time of this application, was still pending. Before the hearing of the appeal, *K. A.*, died, and the applicant thereupon applied to have his name placed on the record as respondent. *Held* that the applicant was entitled to be made a party. The analogy of section 368 is to be extended generally to appeals, and the party appealing may choose his own respondent as representative of deceased. The more specific rule prescribed in that section must prevail, in the cases to which it is exactly applicable, over the more general rule in section 372. But the rule in section 368 may well be intended for the case in which the death, and death only, of the defendant constitutes the change of circumstances for which it was thought necessary to provide; but where there has been, not only the death of the respondent, but an alleged prior conveyance to him of the property awarded by the decree appealed against, there is a fact in addition to the fact contemplated by section 368, and the rule in section 372, being alone sufficiently inclusive, must apply. An appellant may determine who shall be respondent, but not that any particular person shall not be a respondent. The choice of respondents made by the appellant may be defective through ignorance or fraud, and the real representative of the decree-holder cannot justly be refused an opportunity of maintaining the decision which it is sought to upset. RAJARAM BHAGVAT *v.* JIBAI . . . . **I. L. R. 9 Bom., 151**

215. ———— *Death of respondent.—Representatives not added.—Civil Procedure Code, 1859, s. 104.*—A suit having been dismissed, plaintiff appealed from the decision; and although the defendant's death was notified to the Court, and the plaintiff did not attempt, under section 104, Code of Civil Procedure, to bring in the heirs of the deceased or have deceased in any way represented, the Court tried the appeal and passed a decree. *Held* that the decision of the lower Appellate Court was incorrect in law. MONEE LALL *v.* FUZUL HOSSEIN **[14 W. R., 337**

See ROOP NARAIN SINGH v. RAMAYEE SINGH **[3 C. L. R., 192**

216. ———— *Death of respondent before decree on appeal passed against him.—Decree passed in ignorance of death of party.*—Where a suit, which had been decreed in the first Court, was dismissed on appeal after the death of the plaintiff, and the representatives of the latter had not aided in keeping the defendant ignorant of his death, the High Court met the difficulty, as to executing a decree against a dead man, by directing the lower Appellate Court to try the appeal *de novo*, making the dead man's representatives respondents. SHAMA PUDDO MOITRO v. DINONATH BAGCHEE **[25 W. R., 108**

5. TRANSPOSITION OF PARTIES.

217. ———— **Making a defendant plaintiff and making the plaintiff a defendant.**—*Partnership suit.—Civil Procedure Code (X of 1877), s. 32.*—The plaintiff in a partnership suit to which there were twenty-one defendants, applied to the Court for leave to withdraw the suit, or that the suit might be dismissed. Ten of the defendants supported the plaintiff's application. Two of the defendants objected, and applied, under section 32 of the Civil Procedure Code (X of 1877), that they might be made plaintiffs and that the plaintiff might be made a defendant. The Court granted their application. EDULJI MANCHERJI WACHA v. VULLEBHOY KHANBHOY . . . **I. L. R., 7 Bom., 167**

218. ———— **Making parties defendants into plaintiffs against their consent.**—In a suit for arrears of rent certain parties intervened alleging that they were co-sharers with the plaintiff. They were placed by the first Court on the record as defendants and the suit was dismissed. The lower Appellate Court transferred the intervenors against their will to the side of the plaintiffs and remanded the case for re-trial. *Held* that this proceeding was without authority or jurisdiction, as a person cannot be made a plaintiff against his will, unless there is such an equity on the part of another as to compel him to be such. BEHAREE LALL DOSS v. RADHA NATH DOSS . . . . **22 W. R., 229**

219. ———— **Making defendant a plaintiff.**—*Civil Procedure Code, 1859, s. 73.—Adding parties after amendment of plaint.*—A Court could, under section 73, Act VIII of 1859, add parties to a suit, as well as transpose a party from his position as *pro formâ* defendant, and array him amongst the plaintiffs after amendment of the plaint under section 29. PITAMBUR PYNE v. TOOLSEE DOSSEE **[7 W. R., 39**

6. PARTIES WITH VARYING RIGHTS.

220. ———— **Joinder of parties with varying rights, Effect of.**—*Alteration of rights of parties.*—When two or more parties have been joined in a suit with rights various in degree and kind, the mere fact of such joinder cannot confer on any of the parties so joined new rights, or rights adverse to those of the others. PARBUTTEE v. KRISHAN PURTAB BAHADUR SAHIE **[1 N. W., Ed. 1873, 44**

7. PARTIES IN TWO CAPACITIES.

221. ———— **One person party both as plaintiff and one of the defendants.**—*Objec-*

PARTIES—*continued.*

7. PARTIES IN TWO CAPACITIES—*continued.*

One person party both as plaintiff and one of the defendants—*continued.*

tion, Validity of.—The plaintiff, as heir of his mother, sued a firm in which he was himself a partner to recover the amount of certain loans which he alleged that his mother in her lifetime had made to the said firm. It was objected that the suit was improperly framed, inasmuch as the plaintiff was also made a defendant. *Held* that the objection was not maintainable, the plaintiff being a defendant in a different capacity. PREMJI LUDHA *v.* DOSSA DOONGERSEY **[I. L. R., 10 Bom., 358**

8. DISABILITY TO SUE.

222. ——— Deaf and dumb person.—*Right to sue.*—A deaf and dumb person is not on that account alone to be deemed incompetent to sue or to be sued. BUGGEE RAM *v.* BULDEO SINGH **[2 N. W., 414**

9. OBJECTION AS TO DEFECT OF PARTIES.

223. ——— Effect of omission to join necessary parties.—*Civil Procedure Code, 1859, s. 73.*—*Held* that it was opposed to the spirit of the Civil Procedure Code to dismiss a suit merely on account of there being defect of parties,—the Court, under section 73 of the Code, being vested with the power of making the persons who seem to be interested in the subject-matter parties to the suit. RUCHPAUL *v.* JOHUREE . . . **1 Agra, 147**

By section 31 of the Codes of Civil Procedure of 1877 and 1882 a suit is not to be dismissed for mere misjoinder of parties.

224. ——— Objection by defendant to want of parties.—*Civil Procedure Code, 1877, s. 34.*—Section 34 of the Civil Procedure Code (Act X of 1877) limits the time within which a defendant may object for want of parties, but it does not so limit the right of the plaintiff to add parties. In some cases section 34 would not prevent even a defendant from objecting to the want of a proper party after the first hearing,—*e.g.*, where, after the first hearing and before decree a coparcener or remainderman or reversioner is born, or where a woman (who is a party) is married to a man who is not a party to the suit. The objection did not exist at or before the first hearing, and therefore could not have been made or waived by the defendant; and if he made it at the earliest opportunity after it came into existence, he would have satisfied the spirit of section 34. MODHE *v.* DONGRE . . **I. L. R., 5 Bom., 609**

225. ——— Special appeal, Objection taken on.—*Irregularity not affecting merits of case.*—By PRINSEP, *J.*—The objection as to the defect of parties after the case had passed through two Courts, is not one affecting the merits of the case so as to be a ground of special appeal. BOYDONATH BAG *v.* GRISH CHUNDER ROY **[I. L. R., 3 Calc., 26**

But *see* SHIVRAM VITHAL *v.* BHAGIRTHIBAI **[6 Bom., A. C., 20**

PARTIES—*continued.*

10. PRIVILEGES OF PARTIES.

See CASES UNDER ARREST—CIVIL ARREST.

226. ——— Non-attendance in Court—*Appearance by agent.*—A Rajah instituted a suit under Act X of 1859 through an agent appointed in that behalf. The Deputy Collector cited the Rajah himself to appear and be examined. He excused himself on the ground of the privilege under Act VIII of 1850, section 22, and at the same time petitioned that the evidence of his general agent might be taken. The Deputy Collector, without examining the general agent, dismissed the suit, on the ground that the suit ought to have been instituted by the general agent; and that the Rajah himself was bound to obey his citation. *Held* that the Deputy Collector was bound to receive the evidence of the general agent and to decide the case upon the evidence which was tendered; and that the refusal of the Rajah, who had the privilege which he claimed, and his appointment of a special agent or mooktear for the purposes of the suit, instead of his general agent, were no grounds for dismissing the suit. JUGGUD INDUR BUNWAREE *v.* SOORJCOOMAR CHOWDHRY **[Marsh., 627**

227. ——— *Mahomedan lady of rank.*—Where a Mahomedan lady of position residing within the town in which a Court held its sitting was willing to admit the Court to an interview at her own residence, the Judge was held to have done wrong in insisting upon her personal appearance in Court. ZOHURUTOOLLAH CHOWDRY *v.* ASALOODDEEN CHOWDRY . . . **15 W. R., 129**

PARTIES TO CONVEYANCE.

See RECEIVER . **6 B. L. R., 492, note**

——— *Mortgagor and mortgagee.—Sale of mortgaged properties in execution of decree.—Purchase by mortgagee.*—Where a mortgagee becomes the purchaser of property sold under a decree for sale obtained by him on his mortgage, it is not necessary that the mortgagor should join in the conveyance of the property to the mortgagee. JALEERAM *v.* CHUNDER COOMAREE DOSSEE . **12 B. L. R., Ap., 7**

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See RES JUDICATA — PARTIES — INTERVENORS . . I. L. R., 3 Calc., 705

1. FORM OF PARTITION.

1. ——— Imperfect partition.—*Sanction to partition.—Act XIX of 1863.—Partition depending on consent of parties.*—Courts in their judgments should bear in mind the very distinct character of the several kinds of partition, and until it has been ascertained with what description of partition they have to deal, the question of the sufficiency of the sanction or confirmation given to it cannot be determined. In certain cases the Commissioner's sanction is required, in others that of the Collector. There are partitions known as imperfect partitions depending upon the conduct of the parties, and effected from first to last only with their consent. MUHUMDEE BEG *v.* HOSSEIN ALI . . . 2 N. W., 26

2. ——— Informal partition.—*Partition by finding of Court in suit.*—Where plaintiff sued for certain land in dispute as his own, and the lower Court found that it was his share, and that defendant held his separately, no further formal partition was held to be necessary. MODHOOSOODUN CHATTERJEE *v.* JUDDOOPUTTY CHUCKERBUTTY
[9 W. R., 115

2. PRIVATE PARTITION.

3. ——— Effect of private partition.—*Effect of, on right of pre-emption.*—A private partition, though not sanctioned by official authority, will, if full and final as among the parties to it, have the same effect as the most formal partition on the right of pre-emption. GOPAL SAHI *v.* OJOODHEA PERSHAD . . . . . 2 W. R., 47

4. ——— *Effect of, on survey proceedings.*—A private partition of a joint estate is not inconsistent with subsequent survey proceedings and does not take away their legal effect. HUNOOMAN CHOWBAY *v.* BINDHOO TORABA
[10 W. R., 336

5. ——— *Effect of, on parties.—Government and purchasers at revenue sale.*—A private butwarra, though not binding against the Government or against a purchaser at a sale for arrears

PARTITION—*continued.*

2. PRIVATE PARTITION—*continued.*

Effect of private partition—*continued.*

of Government revenue, who derives his title directly from Government, is binding as between the parties to the butwarra and persons claiming title under them. TRIPOORAH SOONDAREE CHOWDHRAINEE *v* KALI CHUNDRA ROY CHOWDHRY . 18 W. R., 327

6. ——— *Right to subsequent partition under Act XIX of 1814.*—Where an estate was divided by private agreement more than fifty years ago, and the division was subsequently maintained in a judicial decision, since which the co-sharers had for many years exercised rights of ownership independently of each other, a butwarra of the whole estate cannot afterwards be demanded, even though a regular separation of one share has been intermediately obtained by a suit in a Civil Court. PERMESSUR DUTT SAHEE *v.* AUDH SAHAJEE . 5 W. R., 40

7. ——— *Beng. Reg. XIX of 1814, s. 30.*—A private partition is no bar to proceedings in the Revenue Courts under section 30 of Regulation XIX of 1814. JOYNATH ROY *v.* LALL BAHADUR SINGH [I. L. R., 8 Calc., 126 : 10 C. L. R., 146

8. ——— *Beng. Reg. XIX of 1814, s. 30.—Power of Collector.—Jurisdiction of Civil Court.*—It is not correct to say that, under section 30 of Regulation XIX of 1814, the Collector is not at liberty to make any partition where the owners have already partitioned the lands amongst themselves. The true meaning of the section is that the Collector must be guided by the nature of the estate in applying the rules contained in the preceding sections of the Regulation; and that where estates are not held in common tenancy, only a portion of those rules will apply. If the parties have divided the lands without agreeing as to the shares of the Government revenue to be paid by them, respectively, all the Collector has to do, when a partition has been applied for, is to make an assignment of the revenue in proportion to the interest of each shareholder. If they have divided the lands and arranged amongst themselves as to the portion of the Government revenue which each is to pay, it is open to the Collector to accept or reject that arrangement. The Civil Court has nothing to do with the matter. AJOODHIA LALL *v.* GUMANI LALL . 2 C. L. R., 134

3. RIGHT TO PARTITION.

(*a*) GENERALLY.

9. ——— Co-sharers.—*Effect of partition.*—In cases of joint ownership each party has a right to demand and enforce partition. A shareholder of a putni talook can claim and enforce a partition of such putni talook as against his co-sharers, but such partition would not affect the liabilities of the parties under their contract with the zemindar. SHAMASUNDARI DEBI *v.* JARDINE, SKINNER, & Co. [3 B. L. R., Ap., 120 : 12 W. R., 160

PARTITION—*continued.*

3. RIGHT TO PARTITION—*continued.*

(*a*) GENERALLY—*continued.*

10. ——— Joint owners in right of worship of idol.—*Performance of worship by turns.*—The reasons for which one of several joint owners is entitled to a partition of the joint property, apply also to the case of a joint right of performing the worship of an idol. The joint owners of such a right are entitled to perform their worship by turns. MITTA KUNTH AUDHICARRY *v.* NEERUNJUN AUDHICARRY . 14 B. L. R., 166 : 22 W. R., 437

MANCHARAM *v.* PRANSHANKAR [I. L. R., 6 Bom., 298

11. ——— Putnidars.—*Right to enforce partition.—Putnidar of undivided share.*—One putnidar of an undivided share of a zemindari held by joint proprietors, has no right to sue to enforce partition against another putnidar where there is no contract between the two, or between the putnidar and his zemindar, to divide. RIDAI NATH SANDYAL *v.* ISWAR CHANDRA SAHA [4 B. L. R., Ap., 57, note

12. ——— Estate held in separate possession.—*Suit by one of several shareholders.—Beng. Reg. XIX of 1814, s. 30.*—When an estate is held in separate possession, a butwarra of the whole, for the purpose of apportioning land according to the jummas of the shareholders, who had severally entered into engagements with the Government, cannot be insisted upon by one of the proprietors under section 30, Regulation XIX of 1814. BUJRUNGEE LALL *v.* VELAET HOSSEIN KHAN [5 W. R., 186

13. ——— Separate holders under private partition.—*Right to have partition by Collector after private arrangement and disagreement.*—Parties holding separate portions of an estate according to a private arrangement previously made, are not in a condition to apply to the Collector for a butwarra when unable afterwards to agree among themselves. AJOODHYA PERSHAD *v.* KRISTO DYAL [15 W. R., 165

See KHOOBUN *v.* WOOMA CHURUN SINGH [3 C. L. R., 453

14. ——— Joint proprietors.—*Joint lands, each proprietor getting rent separately.*—Lands held in joint possession, each proprietor receiving his proportion of the rent according to his interest in the land, cannot be divided under the butwarra laws. DOORGA KANT LAHOORY *v.* RADHA MOHUN GOOHO NEOGY . . . . 7 W. R., 51

15. ——— Division between zemindars.—*Beng. Reg. XIX of 1814.*—One of the co-sharers of a joint estate suing conjointly with the others would, under Regulation XIX of 1814, be entitled to a separation of a mouzah from the rest of the zemindari, and an assessment upon it of a proper proportion of the total jumma, and having done this he would alone be entitled to have an order for

PARTITION—*continued.*

3. RIGHT TO PARTITION—*continued.*

(*a*) GENERALLY—*continued.*

Division between zemindars—*continued.*

partition of that mouzah as between himself and his co-sharers therein. If the zemindari which the plaintiff seeks to have divided is so intermixed with the neighbouring zemindaris that the line of boundary cannot be reasonably identified, he cannot call upon the Collector to make a new line. But if the Collector has the means of ascertaining where the boundary lies, he is bound to carry out a partition. BHUBUT THAKOOR *v.* MURTAZA . **21 W. R., 225**

16. ——— **Zemindars.**—*Separate liability for payment of revenue.—Arrangement for separate payment.—Assent to, by maafeedar.*—A partition was made by the zemindars of their respective holdings and of their joint liability for the Government revenue, and though this partition was not carried out by the Revenue Court, but was acted upon by the zemindars, and the assignee of Government revenue also consented to such partition by accepting revenue from individual zemindars, and by holding them to be individually responsible for the amount due in respect of their several holdings,—*Held* that there was nothing to prevent the maafeedar, who is the assignee of Government revenue, from assenting to any arrangement which the zemindars may make for the conversion of their joint into separate liability. SURNOMOYE *v.* RAMCHURN SINGH **[3 Agra, 251**

17. ——— **Purchaser of specific portion of estate.**—*Right to partition of whole estate.*—The purchaser of a specific portion of the land of an estate separately registered with a separate jumma under section 11, Act XI of 1859, is not entitled to claim a butwarra of the whole estate, and to obtain a share of the whole land proportioned to the amount of the sudder jumma paid by him. FUKEER CHUNDER SHAHA *v.* NOBODEEP CHUNDER SHAHA **[W. R., 1864, 59**

18. ——— **Party with decree for partition which he fails to execute till barred.**—*Act XIX of 1863, s. 47.*—Where a person obtained a decree from the Civil Court, declaring his right to certain shares in the village, and directing a partition, but did not execute his decree within the prescribed period of limitation—*Held* that he was not entitled to partition under section 47, Act XIX of 1863. KISHEN SINGH *v.* DABEER SINGH **[2 Agra, 272**

19. ——— **Right in suit where title has been declared to have precept to Collector to partition.**—*Beng. Reg. XIX of 1814, s. 5.*—In a suit for declaration of title in which plaintiff also claimed an allotment of his share which had been refused him by the Collector in a butwarra then in progress,—*Held* that as it was found that plaintiff's title was established he was also entitled, under section 5, Regulation XIX of 1814, to a precept

PARTITION—*continued.*

3. RIGHT TO PARTITION—*continued.*

(*a*) GENERALLY—*continued.*

Right in suit where title has been declared to have precept to Collector to partition—*continued.*

to the Collector directing him to award to the plaintiff a share corresponding with that title. ABDOOL REZA *v.* JEDUNNISSA BIBEE . . **16 W. R., 34**

20. ——— **Shikmi tenure.**—*Rights of Government, the zemindars, and the shikmidars.*—Partition of a shikmi tenure allowed on the ground that the order could not affect the rights of Government, of the zemindars, nor the plaintiff's co-shikmidars. OOMESH CHUNDER SHAHA *v.* MANICK CHUNDER BONICK . . . **8 W. R., 128**

21. ——— **Lakhiraj tenure.**—*Beng Reg. XIX of 1814.*—Though a partition of a lakhiraj tenure cannot be effected under the provisions of Regulation XIX of 1814, yet a Civil Court in effecting such a partition may well be guided by the rules laid down in that Regulation so far as they are applicable. JANOKEE BIBEE *v.* LUCHMUN PERSHAD **[17 W. R., 137**

22. ——— **Common lands of mirasi villages.**—*Pungavaly tenure.—Semble,*—The right to enforce a partition or allotment of the common lands of mirasi villages held in pungavaly tenure probably does exist. SITARAMAIYAR *v.* ALAGIRY IYER . . . . . **4 Mad., 285**

23. ——— **Coparceners.**—*Order binding whole estate.*—There is no statutory bar against a ryot's right to partition as between himself and his coparcener where he does not ask for such a distribution of the putni rent as would bind the zemindar, or limit the latter's right over the whole tenure as a joint one. GOUREE SUNKUR ROY *v.* ANUND MOHUN MOITRO . . . . **9 W. R., 487**

See MOTHOOR CHUNDER KURMOKAR *v.* MANICK CHUNDER BUNGO . . . **6 W. R., 192**

24. ——— **Hindu widow.**—*N.-W. P. Land Revenue Act, XIX of 1873, s. 108.—Hindu widow.—Reversioners.*—A childless Hindu widow, who has succeeded to her deceased husband's share of a mahal, such share having been his separate property, and is recorded as a co-sharer of such mehal, is as much entitled, under section 108 of Act XIX of 1873, as any other recorded co-sharer is, to claim a perfect partition of her share. The circumstance that she may after partition alienate her share contrary to Hindu law, will not bar her right as a co-sharer to partition. If she acts contrary to the Hindu law, in respect of her share, the reversioners will be at liberty to protect their own interests. JHUNNA KUAR *v.* CHAIN SUKH . . . **I. L. R., 3 All., 400**

25. ——— *Revenue-paying estate.—Beng. Act VIII of 1876, s. 10.*—A Hindu widow who has succeeded to a share in a revenue-paying estate as heir to her deceased husband is not a person having a proprietary interest in an estate

PARTITION—*continued.*

3. RIGHT TO PARTITION—*continued.*

(*a*) GENERALLY—*continued.*

Hindu widow—*continued.*

for the term of her life only, within the meaning of section 10, Bengal Act VIII of 1876. Even if she were, a Civil Court would not be debarred from decreeing partition of a revenue-paying estate at her instance if a proper case for the passing of such a decree be made out by her. *Jadomoney Dabee* v. *Sarodaprosono Mookerjee, 1 Boulnois, 120; Phool Chand Lall* v. *Rughoobuns Sahoy, 9 W. R., 108; Katama Natchiar* v. *Rajah of Shivagunga, 9 Moore's I. A., 539;* and *Bhagbutti Daee* v. *Chowdhry Bholanath Thakoor, L. R., 2 I. A., 256,* referred to. Principles on which Courts should order partition at the instance of a Hindu widow stated. MOHADEAY KOOER *v.* HARUK NARAIN

[I. L. R., 9 Calc., 244

26. ——— Partition between owners of separate shares in permanently-settled estate.—*Effect of, as against Government.*—In the year 1226 F. (1819) a fourteen-anna eight-gunda share of a certain mouzah was permanently settled. The remaining one-anna twelve-gunda share was permanently settled in 1861. This share was sold for arrears of Government revenue in 1873, and purchased by the plaintiff, who subsequently applied to the Collector for partition under the Butwarra Act. The Collector refused to partition, upon the ground that the Act was not applicable to the partition of a mouzah held jointly by the proprietors of two separate estates. The plaintiff then brought the present suit, to which he made the Collector a party, to obtain a declaration that he was entitled to have his share separated from the fourteen-anna eight-gunda share by metes and bounds, and also for a decree directing a partition of the whole mouzah into two parts. *Held* that so far as the plaintiff on the one hand, and the owners of the fourteen-anna eight-gunda share on the other were concerned, the mouzah could be partitioned, but that such partition would not be binding upon the Government unless by consent. AJOODHYA PERSAD *v.* COLLECTOR OF DURBHUNGAH

[I. L. R., 9 Calc., 419: 11 C. L. R., 550

27. ——— Grantees of inam village.—*Suit by co-sharer in melvaram of inam village for division of lands.—Parties to suit.—Liability to Government for quit-rent.*—Where the grantees of an inam village, subject to a favourable quit-rent, enjoy the rent payable by the permanent tenants in defined shares, any one of the grantees may sue his co-sharers for a partition of the lands of the village to enable him the more easily to recover his share of the rent, although he cannot, without the consent of Government, put an end to his joint liability for the entire quit-rent. It is not necessary for the plaintiff in such suit to implead any ryot whose rights are unquestioned. The partition in such a case must be carried out by the Collector after a preliminary decree and when partition is carried out by the Collector a final decree should be passed. RAMANUJA AYYANGAR *v.* VIRAPPA TEVAN

[I. L. R., 6 Mad., 90

PARTITION—*continued.*

3. RIGHT TO PARTITION—*continued.*

(*a*) GENERALLY—*continued.*

28. ——— Civil Procedure Code, 1882, s. 265.—*Revenue-paying estate.—Beng. Act VIII of 1876, Part II, and s 4, cls. (8) and (9)—Civil Procedure Code (Act XIV of 1882), s. 265.*—In 1851 an estate was brought under butwarra under the provisions of Regulation XIX of 1814. At such butwarra a portion of the estate being covered with water and unfit for cultivation was not divided, but left joint amongst all the co-sharers, the land-revenue payable on account of the whole estate being apportioned amongst the several estates into which the portion divided was split up. Subsequently, on the portion remaining joint becoming dry and fit for cultivation, an application was made by one of the co-sharers to the Collector to partition the same under the provisions of Bengal Act VIII of 1876, but that officer refused to do so, on the ground that the land "did not bear an assessed revenue and was not shown in the towzi." In a suit brought under the above circumstances to compel the Collector to make the partition and in the alternative to have it made by the Civil Court,—*Held* that though the reason given by the Collector for refusing was an erroneous one, he was not bound to make the partition under the provisions of Bengal Act VIII of 1876, as the land in suit was not liable for the payment of one and the same demand of land-revenue, and was therefore not a joint undivided estate within the terms of section 4, clause (9) of that Act. *Held* also, that the word "estate," as used in section 265 of the Civil Procedure Code, must not be construed in the same limited and defective sense in which it is used in Act VIII of 1876, but must be taken to be there used in its ordinary signification, and that consequently the plaintiff was entitled to a decree for partition under the provisions of that section. *Chundernath Nundy* v. *Hur Narain Deb, I. L. R., 7 Calc., 153,* approved. SECRETARY OF STATE *v.* NUNDUN LALL

[I. L. R., 10 Calc., 435

29. ——— *Suit in ejectment.—Partition by Collector.—Jurisdiction.—Mortgage-sale.—Hindu law.—Undivided property.—Possession.*—*V.* mortgaged to the plaintiff his house and certain undivided land in which *H.* and others, Hindu coparceners, had a share. *R.* bought the interest of *H.* in the land at a Court-sale, and let to *H.* and *V.*, who, failing to pay rent, were sued by *R.*, who got a decree for possession. This decree was transferred for execution to the Collector, who sold the land and rateably distributed the proceeds, except to *V.*, who declined to take the amount tendered as his share. The plaintiff sued *V.* and the purchasers under *R.'s* decree to recover his mortgage debt by a sale of the property mortgaged to him. *Held* that *R.'s* decree not being for partition of the family property, or for the separate possession of a share, was not one contemplated by section 265 of the Code of Civil Procedure. The proceedings of the Collector were without jurisdiction, and the plaintiff was entitled to ignore them, and assert his claim, under the mortgage. NARAYAN NAGARKAR *v.* VITHU JAKHOJI . I. L. R., 8 Bom., 539

PARTITION—*continued.*

3. RIGHT TO PARTITION—*continued.*

(*a*) GENERALLY—*continued.*

Civil Procedure Code, 1882, s. 265—*continued.*

30. ———— *Ryotwari land.* —Section 265 of the Code of Civil Procedure, 1877, does not apply to property held on ryotwari tenure, but to permanently-settled estates. MUTTU *v.* KUDALALAGA . . . **I. L. R., 6 Mad., 97**

31. ———— *Partition of ryotwari estates.—Act VIII of 1859, s. 225.* —In 1862 it was held by the Sudder Court that section 225 of Act VIII of 1859 did not apply to ryotwari estates. This ruling having always been acted on in the Madras Presidency,—*Held* by the Full Bench that a different construction should not, under these circumstances, be placed on section 265 of the Code of Civil Procedure, 1882. *Muttu* v. *Kudalalaga, I. L. R., 6 Mad., 97,* confirmed. MUTTUCHIDAMBARA *v.* KARUPPA . . **I. L. R., 7 Mad., 382**

32. ———— Suit for partition by person in possession making a false claim.—*B.*, a childless Hindu and a Brahman, adopted *X.*, his sister's son, and subsequently apprehending that the adoption was invalid, executed a will by which he left his estate to *X.* After *B.'s* death, *X.* obtained possession, and remained in possession of the estate till his death, which occurred before he had attained majority. After this, joint possession of the estate was obtained by *P.* and *S.*, two widows of *B.*, who set up a right of inheritance from *X.* as being in the position of mothers to him, in consequence of his adoption by their deceased husband. In a suit brought by *S.* against *P.* for partition of the estate, —*Held* that, inasmuch as the parties had set up a false claim to the estate, and had no estate in law which they could divide, the suit for partition was not maintainable merely by reason of the fact that they were in possession. *Armory* v. *Delamirie, Smith's L. C., 313,* and *Asher* v. *Whitlock, L. R., 1 Q. B., 1,* referred to. PARBATI *v.* SUNDAR **[I. L. R., 8 All., 1**

(*b*) PARTITION OF PORTION OF PROPERTY.

33. ———— Suit for partition of portion of property.—*Civil Procedure Code, 1877, s. 265.* —A suit will not lie for partition of portion only of a joint estate. Accordingly, where the plaintiff sued for partition of a portion of a joint estate and for khas possession of the share which might on the partition be allotted to him, alleging that he had been deprived of possession of that portion by his co-sharers in collusion with others, it was held the suit would not lie. Although under section 265 of Act X of 1877, a decree may be made for partition of revenue-paying land, yet that decree must be carried into execution solely by the Collector. RAMJOY GHOSE *v.* RAM RUNGUN CHUCKERBUTTY **[8 C. L. R., 367**

34. ———— Partition of portion of joint estate without consent of co-sharers.—*Jurisdiction of Civil Court.*—Where a co-sharer in a joint undivided estate sued to have his rights ascertained, and partition made in respect of an orchard which formed part of the joint estate,—*Held* that the Civil Court was not entitled to decree partition or give possession of a separate share in the orchard, and there is no law which entitles a shareholder to obtain partition of a portion of an undivided estate against the will of the other co-sharers. MITTHOO LALL *v.* GHOLAM NUSEER-OOD-DEEN . **3 Agra, 276**

PARTITION—*continued.*

3. RIGHT TO PARTITION—*continued.*

(*b*) PARTITION OF PORTION OF PROPERTY—*continued.*

Partition of portion of joint estate without consent of co-sharers—*continued.*

35. ———— Suit by mokurrari leaseholder of small part of estate.—*Suit against putnidars of whole estate.*—The owner of a 12-annas share in a joint zemindari granted to the plaintiff a mokurrari lease of his share in a small portion of land within the zemindari. The owner of the remaining 4-annas share granted a putni of his share in the whole zemindari to the defendants. In a suit brought for partition of the small plot of land,—*Held* that a partition could not be enforced of a part of the estate held by the defendants, who, if the plaintiff's claim was allowed, might, in respect of the same estate, be subjected to many claims for partition at the suit of persons in the plaintiff's position. PARBATI CHURN DEB *v.* AIN-UD-DEEN **[I. L. R., 7 Calc., 577: 9 C. L. R., 170**

36. ———— Suit for partition of portion of joint property.—*Partial partition.*—The plaintiffs and the defendants being jointly entitled to and in possession of three khanabaris in a village and other immoveable property, the plaintiff sued for partition of one of the khanabaris only. *Held* that the suit would not lie. HARIDAS SANYAL *v.* PRAN NATH SANYAL . **I. L. R., 12 Calc., 566**

37. ———— Portion of property out of, and portion within, jurisdiction.—*Parties.*—A person suing for partition is not obliged to include in his suit the whole of the property, but may confine his suit to the portion of the property which he is desirous of having partitioned; therefore where, in a suit for partition, it was shown that some portion of the property was out of the jurisdiction of the Court, objections that fresh parties would be necessary if the mofussil property were included, and that therefore the suit had not been properly brought, and that the leave of the Court had not been obtained previous to bringing the suit, were overruled. PADMAMANI DASI *v.* JAGADAMBA DASI **[6 B. L. R., 134**

38. ———— Portion of property out of jurisdiction.—*Ancestral property.—Rule as to property being brought into hotchpot.—Property out of jurisdiction.*—No doubt the rule that every partition suit shall embrace all the joint family property has been held to be subject to certain qualifications, as, for instance, where different portions of it lie in different jurisdictions, or where a portion is not

PARTITION—*continued.*

3. RIGHT TO PARTITION—*continued.*

(*b*) PARTITION OF PORTION OF PROPERTY—*continued.*

Portion of property out of jurisdiction—*continued.*

available for actual partition as being in the possession of a mortgagee; but there is no authority for the proposition that a member, who sues for partition of property in the hands of the defendants, can refuse to bring into hotchpot any undivided property held by himself, on the ground that it is situated within another jurisdiction. *Subba Rau* v. *Rama Rau, 3 Mad., 376,* referred to and distinguished. HARI NARAYAN BRAHME *v.* GANPATRAV DAJI

[I. L. R., 7 Bom., 272

39. ——— **Portion of land held under private agreement for exclusive use.**—Where an applicant for the partition of a joint undivided estate holds any portion of it for his own private use under a private agreement,—*Held* that the whole estate, including such portion of it as has been separately enjoyed, must be brought into account before the partition can be effected. LALLJEET SINGH *v.* RAJ COOMAR . . . 25 W. R., 353

40. ——— **Rectification of portion of property.**—*Suit to set aside partition.*—Where a property had been divided, and one of the sharers was dissatisfied with the result, he could bring a suit to have the division entirely revised, but was not at liberty to ask for a rectification of a small portion of the divided property. TRIPOORA SOONDUREE *v.* GOPAL NATH ROY . . . 25 W. R., 358

41. ——— **Omission of property in possession of one party.**—*Ground for dismissal.*—In a partition suit the fact that the plaintiff has not included, or has relinquished his share in property liable to division, affords no ground for dismissing the suit where the coparcener, in whose possession it is, is a party to the suit, for it is competent to the Court, in disposing of the case, to make any order in respect of such property that may to it appear right. JANARDAN VITHAL *v.* ANANT MAHADEV

[I. L. R., 7 Bom., 373

4. APPOINTMENT OF COMMISSIONER.

42. ——— **Procedure.**—*Civil Procedure Code, 1877, s. 396.—Per* PONTIFEX *J.* (FIELD, *J.,* doubting).—In a suit for partition, it is competent to the Court, in its preliminary decree, to appoint any one person whom it thinks fit to be a Commissioner to make the partition under section 396 of the Civil Procedure Code. The section uses the word "Commissioners," but it is not necessary for the purposes of partition that there should be more than one Commissioner, and by force of the General Clauses Act, the word "Commissioners" may be read in the singular number. The intention of section 396 is, that, upon the first hearing of a suit, the Court shall determine whether the plaintiff is entitled to a partition, and shall ascertain who the several persons entitled in the property are, and shall direct

PARTITION—*continued.*

4. APPOINTMENT OF COMMISSIONER—*continued.*

Procedure—*continued.*

by a preliminary decree or order that Commissioners be appointed to make the partition. GYAN CHUNDER SEN *v.* DURGA CHURN SEN

[I. L. R., 7 Calc., 318: 8 C. L. R., 415

5. JURISDICTION OF CIVIL COURT IN SUITS RESPECTING PARTITION.

43. ——— **Suit to set aside partition.**—*Beng. Reg. XIX of 1814.—Minor, Right of.*—A partition by the Collector under Regulation XIX of 1814, if consented to by all the parties, is final, and cannot be set aside by any party in the Civil Court; but where one of the parties was a minor at the time of partition, the Court remanded the suit for an enquiry whether his guardian acted in the partition proceedings *bonâ fide,* and with a due regard to the interests of the minor. HARI PRASAD JHA *v.* MADDAN MOHAN THAKUR

[8 B. L. R., Ap., 72: 17 W. R., 217

44. ——— **Suit for declaration of right to share larger than that allotted.**—*Beng. Reg. XIX of 1814.*—Where a partition of an estate under Regulation XIX of 1814 has been carried out, and confirmed by the revenue authorities, it seems that one shareholder cannot maintain a suit in the Civil Court to have it declared that he is entitled to a share larger than he claimed in the partition proceedings. RAMSAHAYA SINGH *v.* MUZHAR ALY

[2 B. L. R., Ap., 40

45. ——— **Suit for larger share than that allotted by Collector.**—*Beng. Reg. XIX of 1814, ss. 4 and 20, cl. 2.*—Section 20, Regulation XIX of 1814, which says, "the determination of the Board of Revenue or Board of Commissioners on the paper of partition shall be final," refers to those questions only which can be legally determined by the revenue authorities, and will not prevent a regular suit being instituted to establish a right and title to the land, which a party has lost by a butwarra, notwithstanding that the plaintiff may have failed to make his objection before the Collector within fifteen days as required by clause 2, section 4, Regulaton XIX of 1814. There is nothing in the butwarra law or in any other Regulation to prevent the Civil Court from entertaining a suit for a declaration of the plaintiff's right to a larger share than that recorded in his name in the paper of partition. Where a butwarra had been made, and the plaintiff had had a specific share allotted to him, but which share was less than his proper share in the estate, and the plaintiff brought his suit against the co-sharers generally, without specifying in whose share the quantity he had lost was included,—*Held,* the Court could, in such suit, declare the plaintiff's title to the same, treating him as a shareholder to that extent only in the pottah in which it may have been included. SPENCER *v.* PUHUL CHOWDHRY

[6 B. L. R., 658: 15 W. R., 471

PARTITION—*continued.*

5. JURISDICTION OF CIVIL COURT IN SUITS RESPECTING PARTITION—*continued.*

Suit for larger share than that allotted by Collector—*continued.*

See also KUNJ BEHARI SING *v.* NERU SING [6 B. L. R., 663, note: 15 W. R., 291

SHEO PERSHAD SOOKOOL *v.* SHUNKUR SAHOY [16 W. R., 190

46. ——— Suit for declaration of title.—*Beng. Reg. XIX of 1814.—Jurisdiction of Collector.—Title.*—The Collector cannot try the question of title in butwarra proceedings under Regulation XIX of 1814. A suit for possession and declaration of mokurrari title to certain lands can be entertained in the Civil Court notwithstanding the butwarra proceedings. AHMEDULLA *v.* ASHRUFF HOSSEIN [8 B. L. R., Ap., 73, note

S. C. AHMEDOOLLAH *v.* ASHRUFF HOSSEIN [13 W. R., 447

47. ——— Suit for partition.—*Suit by purchaser of share of lakhiraj estate.*—The purchaser of a share in an undivided lakhiraj estate can sue his coparceners for a partition of his share, and the Civil Court has jurisdiction to carry out the partition. FATTEH BAHADUR *v.* JANKI BIBI [4 B. L. R., Ap., 55: 13 W. R., 74

48. ——— ——— *Division to prevent encroachment where enjoyment is distinct.*—The Civil Court has jurisdiction in a suit between joint owners of talooks, who have been occupying and using separate and distinct parts of premises within the estate, where the object is to prevent encroachment by defendants upon the part occupied by plaintiffs, without any division of the Government revenue or alteration of joint liability to pay that revenue. KALEE MOHUN SEN *v.* RAM SOONDER SEN [24 W. R., 243

49. ——— Dispute with regard to shares.—*Parties.*—Where two or more proprietors of a joint estate held in common tenancy, desirous of having separate possession of their respective shares, apply each and all to have that estate divided in exactly the same proportionate shares, and no other sharers oppose the butwarra, the Collector may at once comply with the application; and if no objection is raised when the parties have opportunity of raising objection, the shares cannot again be re-united by a suit in a Civil Court. But if the Collector has judicial notice of a dispute with regard to a share, it is questionable whether he has jurisdiction to make a partition of that share. In any suit, however, to do away with the partition as regards that share, the Collector must be made a party. JOYMONEE DEBIA *v.* IMAM BUKSH TALOOKDAR . 13 W. R., 471

50. ——— Suit for division of share of mouzah.—*Civil Procedure Code, 1859, s. 225.*—A suit for division of a share of a mouzah appertaining to a talook paying revenue to Government will, according to section 225, Civil Procedure Code, 1859, lie in the Civil Court. SHOMB DUTT CHOWDHRY *v.* SURB NARAIN CHOWDHRY . 24 W. R., 242

PARTITION—*continued.*

5. JURISDICTION OF CIVIL COURT IN SUITS RESPECTING PARTITION—*continued.*

51. ——— Partition of revenue-paying estate.—Partition of an estate paying revenue to Government cannot be effected in a Civil Court. BADRI ROY *v.* BHUGWANT NARAIN DOBEY [I. L. R., 8 Calc., 649: 11 C. L. R., 186

RUTTUN MONEE DUTT *v.* BROJO MOHUN DUTT [22 W. R., 11

S. C. affirmed on appeal . . 22 W. R., 333

52. ——— ——— *Jurisdiction of Collector.*—Revenue-paying estates must be partitioned by the Collector; they cannot be partitioned by metes and bounds by the Civil Court Ameen; and if the shares in such an estate are not separate estates, but are mere fractional shares of integral estates, they cannot be partitioned in the absence of the other co-sharers. DAMOODUR MISSER *v.* SENABUTTY MISRAIN [I. L. R., 8 Calc., 537: 10 C. L. R., 401

6. QUESTION OF TITLE.

53. ——— Power of Collector to try question of title.—*Beng. Reg. XIX of 1814.*—The Collector cannot try the question of title in butwarra proceedings under Bengal Regulation XIX of 1814. AHMEDULLA *v.* ASHRUFF HOSSEIN [8 B. L. R., Ap., 73, note

S. C. AHMEDOOLLAH *v.* ASHRUF HOSSEIN [13 W. R., 477

54. ——— Decision by Collector of questions of title.—*Act XIX of 1863.*—Act XIX of 1863 contained no provision for the judicial decision by the Collector of objections raising questions of title arising after the partition order in the course of partition. CHOWDHRY ZALIM SINGH *v.* SEETLOO [2 N. W., 404

55. ——— Claim to right of occupancy for cultivation.—*Suit for partition under Act XIX of 1863.—Partition of sir land.—Held* that a question involving a claim to cultivating right of occupancy was not one which could be properly decided in a suit for partition under Act XIX of 1863, under which only questions of conflicting proprietary title could be determined. AMAN SINGH *v* JOYGOPAL SINGH . . . . . 3 Agra, 164

56. ——— Dispute as to title.—*Beng. Reg. XIX of 1814.*—When, in the preparation of a butwarra under Regulation XIX of 1814, it is ascertained that the parties are at variance on a question of title, the Collector's proper course is to stay proceedings until all such questions are decided by a competent Court, the revenue authorities not having authority under the law to decide them finally. MUDDUN MOHUN *v.* KARTICK NATH PANDEY [14 W. R., 335

7. MODE OF EFFECTING PARTITION.

57. ——— Joint property in sole possession of sharer.—*Protection of sharers from*

PARTITION—*continued.*

7. MODE OF EFFECTING PARTITION—*continued.*

Joint property in sole possession of sharer—*continued.*

liability for debts.—In effecting a partition, account must be taken of any joint property in possession of any sharer; and before transfer of shares, provision should be made for the protection of other sharers from an undue liability on account of debts. ALLY HOSSEIN *v.* ALLY HOSSEIN *alias* CHOTEY MIRZA [2 Agra, 96

58. ——— **Mode of allotment of land.**—*Land in exclusive possession of one party.*—In a suit for partition, the land in dispute being in the exclusive possession of a single co-sharer, should fall as a whole in the share of one or other of the co-owners, and not be subdivided among them. PUDDOMONEE DOSSEE *v.* DWARKANATH BISWAS [25 W. R., 335

59. ——— **Land varying in value.**—Each party to a butwarra need not have the same quantity of land, nor should the land awarded be always in exact proportion to the jumma paid. The object of the butwarra being to divide the lands in as compact a form as possible, one party may have to pay the jumma on a smaller area than another, though on more valuable land. AFTABOODDEEN *v.* SHUMSOODDEEN MULLICK . . 18 W. R., 461

60. ——— **Convenience.**—*Ground for objection to allotment on partition.—Inconvenience.*—Where a party concerned objects, in appeal, to a partition of land fairly allotted according to value, as not having consulted convenience, it is not enough to show that appellant's own convenience would have been better consulted by a different arrangement. He is bound to show some arrangement which would better satisfy all parties, and be more equitable for all. SUMMUN JHA *v.* BHOOPUT JHA [18 W. R., 498

61. ——— **Compensation for expenditure by certain members of joint family on joint property.**—In a suit for partition, it appeared that the defendants, who were members of a joint family, had at their own expense enhanced the value of portion of the lands belonging to the joint estate. *Held* that the partition should proceed on the basis of each co-sharer having an equal share of similar lands, compensation being allowed to each co-sharer for any private expenditure from which it could be shown the value of the partible property had been increased; and that unless it could be shown that there were other lands of similar description out of which the share of the plaintiff could be made up, the plaintiff was entitled, on paying compensation to the defendants, to portion of the lands the value of which had been enhanced by the defendants. KALLIAN BANERJI *v.* MODHUSUDUN BANERJI [8 C. L. R., 259

62. ——— **Principle of adjustment after partition between co-sharers.**—*Beng. Reg. XIX of 1814.*—After partition of an estate among shareholders under Regulation XIX of 1814, one

PARTITION—*continued.*

7. MODE OF EFFECTING PARTITION—*continued.*

Principle of adjustment after partition between co-sharers—*continued.*

shareholder, *A.*, claimed from another shareholder, *B.*, 2¼ bighas of land as having been allotted to him by *B.* under a prior agreement, in lieu of certain lands originally held by him which fell into *B.'s* putti. The Collector left the parties to settle the matter between themselves, and *A.* brought a suit against *B.* for his claim in the Civil Court. *Held* that, in a case of this kind, the only principle that can be adopted is that the Court should ascertain the relative value of the lands originally made over by the defendant to the entire lands of the defendant, and that it should assign, out of the present share of the defendant, lands bearing the same relative value to the whole that the former lands bore: this to be done without interference with the proceedings of the Collector under the butwarra law, and the plaintiff (if successful) to be brought in as a co-sharer to a limited extent in the land assigned by the defendant. OOMA DUTT CHOWDHRY *v.* HUNOOMAN CHOWDHRY . 22 W. R., 453

63. ——— **Land in separate possession by consent.**—*Right of coparceners on partition.*—Coparceners may on partition retain possession severally of such joint lands as they may have taken separate possession of, with the consent of at least a majority of the coparceners. SREENATH DUTT *v.* NANDKISHORE DOSS . . . 5 W. R., 208

64. ——— **Family dwelling-house.**—*Consent of coparceners.—Execution of decree.*—A decree directed partition of a family dwelling-house with its appurtenances, including a poojah dalan and courtyard adjoining it. In execution of that decree, the Civil Court Ameen, at the request and with the consent of two out of three coparceners, did not partition the poojah dalan and courtyard. To this the third coparcener objected, but her objection was overruled by the lower Courts, and it was directed that the property in question should remain undivided. *Held* that the Court would be disinclined to order the property to be divided without giving the coparcener or coparceners who might wish to keep it entire an opportunity of doing so. *Held per* WHITE, *J.*, that having regard to the form of the decree, it was not open to the Court executing it to order that any part of the property should remain joint, except with the consent of all the coparceners who were parties to the suit. *Semble, per* MITTER, *J.*, that the lower Courts were not precluded by the decree from dealing with the property in the mode in which they had done. RAJCOOMAREE DASSEE *v.* GOPAL CHUNDER BOSE [I. L. R., 3 Calc., 514

65. ——— **Property consisting of several houses.**—*Principle of partition.—Commission of partition.—Act XIV of 1882, s. 396* - Where, in a suit for partition, possession was sought of a definite share of a property consisting of a number of houses,—*Held* that the principle in such cases is, that if a property can be partitioned without destroying the intrinsic value of the whole property or of the

PARTITION—*continued.*

7. MODE OF EFFECTING PARTITION—*continued.*

Property consisting of several houses —*continued.*

shares, such partition ought to be made; but where partition cannot be made without destroying the intrinsic value of the property, then a money compensation should be given. ASHANULLAH *v.* KALI KINKUR KUR . . . I. L. R., 10 Calc., 675

66. ——— **Mortgage by one owner of undivided share of estate.**—*Rights of mortgagee and other sharers on partition.*—Where the owner of an undivided share in a joint and undivided estate mortgages his undivided share, he cannot by so doing affect the interests of the other sharers, and the persons who take the security,—*i.e.*, the mortgagees, take it subject to the right of those sharers to enforce a partition and thereby convert what is an undivided share of the whole into a defined portion held in severalty. Where such a partition is effected under the provisions of Regulation XIX of 1814 before the mortgagees have completed their title by foreclosure, and the consequential decree for possession, the mortgagees of the undivided share of one co-sharer who has no priority of contract with the other co-sharers would have no recourse against the lands allotted to such co-sharers, but must pursue their remedy against the lands allotted to the mortgagor, and, as against him, would have a charge on the whole of such lands. BYJNATH LALL *v.* RAMOODEEN CHOWDHRY [21 W. R., 233: L. R., 1 I. A., 106

67. ——— **Easement.**—*Partition of houses one of which has continuous easement over the other.*—Where two houses are held jointly by several owners deriving their title from a common source, and one of such houses enjoys a continuous as distinguished from an occasional easement over the other, such easement will, upon a partition of the premises, pass to the dominant tenement, both by implication of law, and under the usual general words contained in the deed of partition. RATANJI HORMASJI *v.* EDULJI HORMASJI . . . 8 Bom., O. C., 181

68. ——— **Mode of division.**—*Beng. Reg. XIX of 1814.—Evidence of partition.*—Proceedings for partition having been instituted under Regulation XIX of 1884, it was proposed, in order to make equality of partition, that three villages should be divided in unequal proportions, and a goshwara was accordingly prepared by the Ameen setting out in one column the extent of the shares to be allotted, and in another the assessed jumma of each share allotted. In a suit in 1873 by the representatives of one of the shareholders to recover portions of the three villages, the only evidence that the partition had been completed was an istahar of the Deputy Collector, dated October 1864, directing the Nazir to require the ryots to pay their rents according to the extent of the shares as set forth in the first-mentioned column of the goshwara; that is, according to the quantity instead of according to the quality and value which were the basis of the partition. *Held* (affirming the judgment of the High Court) that the plaintiff, having

PARTITION—*continued.*

7. MODE OF EFFECTING PARTITION—*continued.*

Mode of division—*continued.*

failed to prove any order for partition drawn out under section 13 of the Regulation, by the Collector, was not entitled to recover according to the quantity of the land, but, if at all, according to its value as ascertained in the column of the goshwara in which the assessed jumma was set forth. HURRO SOONDARI DEBIA *v.* KESHUB CHUNDER ACHARJEE [5 C. L. R., 257

8. EFFECT OF PARTITION.

69. ——— **Decree for partition.**—*Nature and effect of decree in partition suit.*—A decree for partition is not like a decree for money or the delivery of specific property which is only in favour of the plaintiff in the suit. It is a joint declaration of the rights of persons interested in the property of which partition is sought, and such a decree, when properly drawn up, is in favour of each shareholder or set of shareholders having a distinct share. KHOORSHED HOSSEIN *v.* NUBBRA FATIMA [I. L. R., 3 Calc., 551: 2 C. L. R., 187

70. ——— *Effect of decree as creating severance.—Appeal.*—A decree for partition does not operate as a severance so long as it remains under appeal. SHAKARAM MAHADEV *v.* HARI KRISHNA . . I. L. R., 6 Bom., 113

71. ——— **Finality of proceedings.**—*Beng. Reg. XIX of 1814.*—A butwarra by revenue authorities under Regulation XIX of 1814 is final. ZAKER ALI CHOWDHRY *v.* JUGDESSUREE [1 W. R., 323

72. ——— *Under-tenure-holders.*—A butwarra is only conclusive between the shareholders themselves, but not between them and other parties holding under-tenures at the time. WOMESH CHUNDER MOJOOMDAR *v.* DWARKANATH ROY . . . . . 4 W. R., 80

73. ——— *Beng. Reg. XIX of 1814, s. 20.*—Butwarra proceedings under section 20, Regulation XIX of 1814, are only final as to lands which are the subject of partition. HURREE MOHUN THAKOOR *v.* ANDREWS . W. R., 1864, 30

74. ——— **Extinguishment of title.**—*Effect of partition on others than allottees.*—The allotment of land to one person by partition extinguishes another's right altogether; his subsequent possession is either that of a trespasser or a tenant-at-will; his dispossession is not illegal, and he has no legal right of suit for recovery of possession. NOWAB BEGUM *v.* RUSTUM KHAN . . 2 Agra, 149

75. ——— *Effect of partition among co-sharers.*—By partition a co-sharer's proprietary right to the land which has fallen in another putti becomes extinguished, and he becomes a mere cultivator in respect to that land and liable to rent. ZALIM RAI *v.* DOORGA RAI [1 Agra, Rev., 69

PARTITION—*continued.*

8. EFFECT OF PARTITION—*continued.*

76. ——— **Extinguishment of rights.**—*Tenant rights, Effect of partition on.*—A butwarra does not extinguish rights of tenants, and the mere circumstance that one of the proprietors of the estate was himself the tenant does not destroy his tenant right, because another of the proprietors has had the land allotted as part of his share of the divided estate. NUTHOO LALL CHOWDHRY *v.* SAADAT LALL . . . **W. R., 1864, 271**

77. ——— *Co-sharers.—Ryoti and proprietary rights.*—Plaintiffs sued their co-heirs to recover huq-elagaun,—that is, the half share of the produce of trees planted on a portion of the land by their ancestor before his death,—on the ground that although by a butwarra entered into by the heirs the trees fell to the share of the defendants, plaintiffs were entitled as succeeding to the ryoti rights of the person who planted them. *Held* that as the ancestor was the only proprietor, his heirs were co-proprietors, and the butwarra was a division of the proprietary right; and that no ryoti right existed. AMEERUN *v.* SUNJEEDA . . **11 W. R., 226**

78. ——— *Proprietary right in sír land.*—When an estate in which the proprietors have sír land is partitioned, such partition among the co-sharers is no way affected by any cultivating rights which may be possessed by cultivators not co-sharers in the estate; but it is also a well-understood effect and consequence of partition, that co-sharers retain no right of occupancy in respect of any sír land which may have passed under the partition into the share of other co-sharers, as a sír-hold proprietor has no cultivating right distinct from and independent of his proprietary character. When, therefore, by partition he loses his proprietary title to any particular land, any cultivating right which he had in virtue of his proprietary character necessarily ceases. AMAN SINGH *v.* JEYGOPAL SINGH . **3 Agra, 164**

79. ——— *Right of holder of mokurrari lease.*—A joint and undivided estate having been subjected to private partition, 4 bighas which were in the portion held by *A.* were granted by him in mokurrari. Subsequently, on the application of the parties, the Collector made a regular partition, by which 2 bighas of the mokurrari land were allotted to the other sharers, who refused to recognise the grantee's mokurarri rights for that portion of the land, contending that, as under the private partition all the 4 bighas were in the share of the grantor, the loss of rent should be on him, and that the Collector's butwarra could not transfer 2 bighas with the mokurrari or smaller rental to the other sharers. *Held* that the grantor's mokurrari title could not be got rid of by the butwarra, and that he was entitled to recognition by the other sharers. AHMEDOOLLAH *v.* ASHRUFF HOSSEIN

[13 W. R., 447 : 8 B. L. R., Ap., 73, note

80. ——— **Redistribution by Collector after private partition.**—*Right of mokurraridar of co-sharer.*—Subsequently to a private partition by which the land in dispute was allotted to *A.*, one of

PARTITION—*continued.*

8. EFFECT OF PARTITION—*continued.*

Redistribution by Collector after private partition—*continued.*

the co-sharers, a butwarra redistributing the shares was made by the Collector. In the meantime *A.* had granted a mokurrari to *B.* in respect of the land allotted to him under the private partition. *Held* that, although the co-sharers must be taken to have consented to the redistribution, yet *A.* could not by his consent affect the right of *B.*, his mokurraridar. *Byjnath Lal* v. *Ramoodeen Chowdhry, L. R., 1 I. A., 106 : 21 W. R., 233;* and *Sharat Chunder Burmon* v. *Hurgobindo Burmon, I. L. R., 4 Calc., 510,* distinguished. *Ahmedoollah* v. *Ashruff Hossein, 8 B. L. R., Ap., 73, note : 13 W. R., 447,* followed. JUGGESSUR DOYAL SINGH *v.* BISSESSUR PERSHAD

[12 C. L. R., 281

81. ——— **Butwarra award, Effect of.**—*Intervenor.*—A butwarra award is no absolute proof of title, and no estoppel in the way of an intervenor who can prove that he has received and enjoyed the rents claimed from a date subsequent to the butwarra. SEEENATH GHOSSAL *v.* JOY NARAIN KAVAR

[3 W. R., Act X, 11

9. LIABILITY AFTER PARTITION.

82. ——— **Liability to account for portion of property if in possession.**—*Co-sharers.*—Every one who is entitled to a share in a joint family property in a suit for partition must account for such portion as may have come into his hands. GOUR PERSHAD MOOKERJEE *v.* KALEE PERSHAD MOOKERJEE . . . . **5 W. R., 121**

10. MISCELLANEOUS CASES.

83. ——— **Beng. Reg. XIX of 1814, s. 20.**—*Case where no partition takes place.—Held* that section 20, Regulation XIX of 1814, had no reference to a case where no partition had been made and plaintiff was not a co-sharer. FOOLBASHEE KOWAR *v.* ARZUN SAHOO . . **12 W. R., 134**

84. ——— **Suit for confirmation of possession.**—*Beng. Reg. XIX of 1814.*—To a partition effected by the revenue authorities under Regulation XIX of 1814 the plaintiff presented a petition of objection, in which he alleged that his share had been included in, and declared to be part and parcel of, the defendant's share. In a suit for a declaration of his right to the share claimed by him, and for confirmation of possession thereof, both the lower Courts gave a decree for the plaintiff. On special appeal an objection was taken that the suit would not lie, no application having been made in it for the annulment of the partition proceedings by which the property sued for was included in the plaintiff's share. *Held* that the suit would lie; that there was no necessity for the plaintiff, who claimed to be in possession of his proper share, and sued only for a declaration of his title thereto, to include in his plaint an application for the renewal of the partition proceedings: and that those proceedings were final. INDRABATI KUNWARI *v.* MAHADEO CHOWDHRY . **1 B. L. R., S. N., 6**

PARTITION—*continued.*

10. MISCELLANEOUS CASES—*continued.*

85. ——— Suit for house allotted on partition.—*Agreement to pay rent for house—Onus of proof.*—Where on partition the defendants' house fell within the plaintiff's lot,—*Held* the plaintiff was entitled to sue for possession of the house, and that it lay on the defendants to prove that under section 38, Act XIX of 1863, they were entitled to retain possession by having agreed to pay an equitable rent for the ground, which rent had been determined by the officer making the partition, and had been stated in the paper of partition. LAIKHRAM *v.* CHUMNEE . . . . . **3 Agra, 298**

86. ——— Beng. Reg. XIX of 1814, s. 9.—*Dwelling-houses of co-sharers.—Liability to assessment.*—Suit for khas possession of land made over to plaintiff on a butwarra The defendant pleaded twelve years' adverse possession, and that he was entitled to retain possession on payment of rent, as the lands were occupied by gardens made by his ancestor. *Held* that section 9, Regulation XIX of 1814, did not apply to the lands made over to the plaintiff under the butwarra; that section referring to the dwelling-houses of co-sharers, and to offices, buildings, and ground immediately attached to those dwelling-houses, which the lands in suit were not proved to be. LULEET NARAIN *v.* GOPAL SINGH **[9 W. R., 145**

87. ——— Mortgage by co-sharer.—*Incumbrance.—Cause of action.—Beng. Reg. XIX of 1814.—A.*, one of the shareholders of a talook consisting of several mouzahs, mortgaged his share in one of the mouzahs named Kishoopore to *B.* Upon a partition being made under Regulation XIX of 1814, the mouzah Kishoopore was allotted to *C.* and *D.*, coparceners in the talook, and other mouzahs were allotted to *A.* In a suit by *C.* against *B.* for obtaining possession of his share in Kishoopore,—*Held* that there was no cause of action. Upon a partition of a joint property, a coparcener is bound by the incumbrances created by another coparcener in respect of a portion of the property, if such portion be allotted to him upon a partition between the coparceners. NISHAN SING *v.* JUGDEO SING **[4 B. L. R., Ap., 97**

88. ——— Suit to set aside sale for arrears of revenue.—*Sanction of Board of Revenue.—Completion of partition.—Per* BAYLEY, *J.*—The completion of the partition was not necessary under Act XI of 1838 before the amount of unpaid expenses could become an arrear realisable by sale. *Semble,*—The Government need not give its sanction in each case, but a "general" sanction will be sufficient. HAR GOPAL DAS *v.* RAM GOLAM SAHI **[5 B. L. R., 135 : 13 W. R., 381**

89. ——— Objection to application for partition.—*Act XIX of 1863.—Procedure.*—When an objection was taken to an application for partition under Act XIX of 1863, the Collector might either decline the application until the question has been decided, or proceed to investigate it. If he adopted the latter course, he was bound to follow the procedure

PARTITION—*continued.*

10. MISCELLANEOUS CASES—*continued.*

Objection to application for partition—*continued.*

prescribed by Act VIII of 1859. But his failure to follow that procedure would not deprive the parties of their right of appeal to the Judge, who must dispose of the appeal in due course. RAMESHUR RAI *v.* SUBHOO RAI . **1 N. W., 81 : Ed. 1873, 134**

PARTNER OF DIRECTOR APPOINTED AS SOLICITOR OF COMPANY.

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[I. L. R., 12 Calc., 383

1. WHAT CONSTITUTES PARTNERSHIP.

1. ——— **Participation in profits.**—*Application of English law.*—*M. M. & Co.* merchants in London, carrying on business with *W. N. W. & Co.*, merchants in Calcutta, sought to make the defendant liable as a partner in the latter firm, under a particular memorandum of agreement between the members of the firm of *W. N. W. & Co.* and the defendant. *Held* that such agreement did not constitute the Rajah a partner in or with the said firm. Participation in profits does not constitute a partnership The question is, not whether the person sought to be made liable participated in the profits, but whether the trade has been carried on by persons acting on his behalf. There is no rule of law which imposes partnership liability upon a man who advances to others money for the purpose of carrying on their business, and in return secures to himself a share of the profits which may arise from the employment in the business of the money so advanced by him. PRATAB CHUNDRA SINGH *v.* MOLLWO, MARCH & CO
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S. C. COURT OF WARDS *v.* MOLLWO, MARCH & CO.
[12 W. R., 56

On appeal to the Privy Council,—*Held*, although a right to participate in the profits of trade is a strong test of partnership, and there may be cases where, from such participation alone, it may, as a presumption, not of law but of fact, be inferred, yet whether that relation does or does not exist must depend on the real intention and contract of the parties. To constitute a partnership, the parties must have agreed to carry on business and to share profits in some way in common; but where a contract is entered into between partners and a third person for the protection of that person as a creditor, whereby it is agreed that he shall receive in consideration of advances commission on the

PARTNERSHIP—*continued.*

1. WHAT CONSTITUTES PARTNERSHIP —*continued.*

Participation in profits—*continued.*

net profits of the partnership business, and large powers of control over the business are given to him, but no power to direct transactions, the Court, if satisfied that the contract was one of loan and security, will not interpret it as constituting a partnership. In applying the English law of partnership to cases in India, the usages of trade and habits of business of the people of India, so far as they may be peculiar and differ from those in England, ought to be borne in mind. MOLLWO, MARCH & CO., *v* COURT OF WARDS . 10 B. L. R., 312: 18 W. R., 384
[L. R., I. A., Sup. Vol, 86

2. ——— **Agreement to share profits.**—*Money paid as rent to one party.*—The parties had entered into a contract of partnership to work certain supposed mines; plaintiff to receive a bonus and also six-monthly payments as "rent" for the land, both parties to share the profits and bear the losses; it being stipulated that in case coal should not be discovered, the bonus, and any sum paid as rent, would be refunded. *Held* that this was a partnership arrangement, and the payment of the money which went by the name of rent was not as by a tenant to a landlord, but as consideration-money for land forming a portion of the capital. SREEMUNJUBEE DOSSEE *v.* POORSUTTUN DOSS . . . . 9 W. R., 499

3. ——— *Contract Act, ss. 239, 240.*—*Loan of money.*—*Held*, on the construction of the agreement in this case, that such agreement did not create a "partnership" between the parties thereto, as defined in section 239 of Act IX of 1872, but was an agreement of the kind mentioned in section 240 of that Act. BHAGGU LAL *v.* DEGRUYTHER . . . . I. L. R., 4 All., 74

4. ——— **Joint Hindu family.**—*Separation among members of.*—Circumstances under which the Court will infer a partnership between members of a Hindu family alleged to have separated. MISSEELOLL *v.* RAMNARAIN . . Cor., 63

5. ——— *Account.*—There is no analogy in respect of the manager being liable to account between a joint Hindu family and a partnership. Where it was arranged amongst the members of a joint Hindu family that the accounts of a banking business carried on by them should be kept, on the understanding that the profits when realised should be divided amongst the individual members in certain proportions, and that the expenses of each member should be credited and charged in the name of each member,—*Held* that this was in the nature of a partnership, and an account was decreed. RANGANMANI DASI *v.* KASINATH DUTT
[3 B. L. R., O. C., 1

6. ——— *Ancestral business.*—*Account.*—An ancestral trade may descend like other inheritable property upon the members of a Hindu undivided family. The partnership so created

PARTNERSHIP—*continued.*

1. WHAT CONSTITUTES PARTNERSHIP —*continued.*

Joint Hindu family—*continued.*

or surviving has many, but not all, of the elements existing in an ordinary partnership. For example, the death of one of the partners does not dissolve the partnership; nor, as a rule, can one of the partners, when severing his connection with the business, ask for an account of past profits and losses. SAMALBHAI NATHUBHAI *v.* SOMESHVAR. I. L. R., 5 Bom., 38

But *see* ABHAY CHANDRA ROY CHOWDHRY *v.* PYARIMOHAN GUHO . . 5 B. L. R., 347

7. ——— Document creating partnership.—*Determination of partnership.*—Where a document creating a partnership for a particular business is silent as to the date at which the partnership is to commence and end,—*Held* that the partnership is conterminous with the business for the purpose for which it was created. BUDDREENATH *v.* ISREE PERSHAUD . . . . . Cor., 114

8. ——— Continuing firm.—*Partnership for a fixed term.—Death of partner.—Power of partner to nominate a successor.—General devise not an exercise of power.—Effect of default in exercising power of nomination.—Good-will.—Valuable asset.*—*V., J.,* and *S.,* being large shareholders in the Great Eastern Spinning and Weaving Mills, Limited, entered into an agreement in October 1873 to cause the said company to be wound up and to form a new company to take over its assets and liabilities, and to cause themselves to be appointed agents of the new company under the firm of *V., J., S., & Co.,* and under that name to act as agents of the new company, subject to the terms of the agreement. The agreement provided that the firm of *V., J., S., & Co.* should take the agency of the new company for a period of thirty years; that of the profits to be derived by the said firm out of the agency *V.* should receive 39 cents., *J.* 31 cents., and *S.* 30 cents.; that, in case of a vacancy in the firm of *V., J., S., & Co.,* caused by the death or retirement of any of the partners, the nominee of the dying or retiring partner should be admitted into partnership, and should receive the share of such partner, and should exercise all his authority. In pursuance of this agreement, the Great Eastern Spinning and Weaving Mills, Limited, was wound up, and a new company called "The New Great Eastern Spinning and Weaving Company, Limited," was formed and registered. Both the memorandum and articles of association of the said new company contained clauses providing that the firm of *V., J., S., & Co.,* or whatever member or members that firm for the time consist of, should be agents of the company so long as the said firm should carry on business in Bombay, or until they should resign. The firm of *V., J., S., & Co.,* having been constituted under the said agreement, became the agents of the said company, and continued to act as such down to the date of the present suit. No other business was done by the firm, and the three partners divided the profits realised by the firm out of the agency business in the shares specified in the

PARTNERSHIP—*continued.*

1. WHAT CONSTITUTES PARTNERSHIP —*continued.*

Continuing firm—*continued.*

agreement as above mentioned. *V.* died in 1874, leaving a will whereby, in exercise of the right vested in him by the agreement, he nominated and appointed his wife *K.* as his successor in the firm, and she accordingly became and was recognised as a partner therein. In August 1875 she assigned her interest in the firm to *H.,* and he thereupon became a partner and received 39 cents. of the profits. In November 1876 *J.* assigned his interest in the firm (31 cents.) to *H.* and *S.,* of which 21 cents. became the property of *H.* and 10 cents. the property of *S.,*—the firm henceforth consisting only of these two partners, of whom the former received in all 60 cents. of the profits and the latter 40 cents. In November 1882 *H.* died, leaving a will whereby he appointed his wife *B.* his executrix, and left all his property to her for life, and after her death to his son. The will did not refer to the firm, or nominate any successor in the partnership. In the present suit *B.* as executrix claimed to be entitled to 60 cents. or shares in the firm of *V., J., S., & Co.,* up to the date of the testator's death, and to a like share in the profits earned subsequently to his death, or to be earned by the firm so long as it continued to carry on the said agency business of the company. The defendant admitted the right of the plaintiff to the share claimed in the profits earned prior to the testator's death, but resisted her claim to any portion of the subsequent profits. *Held* (1), on the authority of *Beamish* v. *Beamish, Ir. Rep., 4 Eq., 120,* that the testator's will did not operate as an exercise of the power of nominating a successor in the firm so as to make the plaintiff a partner. (2) That, having regard to the nature of the duties of the firm as agents and to the language of the agreement constituting the firm, coupled with the fact that there was no capital employed in the business, it must have been intended that, in default of nomination of a successor by a retiring or deceased partner, the agency should be carried on by the continuing or surviving partners in the name of the firm, and that the interest of the testator in the firm upon his death therefore survived to the defendant. *Held,* also, that although the plaintiff was entitled to an account up to the date of the testator's death, she was not entitled to a share of the good-will as an asset of the firm. The good-will of a firm is attached to the name, and in the present case, by the partnership agreement itself, the name was to be used by the surviving partners or partner for their own benefit. That arrangement took away all value from the good-will, if, indeed, it was consistent with its being an asset at all. BACHUBAI *v.* SHAMJI JADOWJI

[I. L. R., 9 Bom., 536

2. RIGHTS AND LIABILITIES OF PARTNERS.

9. ——— Construction of deed of partnership.—*Agreement to give managing partner commission.—Dissolution of partnership.—Loss of*

PARTNERSHIP—*continued.*

2. RIGHTS AND LIABILITIES OF PARTNERS—*continued.*

Construction of deed of partnership—*continued.*

commission on dissolution.—By an agreement, made on the 10th of January 1857, between *K. N.* and several other persons, it was agreed that they should form a co-partnership for the purpose of erecting a mill for the manufacture of yarn. The capital of the partnership was fixed at R3,00,000, divided into 100 shares of R3,000 each. By the 4th clause of the agreement it was provided that, in return for the trouble *K. N.* had been at in establishing the factory, "whatever cotton had to be purchased for the factory *K. N.* was to purchase, and whatever yarn should be made in the factory *K. N.* was to sell, and for whatever he should sell on account of the factory he was duly to receive from the co-partnership his commission at the rate of 5 per cent. during his lifetime;" and it was also provided that though the purchases and sales by the co-partnership should not be made through *K. N.*, "yet upon the whole amount of the sales the co-partnership was duly to pay 5 per cent. to *K. N.* during his lifetime." The factory was built, and its machinery procured and set up, by *K. N.*, and both financially and otherwise the factory was wholly managed by him. Shortly after it commenced to work, it was found that the co-partnership had expended all its capital and was heavily involved in debt—incurred by *K. N.* without the sanction of his co-partners,—and that the factory was working at a loss; and at the suit of some of them, but against the consent of *K. N.* and a minority of the co-partners, the co-partnership was ordered to be dissolved. *K. N.* then claimed to be entitled to compensation for the loss of the commission he should have earned upon the sale of the yarn of the factory during his lifetime. *Held* that he was not so entitled; that as between his co-partners and *K. N.* there was no obligation on the former to subscribe more capital after the original capital of the co-partnership had been exhausted; and that there was no implied covenant on the part of the co-partnership to continue to work the factory in order that *K. N.* should be in a position to earn his commission during his lifetime. Distinction between right to compensation for loss of fixed wages, and right to compensation for loss of commission, pointed out. When a partnership is wound up by the Court, all questions arising between the partners out of the partnership transactions should be disposed of in the winding-up suit. LALBHAI VALLABHBHAI *v.* KAVASJI NANABHAI . . . . **8 Bom., O. C., 209**

10. ——— Payments made by partners.—*Presumption.—Dissolution of partnership.*—Payments made by the different partners of a firm are presumed to have been made out of the funds of the firm where the contrary is not proved by any satisfactory evidence; and when a firm consisting of two members is dissolved by the death of one partner, the presumption is that the deceased was entitled to a moiety of the existing assets. KESHAV GOPAL GINDE *v.* RAYAPA . . . **12 Bom., 165**

PARTNERSHIP—*continued.*

2. RIGHTS AND LIABILITIES OF PARTNERS—*continued.*

11. ——— Dormant partner, Liability of.—*Bond executed by one of several partners.—Right of creditor.*—The doctrine that a dormant partner, when discovered, is liable for every debt incurred for the partnership by the active partner, is not absolute in the Courts in England, and is not to be followed by the Courts of this country, unless found in particular cases to be consonant with justice, equity, and good conscience. Where money was lent on a bond to a "malik and mooktear" of a factory on his personal credit and the security of the entire factory, and it was afterwards discovered that other parties had a share in the factory, it was held that the lender was not entitled to go beyond his contract and recover from those other parties personally. NUNDEEPUT MAHATAH *v.* URQUHART **[9 W. R., 355**

12. ——— *Bill drawn by one partner.*—Every one of the partners in a mercantile firm of ordinary trading partnership is liable upon a bill drawn by a partner in the recognised trading name of the firm, for a transaction incident to the business of the firm, although his name does not appear upon the face of the instrument, although he be a sleeping and secret partner. In order to take a case out of these principles of the general law, it must be shown that the holder of the bill knew at the time he received it that the transaction was the private affair of a single partner. BUNARSEE DOSS *v.* GHOLAM HOSSEIN **[13 W. R., P. C., 29 : 13 Moore's I. A., 358**

13. ——— Liability of partners on bond executed by managing partner.—Where a bond is executed by the managing partner in a firm within the ordinary scope of a manager's authority, to raise money for the joint purpose of the firm, it binds the remaining partners. AHMED HOSSEIN *v.* KUBEEDAN . . . . **24 W. R., 60**

14. ——— Liability of partner for purchases made by co-partner out of the scope of partnership business.—*Application of proceeds of sale to pay partnership debts.*—*C.*, the managing member in Calcutta of a firm of which *B.*, the other partner, was absent in England, made, unknown to *B.*, and without authority from him, various purchases from the plaintiff of articles not within the scope of the partnership business. The purchases were made as for the firm, and were delivered on the partnership premises by the plaintiff. Subsequently, the goods were taken to *C.'s* house, and, together with certain private property belonging to *C.*, were sold by auction, and the whole proceeds of the sale were paid by *C.* to a bank in Calcutta to the partnership account with that bank and were eventually remitted to *B.* in England as from the partnership funds, and applied in payment of certain bills of the firm then due. *B.*, on coming to Calcutta, took over the management of the business from *C.* In a suit brought against *B.* and *C.* for the price of the goods purchased from the plain-

PARTNERSHIP—*continued.*

2. RIGHTS AND LIABILITIES OF PARTNERS—*continued.*

Liability of partner for purchases made by co-partner out of the scope of partnership business—*continued.*

tiff,—*Held*, both in the Court below and on appeal, that *B.* was not liable. MARTIN *v.* BAKER [15 B. L. R., 372

15. ——— **Liability of person joining firm as partner.**—Where one person joins a firm as partner in place of one of the partners, he is only liable for the debts of the firm contracted after he joined it, unless by special agreement. GUJADHUR PERSHAD *v.* KUNHYA LALL . 3 Agra, 27

16. ——— *Contract Act, s. 249.*—Section 249 of the Contract Act has no application in cases where by arrangement between the parties a person becomes entitled to the profits and liable for the debts accruing to and incurred by the firm before his admission as a partner. SHEWAK MAHTOON *v.* ST. JOSEPH . . 9 C. L. R., 21

17. ——— **Partner dealing with Hindu joint family.**—*Dealings among co-partners.*—A co-partner dealing with an undivided Hindu family is, with reference to its component members, in the same position that a partner according to English law is placed in with respect to his co-partners and their representatives. RAMLAL THAKURSIDAS *v.* LUCHMICHAND MUNIRAM . . 1 Bom., Ap., 51

18. ——— **Lien of banian on goods under agreement with firm.**—*Construction of agreement.*—The plaintiff became banian to the defendants, under an agreement by which he had a lien upon all goods "belonging to" them in their godowns for balances that might be due by them. Some time after the date of the agreement, while there was a balance due, the defendants' firm took in a new partner. *Held* that the words "belonging to" included all goods in the possession of the new firm that came to them in the way of business. *Held*, also, that the new firm, not having given notice to the contrary, must be taken to have engaged the plaintiff as banian upon the terms expressed in the agreement with the old firm, and to have taken over the balance due at the time when the new firm was constituted as a debt due by the new firm. BALDEO DAS AGARWALLA *v.* KAICH . 3 B. L. R., O. C., 80

19. ——— **Power of partner to borrow money.**—*Winding up.—Account.—Suit for dissolution.—Power of partner to mortgage partnership land.*—*T.*, *B.*, *R.*, and *W.*, the owners of a certain estate in equal shares, in 1863 entered into a partnership for "the cultivation of tea and other products" upon such estate. In 1864 *H.*, *E.*, and *I.* joined the firm. In 1870 *H.* died; and in 1871 *T.* purchased the shares of *E.* and *I.*, and in 1873 of *R.* In 1875 *T.* gave the Delhi and London Bank a mortgage on such estate as security for the repayment of money which he had borrowed from the Bank ostensibly for the purposes of the estate. The Bank obtained a decree against him personally for the money, in execution of which his rights and interests in the estate were put up for sale on the 20th June 1877 and were purchased by the Bank, which obtained possession of the estate in August 1877. In August 1879 *B.* and *W.'s* executor sued *T.* and the Bank, claiming a declaration that they were or had been partners with *T.* in the estate; that if the partnership should be held to be subsisting, it might be dissolved, or that if it had ceased to exist, the date of its termination might be fixed, and that in either event a liquidator might be appointed to take an account, and, after realising assets and discharging liabilities, might be ordered to pay them each one-third of such balance as remained. *Held* that as the effect of the purchases by *T.* in 1871 and 1873 was to relieve the estates of *H.*, *E.*, *I.*, and *R.* of all past and future liabilities of the partnership, in respect of which *B.* and *W.* still continued as liable as *T.*, and to which they would have to contribute to discharge, such purchases should be regarded and treated as made on behalf of the partnership; and therefore, at the time of the execution of the mortgage of the estate, *B.*, *W.*, and *T.* were interested in the estate to the extent of one-third each: that, although *T.* was not authorised, either actually or impliedly, by *B.* and *W.* to mortgage the estate, and the mortgage therefore was not binding on them, yet, as they allowed him to conduct the business of the estate in such a manner as to make it appear that the control and management of it rested with him, and he was for all ordinary business purposes their representative, *B.* and *W.* were bound, in any accounting that might take place, to recoup the defendant Bank for such advances as were made to *T.* for the necessary purposes of the estate, in the same proportion as they must discharge debts due to other creditors: that *T.* was entitled to be reimbursed such moneys of his own as he had expended within the legitimate scope and for the proper purposes of the partnership as originally contemplated by the parties. Directions to the liquidator appointed how to proceed. HARRISON *v.* DELHI AND LONDON BANK [I. L. R., 4 All., 437

3. SUITS RESPECTING PARTNERSHIPS.

20. ——— **Suit for account without asking for dissolution.**—*Partnership dissoluble at will.*—A member of an ordinary trading partnership, dissoluble at will, cannot, except under special circumstances, seek an account without praying for a dissolution. GOLLA NAGABHU SHANAM *v.* KANAKALA GANGAYYA . . . . 2 Mad., 28

21. ——— **Suit for dissolution and an account.**—*Partner seeking to remove attachment on partnership property.*—The proper course for a partner seeking to remove an attachment on partnership property in execution of a decree against one partner only, is to sue for a dissolution of the partnership and an account, with a view to ascertain the

PARTNERSHIP—*continued.*

3. SUITS RESPECTING PARTNERSHIPS —*continued.*

Suit for dissolution and an account—*continued.*

amount due to the partner in execution against whom the partnership property is attached. KARIMBHAI *v.* CONSERVATOR OF FORESTS [I. L. R., 4 Bom., 222

22. ——— Suit by partner against co-partner.—*Suit for share of profits.*—A member of a subsisting partnership is not in a position to sue his partner, still less one of his alleged partners, for the profits which had up to a particular time accrued, but he must, if he desires relief, sue in the ordinary way for an account. DOYARAM LUSKURRE *v.* SOOKHANUM . . . . . 16 W. R., 141

23. ——— Suit for general adjustment of account.—In disputes between partners respecting their accounts, the plaintiff should so frame his suit that there may be a general adjustment of the partnership accounts. A particular item or claim should not be made the subject of a distinct suit. SOONDER BIBEE *v.* KHILLOO MULL *alias* RAM LALL . . . . . 2 N. W., 90

24. ——— Suit against co-partners for money deposited and profits.—*Necessity for taking accounts.*—In a suit against co-partners in a joint firm to recover money deposited as plaintiff's share, and to have accounts rendered of the profits, before any order can be made to the effect that the plaintiff is entitled to be paid by any one of his partners or out of the assets of the firm the actual money advanced, the whole accounts of the firm ought to be taken, and the ultimate liability of each of the partners ascertained. KALEE CHURN SAHOO *v.* RAM LALL SAHOO . . . . . 21 W. R., 300

25. ——— Suit for contribution among partners.—*Transactions by some only of partners.—Obligation to ask for account of partnership dealings.*—Four members of a partnership consisting of seven persons borrowed certain sums on account of the partnership for which they gave their joint and several promissory notes on which decrees were afterwards obtained against them. In a suit for contribution brought by one of the four members against the others, as having paid more than his share under the joint decrees,—*Held* that the giving of the promissory notes was not a partnership transaction so as to debar the plaintiff from a suit for contribution without asking for an account of the partnership dealings. DOYAL JAIRAJ *v.* KHATAV LADHA [12 Bom., 97

26. ——— Suit on agreement in nature of partnership deed.—*Suit by one party for his share.*—An agreement was entered into whereby the defendant undertook to pay to the plaintiff and two other co-creditors of an insolvent a share in any sums which he might recover from the insolvent in consideration of receiving a share in any sums which might be recovered by the other creditors. In a suit by one of the persons in whose favour the agreement was passed, without making the others parties, against the person who executed it, to recover his share, it was held that the suit was not maintainable, as it could only be brought as a suit between partners for an account, and the result of all the partnership transactions must be brought at once under the view of the Court. BHAGTIDAS BHAGVANDAS *v.* OLIVER [9 Bom., 418

PARTNERSHIP—*continued.*

3. SUITS RESPECTING PARTNERSHIPS —*continued.*

Suit on agreement in nature of partnership deed—*continued.*

27. ——— Suit based on rights of deceased partner.—*Adjustment of partnership accounts.—Payments by partners, Presumption as to.—Partnership property.*—A suit based on the right of a deceased partner cannot be limited to a demand for his share in the proceeds of property alleged to have come into the possession of the partnership during its existence. The agreement on which the partnership was formed, the amounts advanced and drawn out by the several partners, and the subsisting liabilities and assets, if any, must all be taken into account, and the suit must demand such a sum, if any, as, on a general account, and an account between the deceased partner and the co-partnership, being taken, shall appear to be due. Principle on which the account of a dissolved partnership should be adjusted, explained. KESHAV GOPAL GINDE *v.* RAYAPA . . . 12 Bom., 165

28. ——— Suit against one of several partners for money lent.—*Form of suit.*—*A.* was partner in an indigo concern in the name of his son. In his own name *A.* lent moneys to the concern for the purpose of carrying on the business, and each partner was to be separately liable for the moneys advanced in proportion to his share in the concern. In a suit against one of the partners for his proportion of the moneys so lent,—*Held* that the plaintiff could not sue for those moneys on the footing of a mere creditor, and that the suit should be so framed as to determine the profits or losses of the concern, and whether any and what assets would be available to each partner to liquidate the loan in proportion to his share. CHUNDER SIKHUR BISWAS *v.* RAM BUKSH CHETLUNGEE . 1 C. L. R., 545

29. ——— Suit by representative of a deceased partner for a share of a specific asset of the partnership recovered after the right to a general partnership account is barred.—A suit may be brought by the representative of a deceased partner against the surviving partner of a firm to recover a share in a sum received by the surviving partner in respect of a partnership transaction within the period of limitation, although a suit to take partnership accounts generally would be barred. *H. J.*, the plaintiff's father, and the defendant *R.* were partners in the firm of Hormusji and Rustomji which carried on business in China. In the year 1862 the firm of *N. K. & Co.* was largely indebted to the firm of Hormusji and Rustomji. At the end of that year the latter firm ceased to do

PARTNERSHIP—*continued.*

3. SUITS RESPECTING PARTNERSHIPS —*continued.*

Suit by representative of a deceased partner for a share of a specific asset of the partnership recovered after the right to a general partnership account is barred—*continued.*

business, but no formal dissolution of the partnership ever took place. In 1869 the defendant *R.* filed a suit (No. 461 of 1869) in the High Court of Bombay in his own name and that of *H. J.*, his former partner, against the firm of *N. K. & Co.*, for an account of the dealings of that firm with the firm of Hormusji and Rustomji, and by a decretal order dated 19th March 1870, the suit was referred to the Commissioner to take the accounts as prayed for. On the 17th December 1872 *H. J.* died at Hongkong intestate. On 22nd February 1873 the defendant *R.* assigned to the second defendant *W.* for R20,000 the claim of the firm of Hormusji and Rustomji against the firm of *N. K. & Co.* The plaintiff did not know of this arrangement, and he only became aware of it in 1880. The plaintiff alleged that of the said sum of R20,000 the second defendant *W.* paid to the first defendant *R.* R10,000 in 1878, and for the remaining R10,000 gave a promissory note payable in July or August 1881. The plaintiff took out letters of administration to his father *H. J.*, and brought this suit on 16th July 1880, claiming a moiety of the R10,000 already paid by the defendant *W.* to the first defendant *R.*, and praying that he might be declared entitled to a moiety of the remaining sum of R10,000 payable by the defendant *W.*, and that the same might be paid over to him. The defendant *R.* alleged that he had assigned the claim against the firm of *N. K. & Co.* to the defendant *W.*, and had received the consideration for such assignment in February 1873, and contended that if the plaintiff had ever any claim to any portion of the said money (which he denied), such claim was barred by limitation. He also alleged that he had carried on the suit No. 461 of 1869 without any assistance from the plaintiff's father *H. J.*, or from the plaintiff, who, although applied to, refused to assist him, and he submitted that under no circumstances was the plaintiff entitled to any of the moneys claimed by him without giving credit to the defendant for his (plaintiff's) share of the expense of prosecuting the said suit, and for the amount of proper remuneration to the defendant for the time and labour bestowed by him in the said suit. He also claimed that the partnership accounts of the firm of Hormusji and Rustomji should be taken, and alleged that on such accounts being taken a large sum would be found due to him from the partnership. The second defendant *W.* paid into Court the R10,000 due on the promissory note above mentioned, and was dismissed from the suit. At the hearing the Judge found that, of the other moiety of the consideration for the assignment of February 1873, a sum of R1,000 was paid by the defendant *W.* to the defendant *R.* on January 23, 1878, and a sum of R6,000 on September 13, 1879. *Held* that the suit was not barred by limitation in respect of the said sums of R1,000, R6,000, and R10,000, and that the plaintiff was entitled to recover a half share of these sums from the defendant *R.*, deducting all sums expended by the defendant in the prosecution of the suit No. 461 of 1869,—no allowance, however, being made to him as remuneration for conducting the suit. *Held*, also, that the defendant might deduct the amount (if any) which might be found due to him on taking the partnership accounts, although a separate suit for such account would be barred by limitation. MEERWANJI HORMUSJI *v.* RUSTOMJI BURJORJI

[I. L. R., 6 Bom., 628

4. DISSOLUTION OF PARTNERSHIP.

30. ——— Ground for dissolution.—*Adultery of partner with wife of co-partner.*—Adultery of one partner with the wife of his co-partner is a sufficient ground for dissolution of the partnership. ABBOTT *v.* CRUMP . **5 B. L. R., 109**

31. ——— Death of partner.—*Deed of partnership.—Contract Act, s. 253, cl. 10.*—Where one party (*A.*) advanced money to others to carry on business, and an instrument was executed whereby the latter agreed and bound themselves to account yearly to the former for a share of the profits, the transaction was held to amount to an agreement that *A.* should be a party to the business *pro tanto*. *Held* that by the operation of the Contract Act of 1872, section 253, clause 10, the partnership between *A.* and the others was dissolved by the death of *A.*, and that the representatives of *A.*, by receiving, some six months after his death, an account with a portion of the money advanced and of the profits, did not reconstitute partnership, but rather indicated an opposite intention. PEER MAHOMED *v.* NEKJAN BIBEE

[25 W. R., 49

32. ——— Assignment of share in partnership.—*Contract Act, ss. 253, cl. 6, and 265.—Introduction of a new member into firm.—Suit for an account.*—The effect of clause 6 of section 253 of the Contract Act is not to render an assignment of a share in a partnership concern illegal or void as between the parties to the assignment, but only so far void as between those parties and the other partners as to cause an immediate dissolution of the partnership. If no assent is given by the other partners to the assignment, the assignee is on dissolution at liberty to sue for an account and for distribution, not as a partner, but as assignee of the right of his assignor in the partnership property. Section 265 of the Contract Act commented on. JUGGUT CHUNDER DUTT *v.* RADA NATH DHUR

[I. L. R., 10 Calc., 669

PARTNERSHIP—*continued.*

4. DISSOLUTION OF PARTNERSHIP—*continued.*

33. ——— **Right of co-partners to dissolve.**—*Renunciation of right.*—A contract between a partner and his co-partners for remuneration to the former for the management of the partnership business by a commission on the sale, during his lifetime, does not, in the absence of any express agreement to that effect, imply a renunciation of the right of the co-partners to dissolve the partnership if they find that it cannot be carried on except at a loss: nor does it imply an obligation to pay the managing partner compensation in case the partnership is dissolved for that reason. *Rhodes* v. *Forwood, L. R., 1 Ap., Ca., 256,* referred to and approved. COWASJEE NANABHOY *v* LALBHOY VULLUBHOY

[I. L. R., 1 Bom., 468 : 26 W. R., 78 L. R., 3 I. A., 200

34. ——— **Notice of dissolution.**—*Liability of members for payment to partner retiring without notice.*—Partners must, on dissolution of partnership, give full and fair notice to their customers of such dissolution, or otherwise be liable to them for all payments made by them to one partner in the belief that he represented the firm. SHEWRAM *v.* ROHOMUTOOLLAH . . . **W. R., 1864, 94**

35. ——— *Contract Act (IX of 1872), s. 264.*—Section 264 of the Contract Act is not intended to be an exhaustive exposition on the question of notice of a dissolution of partnership. The mode of notification of dissolution required in the case of old customers, who are known to the firm as having dealt with it, is an express or specific notice by circular or otherwise. But in the case of the general public the most effectual public notice which can reasonably be given is requisite. *Roop Chund Pundit* v. *Madhub Chunder Bose, I. L. R., 8 Calc., 681, note,* overruled. CHUNDER CHURN DUTT *v.* EDULJEE COWASJEE BIJNEE

[I. L. R., 8 Calc., 678 : 11 C. L. R., 225

36. ——— *Effect of dissolution as against party without notice.*—*Held* that dissolution between the members of a carrier's firm, or exclusion of one of the members thereof by others in virtue of a partnership agreement would not operate against a third party (a consignor) who had no knowledge of it, and who in his dealing with the firm, in the absence of any notification of change, supposed that the partnership continued unaltered as to its members; and that such dissolution or exclusion would not exempt the retired member of the firm from liability to the consignor's claim, unless it be shown that the latter was aware of the fact of the former having ceased to be a member thereof. GUNGA RAM *v.* GUNGA DHUR . **1 Agra, 198**

37. ——— *Contract Act, s. 264.*—*Sleeping partner.*—*A., B.,* and *C.* traded together in partnership as *B., C., & Co., A.* being a sleeping partner. After the partnership was dissolved, *B* and *C.* continued to trade together under the same name and incurred debts to the plaintiffs, who sued to recover the amounts from *A., B.,* and *C*

PARTNERSHIP—*continued.*

4. DISSOLUTION OF PARTNERSHIP—*continued.*

Notice of dissolution—*continued.*

The plaintiffs had not dealt with the old partnership nor received notice of its dissolution, and it was not alleged that they knew of *A.'s* previous connection with it. *Held* that the suits did not lie against *A.* RAMASAMI *v.* KADAR BIBI

[I. L. R., 9 Mad., 492

5. PROCEDURE.

38. ——— **Suit to close partnership transactions.**—*Issues.*—*Civil Procedure Code, 1877, sch. IV, forms 132, 133.*—*Accounts, Decree for.*—In a suit for an account of partnership transactions, the Subordinate Judge, in whose Court the suit was instituted, framed certain issues with the object of ascertaining who managed the business; with whom the partnership property was; whether the defendants ought to account; what was the capital, and what the expenditure and profits of the firm; and after taking evidence on these points, dismissed the suit *Held* that the Subordinate Judge should have followed the course pointed out in forms 132 and 133 of schedule IV of the Civil Procedure Code, and at the first hearing should have determined whether there had been a partnership; what were its conditions; was it dissolved, or ought it to be dissolved; and who were the parties interested, and in what shares: and upon determining these questions, should have directed accounts to be taken; and after the accounts had been taken, should have made a final decree. RAM CHUNDER SHAHA *v.* MANICK CHUNDER BANIKYA . **I. L. R., 7 Calc., 428 [9 C. L. R., 157**

PARTNERSHIP PROPERTY.

1. ——— **Theft.**—*Fraudulent removal of.*—*Penal Code, ss. 378, 405, and 424.*—*Criminal misappropriation and breach of trust.*—*K.,* the servant of *A.* and others, partners, was coming out of the Small Cause Court with some books belonging to the partnership shop, when *A.* took them from him and kept them, saying they were his, and refused to give them up. The Magistrate found *A.* guilty of theft under section 378. *Held,* the conviction could not be sustained: the possession of *K.* was the possession of *A.* and the partners, and *A.* could not therefore be convicted of theft. QUEEN *v.* ALLAH BUKSH

[6 B. L. R., Ap., 133 : 13 B. L. R., 310, note

S. C. KEAMUDDIN *v.* ALLAH BUKSH

[15 W. R., Cr., 51

2. ——— **Criminal misappropriation.**—*Misappropriation of partnership property.*—*Penal Code, s. 405.*—A partner who dishonestly misappropriates or converts to his own use any of the partnership property with which he is entrusted, or which he has dominion over, is guilty of an offence under section 405 of the Penal Code. QUEEN *v.* OKHOY COOMAR SHAW. IN THE MATTER OF THE PETITION OF NAGENDRA LAL CHATTERJEE

[13 B. L. R., F. B., 307 : 21 W. R., Cr., 58

PARTNERSHIP PROPERTY—*continued.*

3. ——— **Criminal breach of trust.**—*Removal of partnership property.—Penal Code, s. 424.*—Also a partner who fraudulently removes partnership property is guilty of an offence under section 424, Penal Code. QUEEN *v.* GOUR BENODE DUTT
[13 B. L. R., 308, note : 21 W. R., Cr., 10

PARTNERSHIP PROPERTY, INTEREST IN—

See COURT FEES ACT, SCH. 1, CL. 12.
[I. L. R., 1 Calc., 168

PARTY WALL, LIABILITY OF ADJOINING OWNER FOR COSTS OF—

See BUILDINGS ERECTED BY ADJOINING OWNERS . I. L. R., 9 Bom., 183

PASSENGER BY RAIL.

See RAILWAY ACT, 1879, SS. 17, 31.
[I. L. R., 12 Calc., 192

See RAILWAY COMPANY.
[I. L. R., 1 Bom., 25

PASTURAGE, RIGHT TO—

——— *Grazing.—Bombay Act I of 1865, s. 32.—"Village cattle."*—Plaintiff erected a hut on public ground in a village in the district of Thana, and lived there annually for a few months while his cattle grazed on the public grazing ground in that village. He was not the owner or lessee of any land in the village. On being prevented by the Collector of Thana from thus grazing his cattle, plaintiff brought a suit against that officer for a declaration of his right to graze his cattle within the limits, not only of that village, but of any other village in the district of Thana. *Held* that plaintiff was not entitled to any such right. The phrase "village cattle" in section 32 of Bombay Act I of 1865 does not include the cattle of any roving grazier who may choose to squat for a few months on the public ground of a village. That Act does not vest the right of sanctioning such a diversion of the village grazing ground in the villagers themselves, but in the Revenue Commissioner, whose consent must be obtained. COLLECTOR OF THANA *v.* BAL PATEL . I. L. R., 2 Bom., 110

PATENT.

——— **Infringement of—**

See LIMITATION ACT, 1877, ART. 40 (1871, ART. 11) . . I. L. R., 3 Calc., 17

——— **Suit for account of profits of—**

See LIMITATION ACT, 1877, ART. 40 (1871, ART. 11) . . I. L. R., 3 Calc., 17

1. ——— **Suit for infringement of patent.**—*Act XV of 1859, s. 25.—Substantial difference in machinery.—Injunction.—Damages and account of profits.*—The fact that a machine has been several times improved since the original patent was obtained is no argument against its being a useful

PATENT.—Suit for infringement of patent—*continued.*

invention within section 25, Act XV of 1859. *Cannington* v. *Nuttal, L. R., 5 H. L., 205,* followed as to the test of "novelty" in an invention. In deciding whether a machine, patented as an entire invention, is an imitation and piracy of another machine previously patented as an entire invention, the question is, Is the latter patented machine substantially the same as the earlier one? The fact of considerable differences existing in the several parts of the two machines will not prevent the later machine from being as a whole a copy of the earlier one; even where an exclusive privilege might have been acquired had the alterations in the later machine been claimed as improvements on the earlier one. *Clark v. Adie, 2 App. Cas., 315,* followed. Where a patent has been obtained for a machine which the patentee subsequently somewhat improves, a subsequent specification claiming the improved machine as a novel combination is bad, though the improvement might be claimed and protected as such. Where a new arrangement of the parts of a machine is claimed as an improvement, the arrangement must be clearly described in the specification. The mere substitution of one mechanical equivalent for another already in use will not protect it. Where a case of infringement of a patent has been made out, an injunction will follow as a matter of course. A plaintiff cannot pray for an account of profits and for damages. He must elect between the two remedies. If the plaintiff elects to take an account of the profits, such accounts will only be carried back to the period of one year before the filing of the plaint, in accordance with Act IX of 1871, article 11. KINMOND *v.* JACKSON. KINMOND *v.* LAWRIE . . . 1 C. L. R., 66

2. ——— *Act XV of 1859, s. 23.—Measure of damages.—Evidence of particulars.—Held* by the Court, in a suit under Act XV of 1859 for the infringement of a patent, where the plaintiff had been in the habit of licensing the use of his invention, that the loss of the amount paid for such license was the measure of damages. *Per* SPANKIE, *J.*—The meaning of the words "publicly or actually used" in section 23 of Act XV of 1859 discussed. *Held per* SPANKIE, *J.*—That, where the defendant did not allege in his written statement that the invention was publicly used at certain places prior to the date of the petition for leave to file the specification, but was allowed to give evidence that the invention was so used at such places, the plaintiff was not bound before trial to have called upon the defendant to supply the particulars as to such places, and such evidence was not admissible. SHEEN *v.* JOHNSON . . . . I. L. R., 2 All., 368

3. ——— *Particulars of infringements, Sufficiency of.—Practice.—Act XV of 1859, s. 34.*—In a suit for the infringement of certain inventions the plaintiff did not, as required by section 34 of Act XV of 1859, deliver with his plaint particulars of the breaches complained of in the suit. In his plaint, after describing his inventions, he alleged generally that the defendant had made and used them at a certain place without his license. *Held*

PATENT.—Suit for infringement of patent —*continued.*

that, as required by section 34 of Act XV of 1859, the plaintiff should have delivered with his plaint particulars of the breaches complained of; that the general allegation as to infringement contained in the plaint did not amount to such particulars; and that under these circumstances the plaintiff came into Court with a case which could not be tried. PETMAN *v.* BULL . . I. L. R., 5 All., 371

In the same case, on appeal to the Privy Council,—*Held*, the sole object of Act XV of 1859, section 34, corresponding with section 41 of the English Patent Law Amendment Act, 1852, is to give the defendant fair notice of the case which he has to meet, and it is quite immaterial whether the requisite information be given in the plaint itself or in a separate paper. Particulars of breaches must be distinguished from particulars of objections for want of novelty. In the latter case the particular instances may not be within the knowledge of the patentee and must be specified: in the former the defendant must know whether and in what respect he has been guilty of infringement. Where three patents of the plaintiff all related to one article,—a kiln for burning bricks,—and the second and third in date were for improvements upon the invention specified in the first, and the plaintiff alleged a particular kiln constructed and used by the defendant, and in his plaint not only referred to his patents, but indicated in the case of each of them the infringements of which he complained,—*Held*, reversing the decision of the High Court, that this was a sufficient compliance with the Act. *Talbot* v. *La Roche, 15 C. B., 310*; and *Needham* v. *Oxley, 1 H. & M., 248*, approved. LEDGARD *v.* BULL . . L. R., 13 I. A., 134 [I. L. R., 9 All., 191

PATENT ACT, 1859.

See LIMITATION ACT, 1877, ART. 40 (1871, ART. 11) . . I. L. R., 3 Calc., 17

PATIL OF VILLAGE, SUIT FOR DECLARATION OF RIGHT TO OFFICIATE AS—

See PENSIONS ACT, 1871. [I. L. R., 1 Bom., 531

PATNI TENURE.

See CASES UNDER SALE FOR ARREARS OF RENT.

1. ——— **Hereditary interest.**—*Construction.*—The words "patni tenure" *primâ facie* convey an hereditary and transferable interest in land. TARINI CHARAN GANGULI *v.* WATSON [3 B. L. R., A. C., 437: 12 W. R., 413

2. ——— **Division or transfer of patni talook.**—A patni talook cannot be divided except by an act of the zemindar, or by an act recognised by him. A patnidar may generally transfer his tenure without the consent of his zemindar, but he can only do so *in solido*, and the transfer of a portion in no way affects the existence of the patni in its

PATNI TENURE.—Division or transfer of patni talook —*continued.*

entirety or the rights of the zemindar. JUDOO NATH SHAHANA *v.* JADUB CHURN THAKOOR [11 W. R., 294

3. ——— **Suit by grantor of patni pottah as ijaradar of share in zemindari.**—*Suit to set aside patni.*—One of several grantors of a patni pottah cannot get rid of the patni as to a share in the patni by a suit, as ijaradar of that share, for rent against the ryots. The patni must be upheld until set aside by a regular suit. RAJ CHUNDER ROY CHOWDHRY *v.* UNNODA PERSHAD MOOKERJEE . . . . . 17 W. R., 221

4. ——— **Separate payments of rent and separate registration by patnidar.**—*Cancellation of lease.*—The fact of a patnidar having made separate payments of rent, of having registered his name with each of the sharers, and of being prepared to enter into a fresh engagement with one of them, does not amount to a cancellation of the original lease and substitution of a new lease. SHAM CHAND MITTER *v.* JUGGUT CHUNDER SIRCAR [22 W. R., 50

MOHADEB MUNDUL *v.* COWELL [15 W. R., 445

5. ——— **Suit by zemindar to set aside patni lease.**—*Effect as between patnidar and under-tenants of setting it aside with mesne profits.*—Where a landlord (patnidar) and his tenant were defendants in a suit by the zemindar for setting aside the patni, and both were by the decree made liable for the mesne profits which the tenant eventually paid out of his own pocket,—*Held* that the effect was to cancel all relation of landlord and tenant between them, and to give the tenant a right to receive back what he had paid. RAKHAL MONEE DOSSEE *v.* BROJENDRO GOPAL ROY . 23 W. R., 303

6. ——— **Refusal of patnidar to give security.**—*Inability to collect rents owing to zemindar in consequence withholding amaldastak.*—If, by reason of the patnidar not giving security the zemindar withholds his amaldastak, and also abstains from availing himself of the power which the law gives him of collecting the rents himself, it would be inequitable to allow him to recover from the patnidar the rent which the withholding of the amaldastak has prevented his collecting. BIDHOO-MOOKHI DEBI *v.* NILMONEY SING DEO [1 C. L. R., 464

PATNIDAR, RIGHT OF—

See ABATEMENT OF RENT.
[B. L. R., Sup. Vol., 70
1 W. R., 299
2 W. R., Act X, 30, 47

PAUPER-SUIT.

Col.
1. SUITS 4337
2. APPEALS 4344

PAUPER-SUIT—*continued.*

See APPEAL TO PRIVY COUNCIL—PRACTICE AND PROCEDURE—LEAVE TO APPEAL.
[7 W. R., P. C., 29: 4 Moore's I. A., 114
8 W. R., 4

See COMPROMISE—CONSTRUCTION, ENFORCING, EFFECT OF, AND SETTING ASIDE DEEDS OF COMPROMISE.
[7 W. R., P. C., 29 : 4 Moore's I. A., 114

See DECREE—ALTERATION OR AMENDMENT OF DECREE . . 2 C. L. R., 461

See LIMITATION ACT, 1877, s. 4 (1871, s. 4).
[I. L. R., 2 Calc., 389
I. L. R., 1 All., 230
I. L. R., 2 All., 241
I. L. R., 2 Mad., 230
W. R., F. B., 53 : Marsh., 174
I. L. R., 5 Calc., 807

See LIMITATION ACT, 1877, ARTS. 171, 171 A, AND 171 B.
[I. L. R., 7 Bom., 373

See REVIEW—ORDERS SUBJECT TO REVIEW . . 5 B. L. R., Ap., 29
[5 B. L. R., 318, note
I. L. R., 4 Bom., 414

1. SUITS.

1. ——— **Continuation in formâ pauperis of suit commenced in ordinary form.**—*Civil Procedure Code, 1859, ss. 297-310.*—The power of the Court to allow a suit to be instituted *in formâ pauperis* includes the power to allow a suit to be continued as a pauper suit after it has been commenced in the ordinary form. NIRMUL CHANDRA MOOKERJEE *v.* DOYAL NATH BHUTTACHARJEE
[I. L. R., 2 Calc., 130

REVJI PATIL *v.* SAKHARAM
[I. L. R., 8 Bom., 615

2. ——— **Pauper defendant.**—*Civil Procedure Code, 1877, chap. XXVI, ss. 401-415.*—Although Chapter XXVI of the Civil Procedure Code only provides for suits to be brought by a pauper, the Court has power to allow a defendant to defend *in formâ pauperis.* DOORGA CHURN DOSS *v.* NITTOKALLY DOSSEE . I. L. R., 5 Calc., 819
[6 C. L. R., 120

3. ——— **Suit by next friend.**—*Next friend a pauper.—Infant.*—A suit can be brought *in formâ pauperis* by a next friend who is also a pauper. GOLAUPMONEE DOSSEE *v.* PROSONOMOYE DOSSEE . . . . . 11 B. L. R., 373

4. ——— *Minor.—Next friend a pauper.*—The rule of English practice which prevents a minor from instituting a suit *in formâ pauperis* through his next friend, unless he gives proof not only that he is himself a pauper, but that the next friend is a pauper, and that he cannot get any substantial person to act as his next friend, is not to be found in, or deduced from, the provisions of the Civil Procedure Code. VENKATANARASAYYA *v.* ACHEMMA . . I. L. R., 3 Mad., 3

PAUPER-SUIT—*continued.*

1. SUITS—*continued.*

5. ——— **Representative of pauper.**—*Right to carry on suit.*—There is no necessity for an inquiry whether an alleged representative of an admitted pauper is a pauper or not. The Court, if satisfied that he is the legal representative, ought to admit him to carry on the suit. BHAGBUT DOSS *v.* BULORAM DOSS . . . 3 W. R., Mis., 20

6. ——— **Pauper administrator.**—*Civil Procedure Code, 1882, s. 401.*—The administrator of the estate of a deceased person may apply to sue *in formâ pauperis* under the provisions of Chapter XXVI of the Code of Civil Procedure, 1882. IN RE BILL . . . I. L. R., 7 Mad., 390

7. ——— **Presentation of petition to sue in formâ pauperis.**—*Civil Procedure Code, 1859, s. 301 and s. 17.—Held* that section 301 of Act VIII of 1859, requiring the petition for permission to sue *in formâ pauperis* to be presented by the petitioner person, is imperative, and must be held to control the provisions of section 17 of the same Act. EX PARTE DEVGIR GURU SUMBHAGIR
[4 Bom., A. C., 91

8. ——— **Authorised agent.**—*Vakeel.—Civil Procedure Code, 1859, s. 301.*—A vakeel may be a "duly authorised agent," within the meaning of section 301 of the Code of Civil Procedure. KISHOREE MOHUN BOSE *v.* GOUR MONEE DOSSEE
[15 W. R., 198

9. ——— **Presentation of plaint.**—*Limitation.—Suit when to be considered as commenced.*—In calculating the period of limitation in a case where it is sought to extend the time by reason of a pauper suit having been commenced, the suit is commenced for this purpose when the plaint is presented to the Court, and not merely at the date of its allowance. SEETARAM GOWER *v.* GOLUCKNATH DUTT
[Marsh., 174

GOLUCKNATH DUTT *v.* SEETARAM GOWER
[W. R., F. B., 53 : 1 Ind. Jur., O. S., 66
1 Hay, 378

VINAYAK K. DHAVLE *v.* BHAU B. SAMVAT
[4 Bom., A. C., 39

10. ——— *Civil Procedure Code, 1859, s. 308.—Limitation.*—Where an application for permission to sue *in formâ pauperis* is numbered and registered, and deemed to be the plaint in the suit, not in consequence of proof of the plaintiff's pauperism, but in consequence of his abandoning his claim to sue as a pauper and paying for the stamps required for the institution of the suit, the date of such payment, and not the date of the application, must be taken, in computing the period of limitation, to be the date of the presentation of the plaint and the institution of the suit. SKINNER *v.* ORDE . . . . I. L. R., 1 All., 230

11. ——— *Enquiry into pauperism.—Civil Procedure Code, 1859, s. 310.—Limitation Act, 1859, s. 14.—Deduction of time.—Presentation of plaint in wrong Court.—Institution*

PAUPER-SUIT—*continued.*

1. SUITS—*continued.*

Presentation of plaint—*continued.*

of suit.—The plaintiff applied by petition, on 20th February 1873, to the Subordinate Judge of Meerut for leave to sue *in formâ pauperis.* The petition contained a statement of the claim and such particulars as are required in a plaint, and a prayer that, as part of the immoveable property claimed was situated in the Punjab, the Subordinate Judge would seek the necessary sanction to give him jurisdiction. The Subordinate Judge, considering that the suit should be instituted in the Delhi district, rejected the application. On 3rd March the plaintiff presented the petition to the Deputy Commissioner of Delhi, and was admitted by that officer to sue as a pauper. The Deputy Commissioner having applied for sanction to try the suit, the High Court, North-Western Provinces, and the Chief Court of the Punjab, considered it advisable that the suit should be tried at Meerut; and on 10th June 1873 the Deputy Commissioner returned the petition for presentation in the proper Court in the North-Western Provinces. On 19th July the plaintiff presented it to the Subordinate Judge of Meerut, who received and registered it as a plaint. On 10th November the defendants filed written statements, wherein they urged that the plaintiff ought not to be allowed to sue *in formâ pauperis* until he had proved his pauperism in the Subordinate Judge's Court. Upon this the Subordinate Judge threw out the suit, holding that he had no jurisdiction to admit it. *Held* that the Subordiaate Judge, if he regarded as ineffectual the order of the Deputy Commissioner admitting plaintiff to sue as a pauper, should himself have entered into an inquiry into the plaintiff's pauperism, and not have thrown out the suit. *Held,* also, that the provisions of section 340 of Act VIII of 1859 were not applicable to the order of the Subordinate Judge refusing to allow the plaintiff to sue as a pauper, as he pronounced no opinion on the point. *Held,* also, with reference to the question of limitation, that the time during which the suit was pending in the Delhi Court should be deducted in computing the period of limitation. *Semble,*—That the order admitting the plaintiff to sue as a pauper, which was made by the Delhi Court, became ineffectual when the plaint was returned by that Court; and that it became the duty of the Meerut Court, when the petition was again presented to it, to pass orders *de novo* on the subject. SKINNER *alias* MIRZA *v.* ORDE . **6 N. W., 225**

12. ——— **Inquiry into pauperism.**—*Ciml Procedure Code, 1859, ss. 305, 306.*—Inquiry under sections 305 and 306 of the Civil Procedure Code should be made by the Judge himself, and not by the sherista of the Court. IN THE MATTER OF EKNATH BIN MADOBA . **1 Bom., 102**

13. ——— *Civil Procedure Code, 1859, s. 306.*—When a pauper petition comes on for hearing, under section 306 of the Code of Civil Procedure, the Judge has no power to inquire into any other circumstances than the pauperism of the petitioner. DIPSANGJI JITSANGJI *v.* FATTLESANGJI JASVATSANGJI . . **5 Bom., A. C., 59**

PAUPER-SUIT—*continued.*

1. SUITS—*continued.*

Inquiry into pauperism—*continued.*

14. ——— *Civil Procedure Code, 1859, ss. 305, 306.—Procedure.*—Where a day was fixed, under Act VIII of 1859, section 305, for receiving evidence of the pauperism of the plaintiff, the Court refused, under section 306, to entertain any objection of the defendant other than on the single question of the pauperism of the plaintiff. SHIPONESSA BIBEE *v.* KAMINEE BIBEE **[2 Ind. Jur., N. S., 121**

15. ——— *Civil Procedure Code, 1859, ss. 304, 306.—Procedure.*—Where a petition in a suit *in formâ pauperis* had been admitted, the usual order made under section 305, Act VIII of 1859, and the case came on for hearing under section 306, it was proposed for the defendant to show by examination of the plaintiff that, on the facts stated in the petition, she had no cause of action, and it was objected that no question except the pauperism of the plaintiff could be gone into under section 306. The Court allowed the plaintiff to be examined to show that on her own evidence she had no cause of action, but refused to allow other witnesses to be called upon. From the plaintiff's evidence the defendant failed to show that there was no cause of action. TARAMONEY DABEE *v.* HURRO MOHUN CHATTERJEE . . **11 B. L. R., Ap., 23**

But *see* IN RE GUNGA DASS ADHIKAREE, where it was held that where, on the day fixed for hearing evidence on the question of pauperism, the defendant brings to the notice of the Court any ground on which it would have been bound to refuse to admit the petition, it is in the discretion of the Court to admit or refuse to receive evidence of such ground **[11 B. L. R., Ap., 23, note: 14 W. R., 281**

The Judge was held not to have been justified in finding on evidence other than that of the petitioner that the claim was barred by limitation PARKASH OJHA *v.* DUSRUTH OJHA . . **25 W. R., 74**

16. ——— *Application for leave to sue as a pauper.—Property admitted by the respondent to be the property of petitioners not the "subject-matter of the suit," although claimed in the petition.—Civil Procedure Code (Act XIV of 1882), ss. 401, 408, 409, 410.*—The petitioners prayed to be allowed as paupers to sue the respondent for certain property specified in the schedule annexed to their petition. At the hearing of the petition under sections 408 and 409 of the Civil Procedure Code (Act XIV of 1882) the respondent appeared and deposited in Court some of the articles claimed by the petitioners to which he admitted they were entitled. The value of the articles deposited was R100. The petitioners acknowledged that the articles were their property, but declined to take possession of them. *Held* that the petitioners were not paupers as defined by section 401 of the Civil Procedure Code (Act XIV of 1882), being possessed of property worth R100 other than the subject-mat-

PAUPER-SUIT—*continued.*

1. SUITS—*continued.*

Inquiry into pauperism—*continued.*

ter of the suit, and that they could not, therefore, be allowed to sue as paupers. The inquiry into pauperism under sections 408 and 409 takes place before any suit is in existence; for, until an application to sue as a pauper is granted, there is no plaint, and, consequently, no suit (see section 410). Any property, therefore, found at such inquiry not to be really in dispute cannot be regarded as part of the "subject-matter of the suit," although it may be entered in the particulars of the application for leave to sue as a pauper. The ground for excluding the "subject-matter of the suit" under section 401 is because such property is presumably out of the petitioner's reach, and cannot be made use of by him to carry on his litigation. In the present case the articles deposited in Court were freely at the disposal of the petitioners, and could not, therefore, be excluded from consideration. DWARKANATH NARAYAN *v.* MADHAVRAV VISHVANATH [I. L. R., 10 Bom., 207

17. ——— **Ground for rejecting petition.**—*Civil Procedure Code, 1882, s. 407.—Rejection of application to sue as a pauper.*—The terms of section 407 (*e*) of the Code must not be read as limiting the Court's discretion to merely ascertaining whether the "right to sue" arose within its jurisdiction, but have a more extended meaning,—namely, that an applicant must make out that he has a good subsisting cause of action, capable of enforcement in Court, and calling for an answer, and not barred by the law of limitation or any other law. Also *per* MAHMOOD, *J.*—The provisions of section 407 must be interpreted strictly, inasmuch as they operate in derogation of the right possessed by every litigant to seek the aid of the Courts of Justice; and an exercise of jurisdiction under that section, when such exercise of jurisdiction is open to the objection of illegality or material irregularity, would form a proper subject of revision by the High Court. *Har Prasad* v. *Jafar Ali, I. L. R., 7 All., 345*; and *Ammal* v. *Nayudu, I. L. R., 4 Mad., 323*, referred to. CHATTARPAL SINGH *v.* RAJA RAM . . I. L. R., 7 All., 661

18. ——— *Civil Procedure Code, 1877, ss. 403-407.—Procedure.*—The Code of Civil Procedure does not authorise the rejection of an application for leave to sue *in formâ pauperis* for want of merits when the applicant is found to be a pauper and his allegations disclose a right to sue. When an application for leave to sue *in formâ pauperis* is made, the Court should not go into evidence as to the merits of the claim. RANGANAYAKA AMMAL *v.* VENKATACHELLAPATI NAYUDU [I. L. R., 4 Mad., 323

19. ——— *Civil Procedure Code, Act XVI of 1882, s. 407, cl. (d).—Vakil.—Agreement.—Subject-matter.*—Two persons, being about to sue to redeem a certain jaghir village which they had mortgaged, applied for permission to sue as paupers. It appeared that they entered into an agreement with a vakil to pay him, as remuneration

PAUPER-SUIT—*continued.*

1. SUITS—*continued.*

Ground for rejecting petition—*continued.*

for his services as vakil in the case, a lump sum of R1,500 as soon as the case was decided. In default of payment the vakil was authorised to recover the money out of the revenues of the said village. *Held* that such an agreement was within the scope of clause (*d*) of section 407 of the Civil Procedure Code (XIV of 1882), and their application to sue as paupers was rejected. MANOHAR RAMCHANDRA *v.* LAKSHMAN MAHADEV . I. L. R., 9 Bom., 371

20. ——— *Obligation to try and raise funds to sue.—Civil Procedure Code, 1877, s. 401.*—A person who applies for permission to sue as a pauper is not bound to try and raise funds by mortgaging his claims. Notwithstanding that he might do so, he may be a pauper under section 401 of the Civil Procedure Code. VEDANTA DESIKACHARYULU *v.* PERINDEVAMMA . I. L. R., 3 Mad., 249

21. ——— **Revival of application.**—*Act VIII of 1859, s. 310.*—Where there has been no refusal of the application to sue as a pauper under section 310, Act VIII of 1859, the applicant may revive his application for leave to sue. BHOJ SINGH *v.* MAHA KONWER . . 3 Agra, Mis., 1

22. ——— **Costs.**—*Pauper suit in the mofussil.—Pauper appeal.—Unsuccessful plaintiff.—Successful defendant.—Civil Procedure Code, 1882, ss. 220, 412.*—Section 412 and Chapter XXVI of the Code of Civil Procedure, of which section 412 forms a part, do not deal with the costs of a successful defendant in a pauper suit. The costs of a defendant in such a case are to be dealt with under section 220 of the Code, and the Court of original or appellate jurisdiction has full power to give and apportion costs in any manner it thinks fit. JETHA MULCHAND *v.* GULBAJ JASRUP [I. L. R., 8 Bom., 577

23. ——— *Guardian suing for minor.—Dismissal of suit.*—Where a guardian obtains permission to sue *in formâ pauperis* on behalf of a minor, the rejection of the suit supplies no ground for throwing the costs of the suit on the guardian. BRIJESSUREE DOSSIA *v.* KISHORE DOSS [25 W. R., 316

24. ——— *Claim of Government for costs of suit.—Stamps in pauper suit.*—Where Government, after attaching a pauper plaintiff's decree in order to recover the value of stamps, under section 309 of the Code of Civil Procedure, 1859, consents to the sale of the decree in execution of another decree against the pauper, and obtains an order by which it secures the chance of any surplus arising from such sale, it cannot afterwards, when the sale is found to yield no surplus, be heard to say, as against the purchaser, that the decree was sold subject to its claim for stamps. The amount of stamps in a pauper case cannot be claimed as a lien or charge upon the decree in favour of Government, but is recoverable in the same manner as the costs of suit; Government

PAUPER-SUIT—*continued.*

1. SUITS—*continued.*

Costs—*continued.*

being, as regards its claim in such a case, in no higher position than an ordinary judgment-creditor. PRANKRISHNO ROY *v.* COLLECTOR OF MOORSHEDABAD [15 W. R., 205

25. ——— *Civil Procedure Code, 1859, s. 309.—Right of Government.—Court fees.*—The Crown has the first claim to the proceeds of a pauper suit to the extent of the amount of the Court fee that would have been payable at the institution of the suit, had the plaintiff not been a pauper, and section 309 of the Code of Civil Procedure does not preclude the Crown or its representative from urging its prerogative. GANPAT PATAYA *v.* COLLECTOR OF KANARA . . . I. L. R., 1 Bom., 7

COLLECTOR OF MORADABAD *v.* MUHAMMAD DAIM KHAN . . . I. L. R., 2 All., 196

26. ——— *Civil Procedure Code, 1859, s. 309, and s. 270.—Attachment and sale in execution of decree.—Right to proceeds.—Right of Government.—Court fees.*—*N.* was allowed to bring a suit as a pauper. His suit was dismissed, the decree directing that he should pay the costs of the defendant. On the defendant's application certain immoveable property belonging to *N.* was attached in execution of this decree, and was sold. *Held* that the Crown was entitled to be paid first, out of the proceeds of such sale, the amount of the Court fees *N.* would have had to pay if he had not been allowed to sue as a pauper. The principle of the ruling in *Ganpat Pataya* v. *Collector of Kanara, I. L. R., 1 Bom., 7,* followed. GULZARI LAL *v.* COLLECTOR OF BAREILLY . . . I. L. R., 1 All., 596

27. ——— *Civil Procedure Code, 1877, s. 412.—Order for costs.—Jurisdiction.*—A Subordinate Judge admitted a plaint *in formâ pauperis*, but, holding that he had no jurisdiction to try the suit, returned the plaint to the plaintiff for its presentation in the proper Court, and ordered each party to pay his own costs. After the presentation of the plaint in another Court, and before the termination of the suit, the Collector applied to the Subordinate Judge for execution of the order as to costs, by seeking to recover the amount of the stamp duty from the plaintiff. The Subordinate Judge refused to execute the order, on the ground that the pauper suit was still pending in another Court. His order was affirmed by the District Judge on appeal. On second appeal to the High Court,—*Held* that, under section 412 of Act X of 1877, the Subordinate Judge had no jurisdiction to make the order for payment of Court fees by the plaintiff. The High Court, accordingly, in the exercise of its extraordinary jurisdiction, annulled the Subordinate Judge's order about costs, and all the subsequent proceedings consequent upon that order. COLLECTOR OF RATNAGIRI *v.* JANARDAN KAMAT . I. L. R., 6 Bom., 590

28. ——— **Right of Government to recover stamp fees.**—*Limitation Act (XIV of 1859), s. 20.—Civil Procedure Code, 1859, s. 309.*—A decree had been obtained by a party suing *in formâ pauperis* against the appellant. The Government now sought to recover against the appellant the amount of stamps which would have been paid by the plaintiff if he had not been permitted to sue as a pauper. *Held* that the right of Government to recover the stamp fees in question, under section 309 of Act VIII of 1859, was not affected by the law of limitation laid down in section 20 of Act XIV of 1859. SHAMI MOHAMMED *v.* MOHAMMED ALI KHAN . 2 B. L. R., Ap., 22: 11 W. R., 67

PAUPER-SUIT—*continued.*

1. SUITS—*continued.*

Right of Government to recover stamp fees—*continued.*

29. ——— **Liability of pauper to pay stamp duty.**—*Civil Procedure Code, 1859, ss. 308, 309.—Defective stamp duty.*—Under sections 308 and 309 of Act VIII of 1859, a pauper cannot claim exemption from liability to pay any further stamp duty or penalty in respect of a document on which he relies, and which, owing to a defect in the stamp, is inadmissible as evidence in the suit. GOLAM GUFFOOR *v.* EKRAM HOSSEIN CHOWDHRY [10 W. R., 358

2. APPEALS.

30. ——— **Application for leave to appeal.**—*Decision in suit in formâ pauperis.—Civil Procedure Code, 1859, ss. 367-371.—Inquiry into pauperism.*—An appeal lies from a decision in a suit heard *in formâ pauperis.* A separate formal application for inquiry into the pauperism of the applicant need not precede an application for leave to appeal *in formâ pauperis.* KAMOD POORY *v.* SHEO POORY [1 N. W., 167: Ed. 1873, 246

31. ——— *Admission of appeal.—Authorised agent to sign and present petition.*—The Court rejected a petition of appeal presented on behalf of a pauper by a vakil who was retained under an ordinary retainer, but was not duly authorised to sign as attorney for the appellant. BHUGOBUTTY KOOER *v.* GUNESH DUTT . 21 W. R., 308

32. ——— *Civil Procedure Code, 1882, ss. 592 and 404.—Application by party, not by pleader, necessary.*—An application for leave to appeal *in formâ pauperis*, under section 592 of the Code of Civil Procedure, must be made by the party in person, subject to the exemption contained in section 404 of the Code of Civil Procedure. IN RE NARISI . . . I. L. R., 8 Mad., 504

33. ——— **Security for costs.**—*Civil Procedure Code, 1859, ss. 342, 370.*—An Appellate Court has no power under section 370, Act VIII of 1859, to annex to its order the condition that the party allowed to appeal should give security for costs. The provisions in section 342, which make it discretionary in the Appellate Court to demand security for costs, is not applicable to appeals *in formâ pauperis;* and therefore the order of the Judge in this case requiring security for costs from the petitioner after his appeal had been admitted,

PAUPER-SUIT—*continued.*

2. APPEALS—*continued.*

Security for costs—*continued.*

and after the Judge on inquiry had found that the appellant was a pauper, was set aside. NUSSEERODDEEN BISWAS *v.* UJJUL BISWAS . 17 W. R., 68

34. ——————— *Civil Procedure Code, 1877, s. 549.*—A suitor *in formâ pauperis* may be called on to give security for costs under section 549 of the Civil Procedure Code, but very special grounds must be shown to support such an application. *Nusseerooddeen Biswas* v. *Ujjul Biswas, 17 W. R., 68,* dissented from. SESHAYYANGAR *v.* JAINULAVADIN . . . I. L. R., 3 Mad., 66

See also MANECKJI *v.* GOOLBAI [I. L. R., 3 Bom., 241

35. ——— Ground of appeal. — *Suit after rejection of claim to attached property.*—*N.* sued to set aside the sale of property which *M.* had attached in execution of a decree against *N.'s* husband's brother, plaintiff alleging that it belonged to her husband (though the latter's objections under section 246, Civil Procedure Code, had been rejected), and asking for a declaration of her right and title. *N.* obtained a decree, and both *M.* and the auction-purchaser appealed to the Judge *in formâ pauperis. Held* that *M.* had good ground of appeal if he could prove that the property belonged to the judgment-debtor. IN THE MATTER OF MOSHAOLLAH KHAN . . . . . 14 W. R., 445

36. ——— Pauper respondent. — *Respondent allowed to proceed as a pauper.*—*Power of High Court.*—Where a respondent is allowed in the lower Court to sue *in formâ pauperis,* the High Court will not set aside that order on motion, on the ground that it has been improperly obtained. IN THE MATTER OF THE PETITION OF KHODEJOONISSA [7 W. R., 486

37. ——————— *Filing objections.*—*Payment of stamp duty.*—*Court Fees Act, s. 16.*—*Civil Procedure Code, 1859, s. 348.*—A pauper respondent is not entitled to present objections at the trial of an appeal without payment of stamp duty. BABAJI HARI *v.* RAJARAM BALLAL [I. L. R., 1 Bom., 75

38. ——————— *Civil Procedure Code, 1882, s. 561.*—Objections by a respondent to a decree under section 561 of the Code of Civil Procedure cannot be filed *in formâ pauperis. Babaji Hari* v. *Rajaram Ballal, I. L. R., 1 Bom., 75,* followed. NARAYANA *v.* KRISHNA . I. L. R., 8 Mad., 214

BROJESHWARI DASI *v.* GUROO CHURN DAS [I. L. R., 11 Calc., 735

PAWNOR AND PAWNEE.

See CONTRACT ACT, s. 178. [I. L. R., 3 Calc., 264

PAYMENT, EVIDENCE OF—

See BOND . I. L. R., 1 Bom., 45
[8 W. R., 316
3 W. R., Mis., 23

PAYMENT IN CONSIDERATION OF RELEASING PERSON FROM PRISON.

See CONTRACT ACT, S. 23—ILLEGAL CONTRACTS GENERALLY [9 B. L. R., Ap., 38

PAYMENT INTO COURT.

See BENGAL RENT ACT, 1869, s. 31. [I. L. R., 4 Calc., 714

See DECREE—CONSTRUCTION OF DECREE—PAYMENT INTO COURT. [I. L. R., 8 Calc., 528
I. L. R., 3 All., 775

See INTEREST—MISCELLANEOUS CASES—PAYMENT INTO COURT. [3 B. L. R., Ap., 105 : 12 W. R., 50
2 C. L. R., 183
16 W. R., 297, 304

1. ——— Payment of charge on estate under decree.—*Authority to make deposit.*—Where a decree treats an estate as primarily liable to discharge a debt with interest, the proprietor (or his heir) has a right to pay the money into Court to protect himself from being made responsible to indemnify the sureties; and if the money is deposited for the purpose of satisfying the decree, it is unnecessary for the Court to inquire whether it was deposited under authority from the proprietor or his heir. BISSESSUR SINGH *v.* NIM CHAND BOSE [12 W. R., 505

2. ——— Voluntary payment.—*Arrest under writ of attachment.*—*Objection by judgment-debtor to money being taken out.*—Payment of money into Court by a judgment-debtor, to prevent arrest under a writ of attachment, is not a voluntary payment; and on application by the decree-holder to take the money out, the judgment-debtor is not limited to those objections only which he raised to the right of the decree-holder at the time of paying the money in. PARESNATH MOOKERJEE *v.* BINADIRAM SEN . 4 B. L. R., Ap., 25 : 13 W. R., 29

3. ——————— *Legal necessity.*—Where a person, in order to save his indigo factory from sale in execution of a decree against a third person, paid the amount of the decree into Court,—*Held* that the payment was not a voluntary payment, but one made under legal necessity. RUMZAN ALI *v.* SOORUJBHAN . . . . . 7 W. R., 403

4. ——————— *Property unincumbered with mortgage lien.*—Where a plaintiff suing to obtain property unincumbered by a previous mortgage pays into Court the amount due under the lien of the defendant as mortgagee, and states that he has an objection to the sum being appropriated to the payment of that lien, he has no cause of action against the defendant. TOOLSEE DUTT MISSER *v* BROJOMOHUN THAKOOR . . . 9 W. R., 323

5. ——————— *Money paid under wrong order of Court.*—Money paid over at the

PAYMENT INTO COURT.—Voluntary payment—*continued.*

instance of a judgment-creditor or under a wrongful order of Court may be recovered by means of a suit in the Civil Court. OMANATH ROY CHOWDHRY *v.* SUROOP CHUNDER BOSE . **10 W. R., 485**

6. ——————— *Payment to stay sale in execution of decree.—Suit to recover.*—Certain property which had been mortgaged to the plaintiff by a bond executed by *J. D.* on 25th February 1867 was sold to him in execution of a decree passed upon that bond on 3rd September 1868. Before such sale, but after the above mortgage, the property was attached by the first defendant, in execution of a decree of 1865 (*i.e., J. D.'s* equity of redemption was attached), and a part of the property was sold. The sale was set aside for irregularity, but the attachment remaining, the first defendant resumed proceedings in execution and got an order for sale, when the plaintiff released it from liability to such sale by paying into Court the money due, which he now sought to recover. *Held* that the first defendant had a right to sell the rights and interests of *J. D.* in the property, and was therefore entitled to keep the money which saved the sale. GOSSAIN MUNRAJ POOREE *v.* DEEN DYAL LALL . **20 W. R., 20**

7. ——————— *Payment by auction-purchaser of mortgage-decree against his purchase.*—Auction-purchasers with notice of a mortgagee's lien are liable to pay off the mortgage, and to satisfy any decree which the mortgagee may obtain in regard to the property in a suit pending at the time of the purchase. Such decree cannot be satisfied by payment into Court, unless the mortgagee has the means of immediately taking the money out of Court, or acquiesces in such payment as payment to himself. LAND MORTGAGE BANK *v.* RAM RUTTUN NEOGY . . . **21 W. R., 270**

8. ——————— *Payment to protect property from sale.*—*P.* lent money to *S.* upon a specially registered tumsook pledging immoveable property, and afterwards obtained a decree under Act XX of 1866, section 53, for principal and interest. More than four years later, he brought a further suit against *S.* to recover the interest due under the same bond. Meanwhile plaintiffs also lent money to *S.* under a bond by which the same property was pledged, and also recovered a decree in execution of which the property was sold. *P.* then proceeded to attach the same property in execution of his second decree, when plaintiffs objected under Act VIII of 1859, section 246, but ineffectually; and after that, to protect the property which they had purchased, they paid a sum of money into Court which was subsequently taken out by *P.* They now sued to recover that money. *Held* that, under the circumstances, the payment of the money into Court was not a voluntary payment, and the plaintiffs were entitled to recover it. MUTHOORA MOHUN ROY CHOWDHRY *v.* PEAREE MOHUN SHAHA . . . **23 W. R., 344**

9. ——— Payment into Government treasury. — *Purchase-money.* — *Civil Procedure Code, s. 308.—Purchase in execution of decree. —Rules of High Court of 1st June 1882.*—Under

PAYMENT INTO COURT.—Payment into Government treasury—*continued.*

the Rules of the High Court, dated 21st June 1882, a payment into the Government treasury is equivalent to a payment into Court for the purposes of section 308 of the Code of Civil Procedure, 1882. SRINIVASA BHATTA *v.* MALAYACHAN MANNADI **[I. L. R., 7 Mad., 211**

PAYMENT INTO COURT BY MORTGAGEE TO PREVENT SALE OF MORTGAGED PROPERTY.

See MONEY HAD AND RECEIVED. **[8 B. L. R., 418**

PAYMENT OF DEBT BARRED BY LIMITATION.

See ADMINISTRATOR GENERAL. **[I. L. R., 1 Mad., 267**

PAYMENT OF INTEREST IN ADVANCE.

See PRINCIPAL AND SURETY—DISCHARGE OF SURETY . **I. L. R., 4 Calc., 132**
[9 B. L. R., 261
15 B. L. R., 331, 338, note

PAYMENT OF WHOLE DEBT BY ONE DEBTOR.

See CASES UNDER CONTRIBUTION, SUITS FOR—PAYMENT OF JOINT DEBT BY ONE DEBTOR.

PAYMENT, SPECIFIED TIME FOR—

See LIMITATION ACT, 1877, ART. 66 (1871, ART. 65) . **I. L. R., 5 Calc., 21**

See CASES UNDER LIMITATION ACT, 1877, ART. 179—ORDER FOR PAYMENT AT SPECIFIED DATE.

PAYMENT TO STAY SALE.

See CASES UNDER CONTRIBUTION, SUITS FOR—VOLUNTARY PAYMENTS.

See CASES UNDER SALE FOR ARREARS OF RENT—DEPOSIT TO STAY SALE.

See CASES UNDER SALE FOR ARREARS OF REVENUE—DEPOSIT TO STAY SALE.

PENAL CODE.

——— **s. 21.**

See CASES UNDER PUBLIC SERVANT.

——— **ss. 23, 24.**

See CHEATING . **22 W. R., Cr., 82**

——— **ss. 24, 25.**

See FORGERY . **I. L. R., 8 All., 653**
[I. L. R., 10 Calc., 584
I. L. R., 5 All., 217, 221
I. L. R., 7 All., 403, 459

PENAL CODE, s. 29.

See FORGERY . 2 B. L. R., A. Cr., 12

——— s. 30.

See FORGERY . . 4 Bom., Cr., 28
[2 Mad., 247
11 W. R., Cr., 15

——— s. 34.

See UNLAWFUL ASSEMBLY.
[I. L. R., 8 Calc., 739

——— s. 59.

See CASES UNDER SENTENCE—TRANSPORTATION.

——— s. 62.

See FORFEITURE OF PROPERTY.
[8 W. R., Cr., 35
12 W. R., Cr., 17

——— s. 64.

See SENTENCE—IMPRISONMENT — IMPRISONMENT IN DEFAULT OF FINE.
[6 Mad., Ap., 40

——— s. 65.

See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—BENGAL ACT III OF 1863.
[10 W. R., Cr., 30

See SENTENCE—IMPRISONMENT.
[I. L. R., 1 All., 461

See SENTENCE—IMPRISONMENT — IMPRISONMENT IN DEFAULT OF FINE.
[16 W. R., Cr., 42
5 Bom., Cr., 61

——— s. 67.

See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—BENGAL ACT III OF 1863.
[10 W. R., Cr., 30

See SENTENCE—IMPRISONMENT—IMPRISONMENT IN DEFAULT OF FINE.
[I. L. R., 6 All., 61

——— s. 70.

See FINE . . 5 Bom., Cr., 63

——— s. 71.

See SENTENCE—CUMULATIVE SENTENCES.
[1 Bom., 87
I. L. R., 7 All., 414
I. L. R., 11 Calc., 353
I. L. R., 12 Calc., 495
I. L. R., 10 Bom., 254, 493

——— s. 72.

See SENTENCE—GENERAL CASES.
[7 W. R., Cr., 13

——— s. 73.

See SENTENCE—SOLITARY CONFINEMENT.
[I. L. R., 6 All., 83

PENAL CODE, s. 74.

See SENTENCE—SOLITARY CONFINEMENT.
[3 B. L. R., A. Cr., 49

——— s. 75.

See CHARGE—FORM OF CHARGE—GENERAL CASES . I. L. R., 9 Mad., 284

See CASES UNDER SENTENCE — SENTENCE AFTER PREVIOUS CONVICTION.

——— s. 78.

See ARREST—CIVIL ARREST.
[3 W. R., Cr., 53

——— s. 79.

See TRESPASS—GENERAL CASES.
[23 W. R., Cr., 40

——— s. 81.

See s. 328 . . 5 Bom., Cr., 59

——— s. 83.

See STOLEN PROPERTY—OFFENCES RELATING TO— . I. L. R., 6 Mad., 373

1. ——— *Capacity for doing wrong.—Malice.*—In construing section 83 of the Penal Code, the capacity of doing that which is wrong is not so much to be measured by years as by the strength of the offender's understanding and judgment. The circumstances of a case may disclose such a degree of malice as to justify the application of the maxim *malitia supplet ætatem.* QUEEN *v.* AIMONA
[1 W. R., Cr., 43

2. ——— *Capacity of understanding to commit offence.*—An objection that the accused is of such an age as not to have attained sufficient maturity of understanding to judge of the nature and consequences of his conduct, is not one of a preliminary character, but rather a matter of defence to be considered with the other issues arising in the case. Where the accused is over seven years of age and under twelve, the incapacity to commit an offence only arises where the child has not attained sufficient maturity, &c.: such non-attainment would have apparently to be specially pleaded and proved. The "consequences of his conduct" mentioned in section 83, Penal Code, are not the penal consequences to the offender, but the natural consequences which flow from a voluntary act. QUEEN *v.* LUKHIM AGRADANNIE . 22 W. R., Cr., 27

——— s. 84.

See INSANITY . I. L. R., 10 Bom., 512

——— s. 94.

See OFFENCE COMMITTED UNDER THREAT.
[10 W. R., Cr., 48

——— s. 95.

See THEFT . . 5 Bom., Cr., 35

See HURT—CAUSING HURT.
[24 W. R., Cr., 67

PENAL CODE, s. 96.

See PRIVATE DEFENCE, RIGHT OF—
[20 W. R., Cr., 36

——— ss. 97, 99.

See CASES UNDER PRIVATE DEFENCE, RIGHT OF—

——— s. 104.

See PRIVATE DEFENCE, RIGHT OF—
[20 W. R., Cr., 36

——— s. 105, cl. 4.

See UNLAWFUL ASSEMBLY.
[12 W. R., Cr., 43

——— s. 107.

See ABETMENT . 8 W. R., Cr., 78
[2 W. R., Cr., 40
24 W. R., Cr., 26
12 W. R., Cr., 52
21 W. R., Cr., 11
4 B. L. R., A. Cr., 7

See ABETMENT (APPENDIX).
[I. L. R., 8 All., 18

——— s. 108.

See ABETMENT . I. L. R., 4 Calc., 366
[21 W. R., Cr., 35

——— s. 109.

See ABETMENT . I. L. R., 4 Calc., 10
[1 Ind. Jur., O. S., 105
9 B. L. R., Ap., 16
8 W. R., Cr., 78
7 W. R., Cr., 54

See KIDNAPPING . I. L. R., 8 Calc., 969

——— s. 114.

See ABETMENT . 4 Mad., Ap., 37
[7 W. R., Cr., 49
8 Bom., Cr., 164
10 Bom., 497

See THEFT . . 8 W. R., Cr., 59

——— s. 116.

See KIDNAPPING . I. L. R., 1 Mad., 173

See PUBLIC SERVANT . 21 W. R., Cr., 9

See POLICE MAGISTRATE.
[1 B. L. R., O. Cr., 39

——— s. 118.

See INFORMATION OF COMMISSION OF OFFENCE . . 1 Agra, Cr., 37

——— s. 120.

See FALSE EVIDENCE—FABRICATING FALSE EVIDENCE . 1 Ind. Jur., O. S., 105

——— s. 121.

See FORFEITURE OF PROPERTY.
[8 B. L. R., 83

See WAGING WAR AGAINST THE QUEEN.
[7 B. L. R., 63

PENAL CODE, s. 141.

See UNLAWFUL ASSEMBLY.
[9 W. R., Cr., 19
20 W. R., Cr., 78
12 W. R., Cr., 75
18 W. R., Cr., 2
23 W. R., Cr., 25
13 C. L. R., 80
4 Mad., Ap., 65
5 Mad., Ap., 6

——— s. 143.

See SENTENCE—CUMULATIVE SENTENCES.
[I. L. R., 12 Calc., 495

See UNLAWFUL ASSEMBLY.
[I. L. R., 9 Calc., 639
7 N. W., 209

——— s. 147.

See SENTENCE—CUMULATIVE SENTENCES.
[I. L. R., 6 Calc., 718
I. L. R., 6 All., 121
I. L. R., 7 All., 29, 757
I. L. R., 12 Calc., 495

See UNLAWFUL ASSEMBLY.
[I. L. R., 3 Calc., 573

——— s. 149.

See SENTENCE—CUMULATIVE SENTENCES.
[I. L. R., 11 Calc., 353
7 W. R., Cr., 60
I. L. R., 6 All., 121
I. L. R., 7 All., 757

See CASES UNDER UNLAWFUL ASSEMBLY.

——— s. 151.

See UNLAWFUL ASSEMBLY.
[I. L. R., 7 Bom., 42

——— ss. 154, 155, 157.

See RIOTING . 7 C. L. R., 289

——— s. 156.

See RIOTING . I. L. R., 10 Calc., 338

——— s. 160.

See SENTENCE—IMPRISONMENT—IMPRISONMENT IN DEFAULT OF FINE.
[I. L. R., 1 Mad., 277

——— s. 161.

See CHARGE—FORM OF CHARGE—GENERAL CASES . 1 Ind. Jur., N. S., 43

See ILLEGAL GRATIFICATION.
[I. L. R., 2 All., 253
2 N. W., 148
3 W. R., Cr., 10

See PUBLIC SERVANT.
[I. L. R., 4 Calc., 376

——— s. 162.

See ILLEGAL GRATIFICATION.
[3 W. R., Cr., 19

PENAL CODE, s. 165.

See ILLEGAL GRATIFICATION.
[2 N. W., 148

See PUBLIC SERVANT.
[I. L. R., 1 All., 530

1. ——— s. 172.—*Absconding to avoid service of summons.—Evidence.*—In order to prove the commission of an offence under section 172 of the Penal Code, the prosecutor must show that a summons, notice, or order has been issued, and that the accused knew, or had reason to believe, that it had been issued. To abscond to avoid the service of process which has not issued is no offence under section 172 of the Penal Code. Absconding does not necessarily imply change of place, but may be effected by concealment. If a person having concealed himself before process issues, continues to do so after it has issued, he absconds. SRINIVASA AYYANGAR *v.* QUEEN . . . I. L. R., 4 Mad., 393

2. ——— *Warrant of arrest.—Absconding offender.*—A warrant addressed to a police officer to apprehend an offender and bring him before the Magistrate is not a "summons, notice, or order" within the meaning of section 172 of the Penal Code, and the offence of absconding by an offender against whom a warrant has been so issued is not punishable under that section. QUEEN *v.* WOMESH CHUNDER GHOSE . . . . . 5 W. R., Cr., 71

QUEEN *v.* AMIR JAN . . 7 N. W., 302

QUEEN *v.* HOSSEIN MANJEE . 9 W. R., Cr., 70

3. ——— *Warrant addressed to Nazir.—Warrant of arrest in execution of decree.*—A warrant addressed to a Nazir by a Civil Court for the arrest of a defendant in execution of a decree is not a notice, summons, or order, within the meaning of section 172 of the Penal Code. QUEEN *v.* ZAHOOR ALI KHAN . . . 4 N. W., 97

1. ——— s. 173.—*Refusal to give receipt for summons.*—A refusal to give a receipt for a summons is not an offence under section 173 of the Penal Code. IN RE BHOOBUNESWAR DUTT
[I. L. R., 3 Calc., 621: 2 C. L. R., 80

REG. *v.* KALYA BIN FAKIR . 5 Bom., Cr., 34

2. ——— *Refusal to receive summons.*—A refusal to receive a summons is not an offence under section 173 of the Penal Code. QUEEN *v.* PUNAMALAI . . . I. L. R., 5 Mad., 199

QUEEN *v.* ARUMUGA NADAN
[I. L. R., 5 Mad., 200, note

——— s. 174.

See CASES UNDER CONTEMPT OF COURT—PENAL CODE, s. 174.

See HOLIDAY . 8 B. L. R., Ap., 12

See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—PENAL CODE.
[8 W. R., Cr., 61

——— *Escaping from custody of peon.*—Complainant, a batta peon, arrested defendant on a warrant and asked him to follow him. Defendant promised to do so, and went into his house on the pretext of getting a turban and absconded. *Held* that a conviction under section 174 of the Penal Code was illegal. ANONYMOUS
[7 Mad., Ap., 44

PENAL CODE, s. 174—*continued.*

——— s. 176.

See INFORMATION OF COMMISSION OF OFFENCE. . . 1 Agra, Cr., 37
[3 Mad., Ap., 31
7 W. R., Cr., 29
16 W. R., Cr., 35
18 W. R., Cr, 22
I. L. R., 7 Mad., 436
I. L. R., 11 Calc., 619

1. ——— s. 177.—*Giving false information to police.*—Section 177 of the Penal Code does not apply to the case of *any person* who is examined by a police officer making a false statement, but to cases where, by law, landholders or village watchmen are bound to give information, and to other analogous cases of the same description. QUEEN *v.* LUCKHEE SINGH . . . . 12 W. R., Cr., 23

2. ——— *Giving false information.—Legally bound.—False entry in diary.—Obeying departmental order.*—To make a false entry in a diary kept by a Government servant and sent to his official superior in pursuance of a departmental order is an offence within the meaning of section 177 of the Penal Code. VIRASAMI MUDALI *v.* QUEEN
[I. L. R., 4 Mad., 144

3. ——— and ss. 182, 415.—*Furnishing false information.—Cheating.*—A person attempted to obtain his recruitment in the police of a district by giving certain information which he knew to be false to the District Superintendent of Police. *Held* that such person had not thereby committed an offence punishable under section 177 or section 188 of the Penal Code, or the offence of attempting to "cheat" within the meaning of section 415 of that Code. EMPRESS *v.* DWARKA PRASAD
[I. L. R., 6 All., 97

4. ——— and s. 416.—*Cheating by false personation.*—*A.* gave *B.* four annas to purchase a stamp for him (*A.*). When the stamp vendor asked *B.* his name he gave *A.'s* name instead of his own,—*Held* not to be cheating by personation under section 416, Penal Code, but giving false information under section 177. REG. *v.* RAGHOJI BIN KANOJI . . . . 3 Bom., Cr., 42

5. ——— *False returns furnished by vaccinators.*—Certain vaccinators were charged with furnishing false returns to their official superior. The Magistrate found as a fact that the returns furnished were false, but acquitted the defendants on the ground that they were not "legally bound" to furnish information within the meaning of section 177 of the Penal Code. *Held* that section 177 embraces every case in which a subordinate may seek to impose false information upon his superior. The defendants in

PENAL CODE, s. 177—*continued.*

the present case were public servants, and part of the duties which they undertook was to make true returns to their official superior. To make false returns was therefore an offence. ANONYMOUS

[6 Mad., Ap., 48

6. ——————— *Duty of police officer.—Police Act (V of 1861), s. 44.*—Under Act V of 1861 a police officer is bound to communicate information to his superior officer regarding the commission of a riot affecting the public peace, and to make an entry thereof in the diary which he is required by section 44 of that Act to keep; and the omission to give such information brings him within the purview of section 177 of the Penal Code. IN THE MATTER OF THE PETITION OF FUTTEH MAHOMED

[21 W. R., Cr., 30

——————— **s. 179.**—*Evidence.—Witness.—Evidence Act, I of 1872, s. 165.*—Under section 165 of the Evidence Act, I of 1872, a Judge has the power of asking irrelevant questions to a witness, if he does so in order to obtain proof of relevant facts; but if he asks questions with a view to criminal proceedings being taken against the witness, the witness is not bound to answer them, and cannot be punished for not answering them, under section 179 of the Penal Code. EMPRESS *v.* HARI LAKSHMAN

[I. L. R., 10 Bom., 185

——————— **s. 180.**—*Refusal to sign statement made before Magistrate.—Code of Criminal Procedure (X of 1872), ss. 122 and 346.*—An accused person who refuses to sign a statement made at his trial in answer to questions put by the Court, commits no offence punishable under section 180 of the Penal Code. EMPRESS *v.* SIRSAPA

[I. L. R., 4 Bom., 15

——————— **s. 181.**

See FALSE EVIDENCE—GENERALLY.

[I. L. R., 6 Mad., 252
8 Bom., Cr., 21
4 Mad., Ap., 18

See SENTENCE—IMPRISONMENT.

[4 Mad., Ap., 18

See STAMP ACT, 1879, s. 51.

[I. L. R., 5 All., 17

——————— **s. 182.**

See FALSE CHARGE . 8 W. R., Cr., 67
[I. L. R., 5 All., 36, 387
I. L. R., 7 Bom., 184
I. L. R., 5 Calc., 184
4 C. L. R., 134
7 C. L. R., 382

See SANCTION TO PROSECUTION—POWER TO QUESTION GRANT OF SANCTION.

[I. L. R., 4 Calc., 869

See SANCTION TO PROSECUTION—WHERE SANCTION IS NECESSARY.

[I. L. R., 8 All., 382

PENAL CODE, s. 182—*continued.*

1. ——————— **and s. 189.**—*Right of person against whom information has been falsely given to institute criminal prosecution.—Consent of public servant.*—A person against whom information has been falsely given with a view to his injury has a right to bring a civil action for damages, with or without the consent of the public servant against whom the offence was committed; but he cannot bring a criminal charge under section 189, or any other section of Chapter X of the Penal Code, without the permission of such public servant; the law looking upon the conduct of the person who gives the false information as an offence, not against the individual charged, but against the public servant to whom the false information was given. To constitute an offence under section 182 of the Penal Code, the information given must be information which the informer knew or believed to be false, and it must be proved that he gave it with such knowledge. IN THE MATTER OF THE PETITION OF ABDOOL LUTEEF

[9 W. R., Cr., 31

See QUEEN *v.* RAM GOLAM SING

[11 W. R., Cr., 22

2. ——————— *Statements made by prisoner for his defence.*—Statements made by a prisoner for the purposes of his defence cannot be held to be "information given to a public servant" within the meaning of section 182 of the Penal Code. QUEEN *v.* DARIA KHAN . . . . 2 N. W., 128

3. ——————— *Giving false information to public servant.*—Section 182 of the Penal Code does not apply where the public servant misinformed is only competent to pass and passes on the information, and the power to be exercised by him cannot tend to any direct or immediate prejudice of the person against whom the information is levelled. QUEEN *v.* PERIANNAN . I. L. R., 4 Mad., 241

4. ——————— *Furnishing false information.—Cheating.*—A person attempted to obtain his recruitment in the police of a district by giving certain information which he knew to be false to the District Superintendent of Police. *Held* that such person had not thereby committed an offence punishable under section 177 or section 182 of the Penal Code, or the offence of attempting to "cheat" within the meaning of section 415 of that Code. EMPRESS *v.* DWARKA PRASAD . I. L. R., 6 All., 97

5. ——————— *Giving false "information" to a public servant.—M.* falsely informed the Collector of a district that certain zemindars had usurped possession of certain land belonging to Government, with the intent "to give trouble to such zemindars and waste the time of the public authorities." *Held* that, inasmuch as such information was no more than an expression of a private person's belief that the Collector might, if he chose, sustain a civil suit with success against such zemindars, and as, had the Collector agreed with the informant, the result would not have been that he would have used his lawful power as a Collector or as a Magistrate to the injury or annoyance of such zemindars, or that he would have done anything he ought not to have done, *M.*

PENAL CODE, s. 182—*continued.*

had not committed an offence under section 182 of the Penal Code. EMPRESS *v.* MADHO [I. L. R., 4 All., 498

6. ——— *Public servant.—Forest Act, VII of 1878.*—Under section 172 of the Forest Act, VII of 1878, a forest officer is a public servant within the meaning of the Penal Code. Any information given to him with the intent mentioned in section 182 of the Penal Code is punishable under that section, whether that information is volunteered by the informant, or is given in answer to questions put to him by that officer. QUEEN-EMPRESS *v.* RAMJI SAJABARAO . . I. L. R., 10 Bom., 124

7. ——— *Complaint of giving false information, Prosecution of.*—No ground for a complaint of giving false information to a public servant under section 182 of the Penal Code exists on the part of any one but the public servant against whom the offence was committed. QUEEN *v.* HURREE RAM . . . . . 3 N. W., 194

8. ——— and s. 211.—*Prosecution under s. 182.—Complaint.—Rejection with reference to police report.*—*K.* made a report at a police station accusing *R.* of a certain offence. The police having reported to the Magistrate having jurisdiction in the matter that in their opinion the offence was not established, the Magistrate ordered the case to be "shelved." *K.* then preferred a complaint to the Magistrate again accusing *R.* of the offence. The Magistrate rejected the complaint with reference to the police report. Subsequently, *R.*, with the sanction of the police authorities, instituted criminal proceedings against *K.*, under section 182 of the Penal Code, in respect of the report which he had made at the police station, and *K.* was convicted under that section. *Held* that *K.'s* conviction under section 182 of the Penal Code was illegal, as the Magistrate had no power to entertain a complaint under that section at the instance of *R.*, the application of section 182 and the institution of prosecutions under it being limited to the public servant against whom the offence has been committed or to his official superior, as mentioned in section 467 of Act X of 1872, and it not being intended that those provisions should be enforced at the instance of private persons. Moreover, if *K.'s* complaint was false, his offence was against *R.*, and not against the public servant to whom the complaint was made, and fell within section 211 of the Penal Code. EMPRESS *v.* RADHA KISHAN [I. L. R., 5 All., 36

9. ——— *Prosecution, Sanction to.—Criminal Procedure Code, s. 195.*—A prosecution under section 182 of the Penal Code may be instituted by a private person, provided that he first obtains the sanction of the public officer to whom the false information was given, or of his official superior. *Queen-Empress* v. *Radha Kishan, I. L. R., 5 All., 36,* overruled. QUEEN-EMPRESS *v.* JUGAL KISHORE [I. L. R., 8 All., 382

10. ——— *False information to a public servant, Charge of.—Criminal Procedure Code, s. 195.—Sanction to prosecution.—Separate convictions for one statement, Illegality of.*—An information was given to a police officer in the course of which two persons were named in whose houses stolen property belonging to a certain individual would be discovered: on complaint the information was found to be false, and the accused was convicted and punished for two offences under section 182 as affecting two different persons. *Held* that, although the information related to two different persons the accused could be charged with having made only one false statement, and punished for one offence under section 182. Section 195, Criminal Procedure Code, clearly shows that a complaint directly made by a public servant mentioned therein is quite as sufficient as his sanction. *Empress of India* v. *Radha Kishan, I. L. R., 5 All., 36,* dissented from. POONIT SINGH *v.* MADHO BHOT . . I. L. R., 13 Calc., 270

——— s. 185.

See CRIMINAL PROCEDURE CODE, 1882, s. 487 (1872, s. 473). . 7 N. W., 132

1. ——— s. 186.—*Obstructing public servant in the execution of his duty.—Escape from lawful custody.*—Escaping from lawful custody is not obstructing a public servant in the discharge of his public functions within the meaning of section 186 of the Penal Code. REG. *v.* POSHU BIN DHAMBAJI PATIL . . 2 Bom. 134: 2nd Ed., 128

2. ——— *Refusal to accompany measuring clerk employed under Bom. Act I of 1865.*—Conviction and sentence under section 186 of the Penal Code reversed, as the conduct of the accused, refusing to accompany a measuring clerk, employed under Act I of 1865 (Bombay) to his (the accused's) house, and permit it to be measured, did not constitute the offence of obstructing a public servant in discharging his public functions. REG. *v.* BHAGTIDAS BHAGVANDAS . . . . 5 Bom., Cr., 51

3. ——— *Obstruction to officer unjustifiably searching without warrant though acting in good faith.*—An officer subordinate to the officer in charge of a police station who was deputed by the latter to make an enquiry under section 135, Criminal Procedure Code, 1861, attempted without a search warrant to enter a house in search of property alleged to have been stolen,—*Held* that persons obstructing and resisting his so doing could not set up the illegality of the officer's proceeding as a justification of their obstruction unless it was shown the officer was acting otherwise than in good faith and without malice. REG. *v.* VYANKATRAV SHRINIVAS . 7 Bom., Cr., 50

4. ——— and s. 183.—*Obstructing public servant.—Bailiff breaking open doors unjustifiably.*—If a bailiff break the doors of a third person, in order to execute a decree against a judgment-debtor, he is a trespasser if it turn out that the person or goods of the debtor are not in the house; and under such circumstances the owner of the house does not, by obstructing the bailiff, render himself punishable under section 183 or section 186 of the Penal Code. REG. *v.* GAZI KOM ABA DORE [7 Bom., Cr., 83

PENAL CODE, s. 186—*continued.*

5. ——— *Refusal of cart-owner to hire his cart to Government officer.*—The refusal of a cart-owner to give his cart on hire to a Government officer does not constitute the offence of obstructing a public servant in the discharge of his public functions within the meaning of section 186 of the Penal Code. REG. *v.* DHORI KULLAN . **9 Bom., 165**

6. ——— *Mouzadar.—Public servant.*—Conviction under section 186 of the Penal Code, of obstructing a mouzadar in the discharge of his duty, reversed, there being nothing to show that the mouzadar was a public servant. JOYNATH *v.* SOORJARAM **[8 W. R., Cr., 66**

——— s. 188.

See UNLAWFUL ASSEMBLY. **[I. L. R., 7 Bom., 42**

1. ——— *Criminal Procedure Code, 1861, s. 62.*—An order in writing under section 62 of the Code of Criminal Procedure is necessary to sustain a charge under section 188 of the Penal Code of disobeying an order under the former section. IN THE MATTER OF PITAMBUR DEY . **17 W. R., Cr., 57**

2. ——— *Evidence of promulgation of lawful order.*—To support a conviction under section 188 of the Penal Code there must be evidence that the order has been promulgated by a public servant, lawfully empowered to promulgate it. QUEEN *v.* SUBUN SINGH . . . **23 W. R., Cr., 57**

3. ——— *Knowledge of promulgation of order.*—Before a conviction can be had under section 188, Penal Code, it must be proved that the accused knew that an order had been promulgated by a public servant directing such accused person to abstain from a certain act. QUEEN *v.* RAMTONOO SINGH . . . . **12 W. R., Cr., 49**

ABELAKH SINGH *v.* SIRRAM SINGH **[15 W. R., Cr., 50**

4. ——— *Injunction in civil suit.—Disobedience of order.*—Section 188 of the Penal Code applies to orders made by public functionaries for public purposes, and not to an order made in a civil suit between party and party. The proper remedy for disobedience of an order of injunction passed by a Civil Court is committal for contempt. IN THE MATTER OF THE PETITION OF CHANDRAKANTA DE **[I. L. R., 6 Calc., 445: 7 C. L. R., 350**

5. ——— *Requisites for conviction under.*—A conviction under section 188 of the Penal Code, of disobedience of an order duly promulgated by a public servant, will not stand where the evidence fails to show that the disobedience caused or tended to cause obstruction annoyance or injury, or risk of obstruction, annoyance, or injury to any person lawfully employed, or that it caused or tended to cause danger to human life, health, or safety, or caused or tended to cause a riot or affray. ANONYMOUS **[4 Mad., Ap., 6**

PENAL CODE, s. 188—*continued.*

6. ——— *Criminal Procedure Code, 1861, s. 62.—Order of Assistant Magistrate.*—Sections 62 (Criminal Procedure Code, 1861) and 188 of the Penal Code should be read together GOVERNMENT *v.* MAHOMED BUKSH . **1 Agra, Cr., 23**

7. ——— *Issue of summons and warrant.*—A Magistrate has no authority to issue simultaneously a summons and a warrant under section 188 of the Code of Criminal Procedure, 1861, unless he has reason to believe that the witness will not attend in obedience to a summons. QUEEN *v* CHUNDER SEEKUR ROY . . . **12 W. R., Cr., 18**

8. ——— *Illegality of order.—Order under consideration of Appellate Court.*—Where a Magistrate had made an improper order requiring the petitioner to pull down his house as an obstruction in fifteen days, and the Sessions Judge, on application of the petitioner, called for the proceedings under section 434 of the Criminal Procedure Code, 1861, the Magistrate wrote and questioned the Judge's authority to interfere, and without waiting for a reply proceeded to try the petitioner for disobedience to an order duly promulgated by a public servant and sentenced him to twenty-five days' imprisonment under section 188 of the Penal Code. *Held* (reversing the conviction) that the Magistrate ought at once to have complied with the precept of the Sessions Judge, under section 434, and that he was not warranted in convicting and imprisoning the petitioner for disobeying an order, the legality of which was then properly under the consideration of an Appellate Court. REG. *v.* DALSUKRAM HARIBHAI **[2 Bom., 407: 2nd Ed., 384**

9. ——— *Order of Magistrate under s. 518, Criminal Procedure Code, prohibiting payment of rents.—Illegal order.*—In a case of a dispute between rival parties as to the payment of rents by tenants, a Magistrate has no power, under section 518 of Act X of 1872, to make an order that no rents should be collected until such time as the right and title of both parties should have been established by order of a competent Court, and a conviction under section 188 of the Penal Code for disobeying such an order cannot be sustained. PROSONO COOMAR CHATTERJEE *v.* EMPRESS . . . **8 C. L. R., 231**

10. ——— *Order of Magistrate under s. 133, Criminal Procedure Code, Act X of 1882, made without jurisdiction.*—The accused was convicted under the Penal Code of disobedience to a general order of the Magistrate directing the public not to frequent the roads and public places at the village of P. between certain hours. *Held* that the conviction was bad. IN THE MATTER OF KOMUL KRISTO BONICK **[12 C. L. R., 231**

11. ——— *Plying boat for hire near public ferry.—Disobedience of order promulgated by public servant.*—If, when directed by the order of a public servant, duly promulgated to him, to abstain from plying a boat for hire at or in the immediate vicinity of a public ferry, a person disobeys such direction, he renders himself liable to punishment under the Penal Code. MUTHRA *v.* JAWAHIR **[I. L. R., 1 All., 527**

PENAL CODE, s. 188—*continued.*

12. ——— *Code of Criminal Procedure, 1861, s. 62.—Trespass by cattle.*—A Magistrate issued an order warning owners of cattle to take proper care of them, and that in case of disobedience or neglect they would be punished according to law, and did punish them for disobedience under section 188 of the Penal Code. *Held* that the conviction under section 188 of the Penal Code was illegal. IN THE MATTER OF AMIRADDI . . . 3 B. L. R., A. Cr., 45

S. C. QUEEN *v.* AMEERUDDEEN [12 W. R., Cr., 36

13. ——— *Landholder, Duty of.—Neglect to aid a public servant.—Disobedience to order by public servant.—Act X of 1872 (Criminal Procedure Code), ss. 90, 91.*—A Magistrate directed a landholder "to find a clue" in a case of theft "within fifteen days, and to assist the police." *Held* that such order was not authorised by sections 90 and 91 of Act X of 1872, and the conviction of such landholder, under sections 187 and 188 of the Penal Code, for disobedience to such order, was not maintainable. EMPRESS OF INDIA *v.* BAKHSHI RAM [I. L. R., 3 All., 201

14. ——— *Act XXXI of 1860, s. 26.—Criminal Procedure Code (Act XXV of 1861), ss. 250, 251.—Carrying firearms without license.—Disobedience of an order promulgated by a public servant.*—A Magistrate issued a notification that all persons desirous of carrying arms should take out a license enabling them to do so, under section 26 of Act XXXI of 1860; and certain persons were, in consequence of his notification, arrested and brought before him charged in a police report with carrying arms without license. No summons or warrant had been applied for, nor any complaint lodged before the Magistrate previous to the arrest of the prisoners. No charge in writing was framed as required under sections 250, 251, of the Criminal Procedure Code. No evidence was taken; but the prisoners admitted carrying the firearms. The Magistrate convicted them under section 188 of the Penal Code, of disobedience of an order duly promulgated by a public servant. There was no evidence that the disobedience would cause, or tend to cause, annoyance, obstruction, or injury to human life, health, or safety. *Held*, the convictions must be quashed. Necessity of observing the rules laid down in the Criminal Procedure Code remarked on. QUEEN *v.* NANDKUMAR BOSE [3 B. L. R., Ap., 149

15. ——— *Order under s. 530, Criminal Procedure Code, 1872.*—In the absence of evidence that an order under section 530 of the Criminal Procedure Code was in fact directed to the accused, he cannot legally be convicted under section 188 of the Penal Code for disobeying such order. IN THE MATTER OF NOBO KISHORE CHUCKERBUTTY [7 C. L. R., 291

16. ——— *Order declaring land in dispute not to be public.*—An order which declares that as between the parties to a contention, certain land in dispute does not belong to the public, is not one the contravention of which can form the subject of an order under the Penal Code, section 188. UNNODA PROSHAD DUTT *v.* SHAMA SOONDUREE [24 W. R., Cr., 20

17. ——— *Order on report of jury under Criminal Procedure Code, 1872, ss. 521, 526.—Disobedience of order.*—A jury having been applied for and duly appointed under section 521 of Act X of 1872, one of the jurors appointed by the Magistrate fell sick, and the foreman of the jury, unknown to the Court, substituted another man in his place. The Magistrate accepted the report of the majority of the jury so constituted and made an order under section 526. This order having been disobeyed, proceedings were taken under section 188 of the Penal Code against the person to whom it was directed, and he was convicted and sentenced to imprisonment. *Held* that the report upon which action was taken not being the report of a regularly-constituted jury, the order and the conviction and sentence passed on disobedience thereto were illegal. EMPRESS *v.* BHOIRUB CHUNDER DUTT . . . . . 10 C. L. R., 193

18. ——— *Disobedience to order of public servant.—Enquiry as to possession.—Parties to enquiry.*—In May 1883 the District Magistrate of Tipperah held an enquiry as to the possession of certain lands claimed by *A.* and *B.*, and having found on the evidence taken by him that *A.* was in possession, he passed an order on the 21st of May 1883, declaring that *A.* was entitled to hold possession of the disputed land until evicted in due course of law, and forbidding *B.* and all others to disturb *A.'s* possession until such disturbance should be effected in due course of law. Previously to November 1885 *B.* sold an 8-anna share of his interest in the disputed land to *C.*, who at the time of his purchase had notice of the order of the 21st of May 1883. In November 1885 *B.* and others went to the disputed lands, and attempted to turn *A.* out of possession by force, and to compel the tenants of the lands to pay rent and give kabuliats to *B.* and *C.* At the time that *B.* and his companions went to the disputed land, the latter were aware of the order of the 21st of May 1883, though none of them was a party to the enquiry then made by the District Magistrate. In December 1885 they were all tried and found guilty of disobedience to an order duly promulgated by a public servant. *Held* that the conviction was right. GOLUCK CHANDRA PAL *v.* KALI CHARAN DE [I. L. R., 13 Calc., 175

19. ——— *Disobedience to order of public servant.—Order of Magistrate under Criminal Procedure Code, 1861, s. 318.*—Where an order was made under section 318 of the Criminal Procedure Code, 1861, between *A.* on the one side and *B.* and the three tenants of *B.* on the other,—*Held* that the order was only binding on the actual parties to the case, and subsequent tenants of *B.* could not be punished for disobeying the order. IN THE MATTER OF GOPAL BURNAWAR . 3 B. L. R., A. Cr., 13

20 ——— *Omission or neglect of zemindar to obey call under s. 21, Beng. Reg. XX of 1817.*—An omission or neglect by a zemindar when called upon under section 21 of Regulation XX of

PENAL CODE, s. 188—*continued.*

1817, to nominate some one to fill the office of village watchman which had become vacant is not an offence under either section 187 or section 188 of the Penal Code. IN THE MATTER OF KALI PROSONO GHOSE [7 C. L. R., 575

21. ——— *Chairman of Municipal Committee under Act XXVI of 1850.—Public servant.*—The Chairman of the Municipal Committee appointed under Act XXVI of 1850, though a public servant, has no power to make an order for the attendance of any one before him, and therefore there can be no conviction for disobedience of it. REG. *v.* PURSHOTAM VALJI . . . 5 Bom., Cr., 33

22. ——— *Conviction for disobeying order made without jurisdiction.*—Convictions and sentences for disobeying an order promulgated by a public servant reversed, as the mamlatdar who stated that he proceeded under Bombay Act V of 1864 was not thereby empowered to make the order. REG. *v.* BHAU BIN VITHU . . . 3 Bom., Cr., 53

REG. *v.* KHANDOJI BIN TANAJI [5 Bom., Cr., 21

——— s. 189.

See s. 182 . . . 9 W. R., Cr., 31

——— *Threat of injury to public servant.—Necessity of proving actual words used.*—In a prosecution for an offence under section 189 of the Penal Code, the witnesses differed as to the exact words used by the prisoner in threatening the public servant, though they agreed as to the general effect of those words. The Magistrate, however, considered that the offence was clearly proved, and convicted the prisoner. The Sessions Judge, on appeal, affirmed the conviction, observing that it was immaterial what the words used were, and that the intention and effect of the words were plain. *Held* that the Judge was mistaken in regarding it as immaterial what the words used actually were, and that, on the contrary, it was most material that those words should be before the Court to enable it to ascertain whether in fact a threat of injury to the public servant was really made by the accused. QUEEN-EMPRESS *v.* MAHESHRI BAKHSH SINGH . I. L. R., 8 All., 380

——— s. 190.

See CRIMINAL INTIMIDATION. [I. L. R., 8 Mad., 140

——— s. 191.

See CASES UNDER FALSE EVIDENCE.

——— s. 192.

See FALSE EVIDENCE—GENERALLY. [5 Bom., Cr., 68
2 B. L. R., A. Cr., 1

See FORGERY . I. L. R., 6 Calc., 482
[7 C. L. R., 356

PENAL CODE, s. 193.

See CRIMINAL PROCEDURE CODE, 1882, s. 437 (1872, s. 473). [I. L. R., 1 All., 625

See CASES UNDER FALSE EVIDENCE.

See SENTENCE—IMPRISONMENT. [3 C. L. R., 527

See STAMP ACT, 1879, s. 51. [I. L. R., 5 All., 17

See STOLEN PROPERTY—OFFENCES RELATING TO— . I. L. R., 1 All., 379

——— s. 196.

See FALSE EVIDENCE—FABRICATING FALSE EVIDENCE . I. L. R., 7 Mad., 289

See FALSE EVIDENCE—GENERALLY. [1 Ind. Jur., O. S., 122

——— s. 199.

See FALSE EVIDENCE—GENERALLY. [4 Mad., 185
I. L. R., 10 Bom., 288
7 C. L. R., 536

1. ——— s. 201 and s. 218.—*Belief and intention of accused.*—Where a person is charged (section 218, Penal Code) with framing a report incorrectly, or (section 201, Penal Code) giving false information, with intent to save offenders from punishment, the issue to be tried is, not whether such alleged offenders were in fact guilty or not, but merely the belief and intention of the prisoner in respect to their guilt. QUEEN *v.* HURDUT SURMA [8 W. R., Cr., 68

2. ——— *Concealing evidence of crime.—False information.*—Section 201 of the Penal Code does not apply to the case of a criminal causing disappearance of evidence of his own crime, but only to the case of a person who screens the principal or actual offender. *Queen* v. *Ram Soonder Shootar, 7 W. R., Cr., 52; Reg.* v. *Kashinath Dinkar, 8 Bom., Cr., 126; Empress* v. *Kishna, I. L. R., 2 All., 713; Empress* v. *Behala Bibi, I. L. R., 6 Calc., 789;* and *Queen-Empress* v. *Lalli, I. L. R., 7 All., 749,* referred to. QUEEN-EMPRESS *v.* DUNGAR [I. L. R., 8 All., 252

3. ——— *Abetment of offence by concealment.*—Section 201 of the Penal Code refers to prisoners other than the actual criminals who, by their causing evidence to disappear, assist the principals to escape the consequences of their offences. But the person who commits an offence, and afterwards conceals the evidence of it, cannot be punished on both heads of the charge. QUEEN *v.* SHAM SOONDER SHOOTAR . . 7 W. R., Cr., 52

4. ——— *Causing evidence of crime committed by oneself to disappear.—Semble,*—A person cannot be convicted, under section 201 of the Penal Code, of causing evidence of the commission of an offence by himself to disappear, nor can he be convicted of the abetment of such an act (*per* LLOYD and KEMBALL, *JJ.*). REG. *v.* KASHINATH DINKAR [8 Bom., Cr., 126

PENAL CODE, s. 201—*continued.*

5. ——————— *Causing disappearance of evidence of offence.*—*K.* and *B*, having caused the death of *J.* in a field belonging to *B.*, removed *J's* dead body from that field to his own field with the intention of screening themselves from punishment. *K.* was convicted on these facts of an offence under section 201 of the Penal Code. *Held* that that section referred to persons other than the actual offenders, and *K.* could not therefore properly be punished under that section for what he had done to screen himself from punishment. Also that, as a matter of fact, he did not by removing *J.'s* corpse from one field to another cause any evidence of *J.'s* murder, which that corpse afforded, to disappear, and his act, although his object may have been to divert suspicion from himself and *B.*, did not constitute the offence defined in that section. EMPRESS OF INDIA *v.* KISHNA [I. L. R., 2 All., 713

6. ——————— *False information.*—*Exculpatory statements inculpating another.*—A woman who, with her infant child, eloped from her husband's house, was afterwards arrested on a charge of murdering the child, which was missing. She made three different statements: (1) that she had left it with her husband; (2) that she had been enticed away by one *R.*, who had taken the child from her; (3) that one *H.* had drowned the child. The Sessions Judge believed the last statement, and convicted her under section 201 of the Penal Code. *Held* that the conviction was wrong, and must be set aside. Section 201 of the Penal Code does not apply to a case where the person, who is the probable or possible offender, makes statements exculpating himself by inculpating another. IN THE MATTER OF THE PETITION OF BEHALA BIBI. EMPRESS *v.* BEHALA BIBI [I. L. R., 6 Calc., 789: 8 C. L. R., 207

7. ——————— *Concealing evidence of crime.*—*Secondary offence, Conviction of.*—In a trial upon a charge under section 201 of the Penal Code, the accused made a statement to the effect that he was present at the commission of a murder by two other persons; that he himself took no part in the act; that before the murder was committed, one of the persons named pulled off a razai from the bed on which the deceased was sleeping; and that, in his presence, the razai was subsequently concealed in a stack. It was proved that the razai belonged to the deceased, that it was found concealed in a stack, and that it was pointed out by the accused to the police. The accused was convicted of concealing evidence of the murder, with the intention of screening the offender from legal punishment, under section 201 of the Penal Code. *Held* that the conviction must be quashed, inasmuch as if the razai had not been concealed or destroyed, its presence or existence would have been no evidence of the murder. A person who is concerned as a principal in the commission of a crime cannot be convicted of the secondary offence of concealing evidence of the crime. QUEEN-EMPRESS *v.* LALLI . . . . I. L. R., 7 All., 749

8. ——————— *Disappearance of evidence.*—*Intention to screen offender.*—A person cannot be punished under section 201 of the Penal Code, where the act which caused the disappearance of the evidence of the commission of an offence was not done with the intention of screening the offender from legal punishment. It is not sufficient that the disappearance of evidence was likely to have the effect of screening the offender. QUEEN *v.* TOOLSHEE RAI . . . . 5 N. W., 186

9. ——————— *Giving false information of offence.*—Prisoner was charged, under section 201 of the Penal Code, "for that he, knowing or having reason to believe that an offence punishable with death had been committed, with the intention of screening the offender from legal punishment, gave information respecting the offence which he knew or believed to be false." *Held* that the proper order of proof on the part of the prosecution in the case, was to prove (1) that *A. N.* was murdered; (2) that the prisoner gave information respecting the offence; (3) that such information was false and known by him to be so; (4) that he then knew of the commission of the murder; and (5) that his intention was to screen the murderer. *Held*, also, that it was essential to the completeness of the case for the prosecution to show, not only that the information was given, but also that it was false, and known to be so by the prisoner. Further enquiry directed under section 422, Criminal Procedure Code, 1861. QUEEN *v.* SUBBRAMANYA PILLAI [3 Mad., 251

10. ——————— *Causing disappearance of evidence of crime.*—*Proof of commission of crime.*—A conviction on a charge of causing the disappearance of evidence of an offence which amounted to culpable homicide not amounting to murder may be good, though there be no proof of who committed the culpable homicide. QUEEN *v.* MUDDUN MOHUN BOSE . . . . 7 W. R., Cr., 22

11. ——————— *Causing disappearance of evidence of an offence.*—*Held* that it is necessary, in order to justify a conviction under section 201 of the Penal Code, that an offence for which some person has been convicted, or is criminally responsible, should have been committed. EMPRESS OF INDIA *v.* ABDUL KADIR . I. L. R., 3 All., 279

12. ——————— *Causing disappearance of evidence of an offence.*—*Omitting to report a sudden, unnatural, or suspicious death.*—Before an accused can be convicted of an offence under section 201 of the Penal Code it must be proved that an offence, the evidence of which he is charged with causing to disappear, has actually been committed, and also that the accused knew or had information sufficient to lead him to believe that the offence had been committed. *Empress of India* v. *Abdul Kadir, I. L. R., 3 All., 279*, followed. MATUKI MISSER *v.* QUEEN-EMPRESS . . I. L. R., 11 Calc., 619

13. ——————— *Abetment of murder.*—*Causing disappearance of evidence of offence.*—Prisoner was present at a murder without being aware that such an act was to be committed. Through fear he not only did not interfere to prevent the commission of the crime, but joined the murderers

PENAL CODE, s. 201—*continued.*

in concealing the body. *Held* that he was guilty, not of abetment of murder, but of causing the disappearance of evidence of a crime under section 201 of the Penal Code. QUEEN *v.* GOBURDHUN BERA [6 W. R., Cr., 80

14. ——— *Causing disappearance of evidence.*—The accused was attacked by a man whom he found by a hole cut in his house for the purpose of committing a burglary, and struck out at the man a blow which caused his death. *Held* that the accused simply exercised his right of private defence, and was guilty of no offence. Two other men, who helped him to remove the dead body, and were accused of causing the disappearance of evidence, knowing that an offence had been committed, under section 201, Penal Code, were also acquitted, for that section contemplates a belief that an offence has been committed; and as the first prisoner was acquitted of all offence, it may be presumed that the other prisoners did not believe that any offence had been committed. QUEEN *v.* PELKOO NUSHYO [2 W. R., Cr., 42

——— **s. 203.**

See INFORMATION OF COMMISSION OF OFFENCE . . 20 W. R., Cr., 66

——— **s. 204.**

See THEFT . I. L. R., 3 Mad., 261

——— **s. 205.**

See FALSE PERSONATION.
[1 Ind. Jur., O. S., 123
1 Mad., 450
4 Mad., 18
8 W. R., Cr., 80

1. ——— **s. 206.**—*Absence of fraudulent intent.*—To bring a case under section 206 of the Penal Code there must be a fraudulent removal, sale, or transfer of property, or of some interest therein, intending thereby to prevent that property from being taken as a forfeiture or in satisfaction of a fine. IN THE MATTER OF THE PETITION OF BALMOKOOND BROJOBASI . . 18 W. R., Cr., 65

2. ——— *Fraudulent removal of property to prevent seizure in execution.—Act X of 1859, s. 145.*—Certain persons were convicted by the Deputy Magistrate, under section 206 of the Penal Code, of having fraudulently removed property to prevent its being taken in execution of a decree under Act X of 1859. The Judge was of opinion that the offence was one provided for by section 145 of Act X of 1859, and was not therefore triable by the Magistrate. *Held* the prisoner was rightly tried and convicted under section 206. GAURCHANDRA CHUCKERBUTTY *v.* KRISHNA MOHUN SING [2 B. L. R., S. N., 4: 10 W. R., Cr., 46

——— **s. 209.**

See s. 210 . . 12 W. R., Cr., 37

PENAL CODE, s. 210.

See CIVIL PROCEDURE CODE, ss. 257, 258.
[I. L. R., 9 Mad., 101
I. L. R., 10 Bom., 288

1. ——— *"Satisfied."—Decree not certified to Court.*—In section 210 of the Penal Code the word "satisfied" is to be understood in its ordinary meaning, and not as referring to decrees, the satisfaction of which has been certified to the Court. QUEEN-EMPRESS *v.* BAPUJI DAYARAM [I. L. R., 10 Bom., 288

2. ——— **and s. 209.**—*Fraudulently applying for execution of decree.*—Where a person applies for the execution of a decree which has already been executed, his offence falls not under section 209, but section 210 of the Penal Code. Section 209 relates to false and fraudulent claims in a Court of Justice, and is confined to the Civil Court in which the original suit was brought. QUEEN *v.* BEEGUN MAHTOON . . 12 W. R., Cr., 37

——— **s. 211.**

See ABETMENT . 9 B. L. R., Ap., 16

See CASES UNDER FALSE CHARGE. .

See MALICIOUS PROSECUTION.
[I. L. R., 3 Mad., 6

See SANCTION TO PROSECUTION—POWER TO QUESTION GRANT OF SANCTION.
[I. L. R., 4 Calc., 869

See SENTENCE — IMPRISONMENT—IMPRISONMENT AND FINE . 1 Bom., 34

——— **s. 213.**

See COMPOUNDING OFFENCE.
[6 C. L. R., 392

See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—PENAL CODE.

——— **s. 214.**

See COMPOUNDING OFFENCE.
[6 N. W., 302
I. L. R., 1 Bom., 147
I. L. R., 3 All., 283
6 C. L. R., 392
I. L. R., 1 Mad., 191

——— **s. 217.**

See CHARGE—ALTERATION OR AMENDMENT OF CHARGE.
[I. L. R., 2 Bom., 142

1. ——— *Direction of law.—Disobedience of public servant.—Omission to give information of offence.*—The direction of law mentioned in section 217, Penal Code, means a positive direction of law such as those contained in sections 89 and 90 of the Criminal Procedure Code, 1872, and cannot be made to extend to the more general obligation on every subject not to stifle a criminal charge. IN THE MATTER OF RAMANIHI NAYAR
[I. L. R., 1 Mad., 268

PENAL CODE, s. 217—*continued.*

2. ——— *Public servant disobeying direction of law with intent to save person from punishment.—Evidence of such person's offence.*—It is sufficient for the purpose of a conviction under section 217 of the Penal Code, that the accused has knowingly disobeyed any direction of the law as to the way in which he is to conduct himself as a public servant, and that he has done this with the intention of saving a person from legal punishment; it is not necessary to show that in point of fact the person so intended to be saved had committed an offence or was justly liable to legal punishment. EMPRESS *v.* AMIRUDDEEN . I. L. R., 3 Calc., 412 : 1 C. L. R., 483

3. ——— *Proof of offence under.*—It is only necessary for a conviction under section 217 of the Penal Code to show that the prisoner knew that the person he released was in danger of punishment, and that the prisoner released such person with the intention of saving him. QUEEN *v.* ABDOOL JALEEL . . . . W. R., 1864, Cr., 5

——— s. 218.

See s. 201 . . 8 W. R., Cr., 68

See FALSE EVIDENCE — FABRICATING FALSE EVIDENCE . 7 Bom., Cr., 64
3 Agra, Cr., 1
19 W. R., Cr., 40
I. L. R., 5 All., 553
7 N. W., 134
8 W. R., Cr., 27
I. L. R., 6 All., 42
I. L. R., 8 All., 653

See FORGERY . I. L. R., 5 All., 553
[I. L. R., 8 All., 653

See POLICE OFFICER . 15 W. R., Cr., 17

——— s. 220.

See ARREST—CRIMINAL ARREST.
[I. L. R., 10 Bom., 506

See WRONGFUL CONFINEMENT.
[9 Bom., 346

——— s. 221.—*Village watchman.—Chowkidar.—Police officer.—Criminal Procedure Code, 1872, s. 92.—N.-W. P. Village and Road Police Act, XVI of 1873, s. 8.*—A chowkidar or village watchman is not legally bound as a public servant to apprehend a person accused of committing murder outside the village of which he is chowkidar, such person not being a proclaimed offender, and not having been found by him in the act of committing such murder; and consequently such chowkidar, if he refuses to apprehend such person on such charge at the instance of a private person, is not punishable under section 221 of the Penal Code. EMPRESS OF INDIA *v.* KALLU . . . . I. L. R., 3 All., 60

——— s. 223.

See PUBLIC SERVANT . 7 W. R., Cr., 99

PENAL CODE, s. 224.

See SENTENCE—GENERAL CASES.
[8 W. R., Cr., 85

——— ss. 224, 225.

See CASES UNDER ESCAPE FROM CUSTODY.

See SENTENCE—CUMULATIVE SENTENCES.
[3 B. L. R., A. Cr., 14, 15 note

——— s. 226.

See ESCAPE FROM CUSTODY.
[4 Mad., 152

——— s. 227.

See JURISDICTION OF CRIMINAL COURT—OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT . . 9 Bom., 356

——— s. 228.

See APPEAL IN CRIMINAL CASES—CRIMINAL PROCEDURE CODES.
[4 Mad., 146

See CASES UNDER CONTEMPT OF COURT—PENAL CODE, s. 228.

See CRIMINAL PROCEDURE CODE, 1882, ss. 480, 481, 482 (1872, ss. 435, 436).
[13 B. L. R., Ap., 40

See SENTENCE—IMPRISONMENT.
[10 W. R., Cr., 47

——— ss. 230, 231.

See COUNTERFEITING COIN.
[11 Bom., 172

——— s. 239.

See COUNTERFEITING COIN.
[3 N. W., 150
I. L. R., 8 Bom., 223

——— s. 241.

See COUNTERFEITING COIN.
[4 N. W., 62

——— s. 260.

See COUNTERFEITING GOVERNMENT STAMP.
[2 W. R., Cr., 65

——— ss. 264, 266.

See WEIGHTS AND MEASURES, FRAUDULENT USE OF— . . 1 Bom., 181
[18 W. R., Cr., 7

——— s. 268.

See GAMBLING . . 7 Bom., Cr., 74

——— s. 269.

See PUBLIC HEALTH, OFFENCE AFFECTING— . . I. L. R., 7 Mad., 276

1. ——— s. 277.—*Public spring.—Reservoir—Strewing branches in river for fishing purposes.*—The words "public spring or reservoir" used in section 277 of the Penal Code do not include a public river.

PENAL CODE, s. 277—*continued.*

The strewing of branches in a river for fishing purposes held, therefore, to be no offence under that section. EMPRESS *v.* HALODHUR POROE [I. L. R., 2 Calc., 383

2. ——— *Continuous stream in river bed.*—The term "public spring" in section 277 of the Penal Code does not include a continuous stream of water running along the bed of a river. QUEEN *v.* VITTI CHOKKAN . . I. L. R., 4 Mad., 229

——— s. 279.—*Rash driving or riding on public way.*—The actual driver, and not the owner of a carriage, is liable, under section 279 of the Penal Code, in case of a collision and injury to another arising out of rash driving. LARRYMORE *v.* PERNENDOO DEO RAI . . . . 14 W. R., Cr., 32

——— s. 282.

See CHARGE—FORM OF CHARGE—SPECIAL CASES—PUBLIC SAFETY, OFFENCE AFFECTING . . . 1 Bom., 137

1. ——— s. 283.—*Obstructing public way.—Failure to prove injury.*—The accused were charged generally with obstruction in a public way, no danger, obstruction, or injury being alleged to have been caused to any person, and were summarily convicted. *Held* that the conviction could not be sustained under section 283 of the Penal Code. IN THE MATTER OF EMPRESS *v.* RAM SINGH . 11 C. L. R., 642

2. ——— *Obstructing public road.—Spreading fishing-nets by roadside.*—To spread fishing nets by the side of a thoroughfare in a town is not, without proof of obstruction caused to any particular person or class of persons, an offence under section 283 of the Penal Code. QUEEN *v.* KHADER MOIDIN [I. L. R., 4 Mad., 235

——— s. 285.—*Injury.—Injury to property.*—The word "injury" (rashly caused by fire, &c.) in section 285 of the Penal Code includes any harm illegally caused to the property of any person, and is not confined to injury to the person only. REG. *v.* NATHA LALLA . . 5 Bom., Cr., 67

——— s. 286.

See NEGLIGENCE. [I. L. R., 8 Mad., 421

——— s. 289.

See NEGLIGENCE . 3 Mad., Ap., 33
[19 W. R., Cr., 1

See NUISANCE—UNDER CRIMINAL PROCEDURE CODES . 9 B. L. R., Ap., 36

——— s. 290.

See CASES UNDER NUISANCE—PUBLIC NUISANCE UNDER PENAL CODE.

See SENTENCE — IMPRISONMENT — IMPRISONMENT IN DEFAULT OF FINE.
[5 Bom., Cr., 45
I. L. R., 5 Mad., 157

PENAL CODE, s. 291.

See NUISANCE—PUBLIC NUISANCE UNDER PENAL CODE . I. L. R., 8 All., 99
20 W. R., Cr., 55

——— ss. 292, 294.

See TRANSFER OF CRIMINAL CASE—GENERAL CASES.
[I. L. R., 1 Calc., 356

——— s. 293.

See OBSCENE PUBLICATION.
[I. L. R., 3 All., 837

——— s. 294A.

See LOTTERY . I. L. R., 10 Bom., 97

——— s. 296.

See RELIGION, OFFENCE RELATING TO—
[I. L. R., 7 All., 461

——— s. 297.

See TRESPASS—GENERAL CASES.
[I. L. R., 3 Mad., 178

——— s. 299.

See CULPABLE HOMICIDE.
[11 W. R., Cr., 3
I. L. R., 2 All., 522
I. L. R., 3 All., 776

——— ss. 299, 300.

See ATTEMPT TO COMMIT OFFENCE.
[4 Bom., Cr., 17

See CULPABLE HOMICIDE.
[I. L. R., 1 Bom., 342

——— s. 300.

See CHARGE TO JURY—SUMMING UP IN SPECIAL CASES . 9 W. R., Cr., 72

See CULPABLE HOMICIDE.
[1 B. L. R., A. Cr., 11
I. L. R., 5 Calc., 31
I. L. R., 2 Mad., 122
19 W. R., Cr., 35
7 W. R., Cr., 27
5 N. W., 130
1 W. R., Cr., 33
I. L. R., 6 Calc., 154
I. L. R., 3 All., 776
1 Agra, Cr., 3

See MURDER . . 6 W. R., Cr., 57
[1 Ind. Jur., O. S., 108
10 W. R., Cr., 59
8 W. R., Cr., 71
3 B. L. R., A. Cr., 25

——— s. 302.

See MURDER . I. L. R., 2 All., 33
[I. L. R., 3 All., 383
I. L. R., 8 All., 622, 635

PENAL CODE, s. 304.

See CHARGE TO JURY—SUMMING UP IN SPECIAL CASES.
[6 B. L. R., Ap., 86, 87, note

See CULPABLE HOMICIDE.
[I. L. R., 2 All., 522, 766
5 N. W., 235
24 W. R., Cr., 48
7 W. R., Cr., 54

See JOINDER OF CHARGES.
[I. L. R., 2 All., 349

See MURDER . I. L. R., 8 All., 622, 635
[I. L. R., 5 Calc., 351

——— ss. 304, 304A.

See MURDER . I. L. R., 5 Calc., 351

——— s. 304A.

See CULPABLE HOMICIDE.
[I. L. R., 4 Calc., 764, 815
I. L. R., 1 Mad., 224
I. L. R., 6 All, 248
I. L. R., 3 All., 597, 776
5 W. N., 38, 235

——— s. 306.

See ABETMENT . 3 N. W., 316
[1 Agra, Cr., 21

——— s. 307.

See ATTEMPT TO COMMIT OFFENCE.
[4 Bom., Cr., 17

——— *See* SENTENCE—TRANSPORTATION.
[7 W. R., Cr., 41

——— s. 309.

See SENTENCE — IMPRISONMENT — IMPRISONMENT AND FINE . . 1 Bom., 4

See SUICIDE . . I. L. R., 8 Mad., 5

——— s. 312.

See MISCARRIAGE . 15 W. R., Cr., 4
[19 W. R., Cr., 32
I. L. R., 9 Mad., 369

——— s. 314.

See MURDER . . 10 W. R., Cr., 59

——— s. 317.

See ABANDONMENT OF CHILDREN.
[16 W. R., Cr., 12

See MURDER . . 10 W. R., Cr., 52

——— s. 318.

See CONCEALMENT OF BIRTH.
[4 Mad., Ap., 63

——— ss. 319-322.

See HURT—CAUSING HURT.
[8 W. R., Cr., 29

PENAL CODE, s. 323.

See COMPOUNDING OFFENCE.
[10 Bom., 68

See CULPABLE HOMICIDE.
[I. L. R., 2 All., 522, 766
I. L. R., 3 All., 597

See HURT—CAUSING HURT.
[18 W. R., Cr., 29

——— s. 324.

See CHARGE—FORM OF CHARGE—SPECIAL CASES—HURT . . 4 Mad., Ap., 5

See HURT—CAUSING HURT . 1 Bom., 17
[7 Mad., Ap., 11

See HURT—GRIEVOUS HURT.
[2 W. R., Cr., 52

See SENTENCE—CUMULATIVE SENTENCES.
[I. L. R., 6 Calc., 718
7 W. R., Cr., 60
I. L. R., 11 Calc., 353
I. L. R., 12 Calc., 495

——— s. 325.

See HURT—GRIEVOUS HURT.
[23 W. R., Cr., 65

See SENTENCE—CUMULATIVE SENTENCES.
[I. L. R., 6 All., 121
I. L. R., 7 All., 29, 414, 757

——— s. 328.

See HURT—CAUSING HURT.
[1 W. R., Cr., 7
4 W. R., Cr., 4

——— and s. 81.—*Causing unwholesome thing to be taken with intent to injure.—Held* that a person who placed in his toddy-pots juice of the milk-bush, knowing that if taken by a human being it would cause injury, and with the intention of thereby detecting an unknown thief who was in the habit of stealing the toddy from such pots, and which toddy was drunk by, and caused injury to, certain soldiers who purchased it from an unknown vendor, was rightly convicted under section 328 of the Penal Code, of "causing to be taken an unwholesome thing with intent to injure;" and that section 81, which says that "if an act be done without any criminal intention to cause harm, it is not an offence," did not apply to the case. REG. *v.* DHANIA DAJI
[5 Bom., Cr., 59

——— s. 330.

See HURT—CAUSING HURT.
[13 W. R., Cr., 23
20 W. R., Cr., 41

——— s. 334.

See HURT—CAUSING HURT. 1 Bom., 17

——— s. 335.

See HURT—GRIEVOUS HURT.
[4 W. R., Cr., 21, 23

PENAL CODE, s. 336.

See CHARGE—FORM OF CHARGE—SPECIAL CASES—PUBLIC SAFETY, OFFENCE AFFECTING— . . . 1 Bom., 137

See CULPABLE HOMICIDE.
[I. L. R., 4 Calc., 764

——— s. 337.

See CULPABLE HOMICIDE.
[I. L. R., 4 Calc., 764

——— s. 338.

See CULPABLE HOMICIDE.
[I. L. R., 4 Calc., 764

See HURT—GRIEVOUS HURT.
[6 Mad., Ap., 32

——— s. 339.

See WRONGFUL RESTRAINT.
[10 W. R., Cr., 20, 35
24 W. R., Cr., 51

——— ss. 340, 342.

See WRONGFUL RESTRAINT.
[24 W. R., Cr., 51

——— s. 344.

See SENTENCE—FINE . 1 Bom., 39

——— s. 346.

See WRONGFUL CONFINEMENT.
[I. L. R., 9 Calc., 221

——— s. 352.

See ASSAULT ON PUBLIC SERVANT.
[I. L. R., 9 Bom., 558

See COMPLAINT—WITHDRAWAL OF COMPLAINT AND OBLIGATION OF MAGISTRATE TO HEAR IT . I. L. R., 5 Mad., 378

See HURT—CAUSING HURT.
[7 B. L. R., Ap., 25

See SENTENCE — IMPRISONMENT — IMPRISONMENT IN DEFAULT OF FINE.
[16 W. R., Cr., 42

——— s. 353.

See ASSAULT ON PUBLIC SERVANT.
[13 W. R., Cr., 49
I. L. R., 9 Bom., 558

See SENTENCE—CUMULATIVE SENTENCES.
[3 B. L. R., A. Cr., 14, 15, note

See SUMMARY TRIAL. 23 W. R., Cr., 3

See UNLAWFUL ASSEMBLY.
[7 N. W., 209

——— s. 354.

See RAPE . I. L. R., 5 Bom., 403

PENAL CODE, s. 361.

See KIDNAPPING . I. L. R., 8 Calc., 971
[10 W. R., Cr., 33, 42
I. L. R., 3 Bom., 178
2 W. R., Cr., 5, 61
3 W. R., Cr., 9, 15
7 W. R., Cr., 36

——— s. 363.

See KIDNAPPING . I. L. R., 1 Mad., 173
[I. L. R., 8 Calc., 969
2 N. W., 286
10 W. R., Cr., 33, 42
4 W. R., Cr., 7
7 W. R., Cr., 56

——— s. 366.

See KIDNAPPING.
[I. L. R., 8 Calc., 971
7 W. R., Cr., 56

——— s. 368.

See KIDNAPPING . 5 N. W., 133, 189
[3 N. W., 146
6 W. R., Cr., 17
7 W. R., Cr., 56

——— s. 369.

See SENTENCE—CUMULATIVE SENTENCES.
[7 Mad., 375

——— s. 370.

See CASES UNDER SLAVERY (CRIMINAL).

1. ——— s. 372.—*Selling or hiring minor for purpose of prostitution.*—To constitute an offence under section 372 of the Penal Code it is not necessary that there should have been a disposal tantamount to a transfer of possession or control over the minor's person. REG. *v.* ARUNACHELLAM
[I. L. R., 1 Mad., 164

2. ——— *Dedication of minor girl to service of temple.—Disposal for purposes of prostitution.—Held* that the dedication of a minor girl under the age of sixteen years to the service of a Hindu temple, by the performance of a religious ceremony, where it was shown that it was almost invariably the case that girls so dedicated led a life of prostitution, was a disposing of such minor knowing it to be likely that she would be used for the purpose of prostitution within the meaning of section 372 of the Penal Code. REG. *v.* JAILI BHAVIN
[6 Bom., Cr., 60

3. ——— *Disposing of and receiving girls for purpose of prostitution.*—The prisoners were convicted, the one of disposing of, and the other of receiving, two children, females under the age of sixteen years, with intent that such females should be used for the purpose of prostitution. The evidence showed that the children were disposed of and registered as dancing girls of a pagoda for the purpose of being brought up as dancing girls. *Held* that offences under sections 372 and 373 of the Penal Code had been committed, and that the prisoners were properly convicted. EX PARTE PADMAVATI
[5 Mad., 415

PENAL CODE, s. 372—*continued.*

4. ——————— and s. 373.—*Obtaining possession of minor for purpose of prostitution.*—The prisoner was tried upon a charge of having obtained possession of Dowlath Bee, a minor aged ten years, with intent that she should be used for an unlawful and immoral purpose,—that is to say, for the purpose of illicit intercourse,—and having thereby committed an offence under section 373 of the Penal Code. The evidence showed that the prisoner met Dowlath Bee, a girl eleven years old, in a street at Triplicane, and promised to give her a pice if she would accompany him into an uninhabited house close by and allow him to have sexual intercourse with her. The girl went willingly with the prisoner, and both were detected in the act of having sexual intercourse. The girl had gone out without permission, had not attained the age of puberty, and the evidence tended to show that the girl had not before had sexual connexion. The jury convicted the prisoner. *Held* by the High Court that the case proved against the prisoner did not make out the offence charged. QUEEN ON THE PROSECUTION OF DOWLATH BEE *v.* ALI . . . . . 5 Mad., 473

5. ——————— *Obtaining possession and disposing of minor for purposes of prostitution.*—*S.*, a married Mahomedan girl under sixteen, while living with *N.*, her grandmother, and in the absence of her husband, formed an adulterous intrigue with two Hindus with the knowledge of *N. S.* and *N.* were then induced by the Hindus to remove to another village, that *S.* might take up the trade of a prostitute; they there met *J.*, a public woman with whom they went to reside, and who introduced visitors to *S.*, and received the money paid by them in exchange for the board and food supplied to *S.* and *N.* *N.* was convicted, under section 372, Penal Code, of disposing of a minor for the purpose of prostitution, and *J.* was convicted, under section 373, Penal Code, of obtaining possession of a minor for the purpose of prostitution. *Held per* JACKSON, *J.*, that on the facts proved no offence was committed under the Penal Code. *Per* GLOVER, *J.*—*N.* and *J.* were both guilty under sections 372 and 373 respectively and their appeals should be dismissed. QUEEN *v.* NOURJAN
[6 B. L. R., Ap., 34: 14 W. R., Cr., 39

6. ——————— *Buying or selling minor for the purpose of prostitution, &c.*—Certain persons, falsely representing that a minor girl of a low caste was a member of a higher caste, induced a member of such higher caste to take her in marriage and to pay money for her in the full belief that such representation was true. *Held per* STUART, *C. J.*, that such persons could not be convicted on these facts of offences under sections 372 and 373 of the Penal Code. *Per* OLDFIELD, *J.*, and STRAIGHT, *J.*, that if such girl was disposed of for the purpose of marriage, it could not be said, because the marriage might be invalid under Hindu law, that such persons acted with the intention that she should be employed or used for the purposes of prostitution or for any unlawful and immoral purpose, or that they knew it to be likely that she would be employed or used for such purpose, and consequently they could not be convicted of an offence under those sections. *Per* PEARSON, *J.*, and SPANKIE, *J.*, that, such girl having been disposed of for the purpose of marriage, although the marriage might be objectionable under Hindu law, it did not appear that it was wholly invalid, and therefore such intent or knowledge could not certainly be presumed, and such persons could not be convicted of offences under those sections. EMPRESS OF INDIA *v.* SRI LAL
[I. L. R., 2 All., 694

PENAL CODE, s. 372—*continued.*

——————— s. 373.

See CHEATING BY PERSONATION.
[7 W. R., Cr., 55

——————— *Obtaining minor for purpose of prostitution.—Soliciting a girl to sexual intercourse.*—Section 373 of the Penal Code is not applicable to a case where a man solicits a girl to have sexual intercourse with him, and having no other intention or purpose in view. QUEEN *v.* BHUTIA
[7 N. W., 295

——————— s. 375.

See RAPE . I. L. R., 5 Bom., 403

——————— s. 376.

See SENTENCE—TRANSPORTATION.
[1 B. L. R., A. Cr., 5

——————— s. 377.

See UNNATURAL OFFENCE.
[I. L. R., 6 All., 204

——————— s. 378.

See PARTNERSHIP PROPERTY.
[13 B. L. R., F. B., 307, 308, note; 310, note

See CASES UNDER THEFT.

——————— s. 380.

See REVISION—CRIMINAL CASES—SENTENCES . B. L. R., Sup. Vol., 488

See SENTENCE—FINE . 16 W. R., Cr., 17

See THEFT . . 8 W. R., Cr., 32

——————— s. 381.

See THEFT . . 8 W. R., Cr., 32
[2 W. R., Cr., 55

——————— s. 383.

See EXTORTION . 7 W. R., Cr., 28
[3 Bom., Cr., 45

——————— s. 384.

See EXTORTION.
[2 Bom., 417: 2nd Ed., 394
18 W. R., Cr., 7

——————— s. 387.

See EXTORTION.
[1 Ind. Jur., N. S., 523

PENAL CODE, s. 394.

See SENTENCE—TRANSPORTATION.
[7 W. R., Cr., 41

——— s 395.

See DACOITY . . 7 W. R., Cr., 35

——— s. 397.—*Using deadly weapon in dacoity or robbery.*—A conviction, under section 397 of the Penal Code, of using a deadly weapon whilst engaged in the commission of robbery or dacoity, is equally good whether the number of thieves be five or under. QUEEN *v.* DWARKA AHEER
[2 W. R., Cr., 49

——— s. 400.

See DACOITY . . 23 W. R., Cr., 18

——— s. 402.

See DACOITY . . 7 W. R., Cr., 97

——— s. 403.

See CRIMINAL MISAPPROPRIATION.
[3 W. R., Cr., 32
10 W. R., Cr., 23
14 W. R., Cr., 13
17 W. R., Cr., 11
10 C. L. R., 187

——— s. 404.

See COMPOUNDING OFFENCE.
[7 Mad., Ap., 34

See CRIMINAL MISAPPROPRIATION.
[6 Bom., Cr., 33
11 W. R., Cr., 1
12 W. R., Cr., 39

——— s. 405.

See CASES UNDER CRIMINAL BREACH OF TRUST.

See PARTNERSHIP PROPERTY.
[13 B. L. R., 307, 308, note; 310, note

——— ss. 405-408.

See COMPOUNDING OFFENCE.
[6 C. L. R., 392
I. L. R., 1 Mad., 191

See CRIMINAL BREACH OF TRUST.
[1 B. L. R., S. N., 21
8 B. L. R., Ap., 1: 16 W. R., Cr., 52

——— s. 409.

See CRIMINAL BREACH OF TRUST.
[3 W. R., Cr., 44
4 Mad., Ap., 32
8 W. R., Cr., 1
2 C. L. R., 515
I. L. R., 8 All., 120
2 N. W., 298
I. L. R., 10 Bom., 256

See CRIMINAL MISAPPROPRIATION.
[13 W. R., Cr., 77

See STOLEN PROPERTY — OFFENCES RELATING TO— . . 2 N. W., 312

PENAL CODE, s. 411.

See CHARGE—FORM OF CHARGE—SPECIAL CASES—STOLEN PROPERTY.
[1 Bom., 95

See SENTENCE—CUMULATIVE SENTENCES.
[4 Mad., Ap., 14

See STOLEN PROPERTY—OFFENCES RELATING TO— . . 4 Mad., Ap., 42
[1 Agra, Cr., 9
2 N. W., 312
5 N. W., 120
18 W. R., Cr., 63
19 W. R., Cr., 37, 38, note
I. L. R., 6 Mad., 373
I. L. R., 6 All., 224
I. L. R., 11 Calc., 160
I. L. R., 8 All., 51

——— s. 412.

See STOLEN PROPERTY—OFFENCES RELATING TO— . . 7 W. R., Cr., 109
[9 W. R., Cr., 16

——— s. 414.

See SENTENCE—CUMULATIVE SENTENCES.
[4 Mad., Ap., 14

See STOLEN PROPERTY—OFFENCES RELATING TO— . I. L. R., 1 All., 379
[I. L. R., 6 Bom., 402
5 N. W., 120

——— s. 415.

See CHEATING . W. R., 1864, Cr., 25
[22 W. R., Cr., 82
I. L. R., 6 All., 97
6 Bom., Cr., 6
3 N. W., 16

See CHEATING BY PERSONATION.
[7 W. R., Cr., 55

——— s. 416.

See CHEATING BY PERSONATION.
[7 W. R., Cr., 51, 55
16 W. R., Cr., 42

See FALSE EVIDENCE—GENERALLY.
[1 Bom., 89

——— s. 417.

See CHEATING . . 9 Bom., 448
[1 Bom., 140

See CRIMINAL BREACH OF TRUST.
[4 Bom., Cr., 16

See CRIMINAL MISAPPROPRIATION.
[3 W. R., Cr., 32

——— s. 419.

See CHEATING BY PERSONATION.
[7 W. R., Cr., 55

See FALSE EVIDENCE—GENERALLY.
[1 Bom., 89

See FALSE PERSONATION.
[2 B. L. R., A. Cr., 25

PENAL CODE—*continued.*

——— s. 422.—*Compromise of debt.*—Where *A.* entered into an agreement with *B.* not to compromise a case with *C.* because he had assigned the benefit of the suit to *B.* as a security for the due payment of some monthly instalment of money, and *A.* notwithstanding did afterwards compromise the suit with *C.*, it was held that *A.* could not be convicted under section 422 of the Penal Code, unless the compromise with *C.* was made dishonestly or fraudulently towards *B.* IN THE MATTER OF THE PETITION OF NOBIN CHUNDER MUDDUCK
[22 W. R., Cr., 46

——— s. 424.

See PARTNERSHIP PROPERTY.
[13 B. L. R., 307, 308, note; 310, note

——— *Illegal attachment.—Fraudulent concealment of property.*—The legality or formality of the mode of attachment allowed by a Civil Court is not a matter for a Deputy Magistrate's consideration. Where a Deputy Magistrate, considering that the attachment of a carriage in execution of a decree of a Civil Court was illegal, because it was placed in the custody of the judgment-debtor's husband, and that the husband had acted fraudulently in removing and concealing the wheels and axles of the carriage on its subsequent distraint for arrears of municipal tax, convicted him of an offence under section 424 of the Penal Code, the conviction was set aside. QUEEN *v.* BROJO KISHORE DUTT
[8 W. R., Cr., 17

——— s. 425.

See CASES UNDER MISCHIEF.

——— s. 426.

See MISCHIEF . I. L. R., 5 Mad., 401
[25 W. R., Cr., 65
21 W. R., Cr., 38

——— s. 427.

See MISCHIEF . . 5 Mad., Ap., 30
[8 Bom., Cr., 63

——— s. 430.

See MISCHIEF . I. L. R., 1 Mad., 262
[I. L. R., 10 Bom., 183

——— s. 441.

See CASES UNDER CRIMINAL TRESPASS.

——— s. 442.

See PRISONS ACT, s. 45.
[I. L. R., 2 All., 301

See THEFT . . 16 W. R., Cr., 63

See TRESPASS—HOUSE TRESPASS.
[6 N. W., 307
I. L. R., 2 All., 301

——— s. 443.

See CRIMINAL TRESPASS.
[5 Mad., Ap., 38

PENAL CODE, s. 447.

See CRIMINAL TRESPASS.
[5 Mad., Ap., 17

——— s. 451.

See CHARGE—FORM OF CHARGE—SPECIAL CASES—HOUSE TRESPASS
[16 W. R., Cr., 63

——— s. 452.

See TRESPASS—HOUSE TRESPASS.
[12 W. R., Cr., 33

——— s. 456.

See REVISION—CRIMINAL CASES—SENTENCES . B. L. R., Sup. Vol., 488

See TRESPASS—HOUSE TRESPASS.
[I. L. R., 2 Mad., 30

——— s. 457.

See BENCH OF MAGISTRATES.
[23 W. R., Cr., 6

See CRIMINAL PROCEDURE CODE, 1882, ss. 436, 438 (1872, s. 296).
[I. L. R., 1 All., 413
2 B. L. R., S. N., 2
S. C. 10 W. R., Cr., 35

See REVISION—CRIMINAL CASES—SENTENCES . B. L. R., Sup. Vol., 498

See SENTENCE—SENTENCE AFTER PREVIOUS CONVICTION . I. L. R., 3 All., 773

See TRESPASS—HOUSE TRESPASS.
[6 N. W., 301, 307

——— s. 458.

See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—PENAL CODE.
[1 W. R., Cr., 34
9 W. R., Cr., 5

——— ss. 459, 460.

See HURT—GRIEVOUS HURT.
[I. L. R., 8 All., 649

——— s. 463.

See FORGERY . I. L. R., 5 All., 553
[W. R., F. B., 71: Marsh., 270
10 C. L. R., 184
10 W. R., Cr., 23
I. L. R., 4 Bom., 657
6 N. W., 56

——— s. 464.

See FORGERY . . 9 W. R., Cr., 20
[I. L. R., 6 Calc., 482
I. L. R., 4 Bom., 657
I. L. R., 10 Calc., 584
10 W. R., Cr., 23
20 W. R., Cr., 49
21 W. R., Cr., 41
I. L. R., 5 All., 217
I. L. R., 13 Calc., 349

PENAL CODE, s. 465.

See FORGERY . . 7 C. L. R., 356
[I. L. R., 5 All., 221
18 W. R., Cr., 46
I. L. R., 8 All., 653
I. L. R., 7 Calc., 352

——— s. 466.

See FORGERY . . . 6 N. W., 56
[7 C. L. R., 356
5 W. R. Cr., 96

——— s. 467.

See FORGERY . W. R., 1864, Cr., 22
[5 Bom., Cr., 56
I. L. R., 10 Calc., 584

See LETTERS PATENT, HIGH COURT, CL. 26.
[3 Bom., Cr., 20

——— s. 468.

See FORGERY . . 18 W. R., Cr., 46

——— s. 471.

See FORGERY . . 8 W. R., Cr., 81
[5 W. R., Cr., 56
11 W. R., Cr., 44
17 W. R., Cr., 32
I. L. R., 5 All., 217, 553
8 C. L. R., 542
I. L. R., 9 Calc., 53
I. L. R., 7 All., 403, 459

——— *Using as genuine a forged document.*—The offence imputed against an accused who, in a civil suit, is alleged to have used as genuine a document which he knew to be a forged document, is one cognisable under section 471 of the Penal Code. Such accused should, therefore, be charged under that section, and not under section 196 of the Code. EMPRESS *v.* KHERODE CHUNDER MOZUMDAR
[I. L. R., 5 Calc., 717: 6 C. L. R., 118

——— s. 473.

See FORGERY . 2 W. R., Cr., 5
[13 W. R., Cr., 16

——— s. 474.—*Possession of forged document.—Intention.*—It is not sufficient for a conviction under section 474 of the Penal Code to say that the prisoner might possibly have used an altered document. The guilty intent must be proved, not inferred. QUEEN *v.* LOKENATH SHAHA
[W. R., 1864, Cr., 12

——— s. 475 and s. 467.—*Counterfeiting device or mark.*—In order to a conviction under section 475 of the Penal Code, the document which the accused has in his possession must have some counterfeit device or mark upon it, and it must be proved that the accused has the document in his possession with the intent of using such device or mark for the purpose of giving the appearance of authenticity to the document. The document must be of the nature mentioned in section 467 of the Penal Code. QUEEN *v.* RUGHOONUNDUN PUTTRONUVEES
[15 W. R., Cr., 19

PENAL CODE, s. 477.

See OFFENCE RELATING TO DOCUMENTS.
[3 W. R., Cr., 38
7 Mad., Ap., 26

——— s. 490.

See CRIMINAL BREACH OF CONTRACT.
[6 W. R., Cr., 80
9 W. R., Cr., 12

——— s. 494.

See ABETMENT . I. L. R., 4 Calc., 10

See BIGAMY . I. L. R., 1 Bom., 347
[I. L. R., 1 All., 316
I. L. R., 4 Bom., 330
I. L. R., 6 Bom., 126
6 W. R., Cr., 60
7 C. L. R., 354

——— s. 496.—*False marriage.*—Proof of dishonest or fraudulent intent is necessary for a conviction, under section 496 of the Penal Code, of falsely going through the ceremony of marriage. QUEEN *v.* KUDUM . . W. R., 1864, Cr., 13

——— s. 497.

See CASES UNDER ADULTERY.

1. ——— s. 498.—*Enticing or taking away wife temporarily living alone.*—Enticing or taking away, with a criminal intent, a wife living in her husband's house, or in a house hired by him for her occupation and at his expense, during his temporary absence, is punishable under section 498 of the Penal Code, provided the seducer knew, or had reason to know, that she was the wife of the man from whose house he took her. MUTTY KHAN *v.* MUNGLOO
[5 W. R., Cr., 50

2. ——— *Enticing away married woman.—Presumption of marriage.—Onus probandi.*—In a charge under section 498 of the Penal Code, the proof that the woman and a man other than the accused were living together is sufficient to throw the burthen of proof on the accused that they were not man and wife. QUEEN *v.* WAZIRA
[8 B. L. R., Ap., 63: 17 W. R., Cr., 5

3. ——— *Enticing away wife.—Proof of marriage.*—*S.* and *G.* having been convicted of enticing away the wife of the complainant, the conviction was quashed on appeal, on the ground that strict proof of marriage being necessary for a conviction under section 498 of the Penal Code, the evidence adduced (*viz.*, of the complainant, the woman and her mother, who swore to the fact of the marriage) was not sufficient to enable the Court to form an opinion whether the marriage took place as a fact, and if it did take place, whether it was according to law. The accused did not cross-examine the witnesses as to the fact or validity of the marriage or otherwise impugn it. *Held* that the marriage was sufficiently proved. *Empress v. Pitambur Singh, I. L. R., 5 Calc., 566,* discussed. QUEEN-EMPRESS *v.* SUBBARAYAN . . . I. L. R., 9 Mad., 9

4. ——— *Alyasantana law.—Marriage.—Custom.*—In the absence of very clear evi-

PENAL CODE, s. 498—*continued.*

dence of custom, which, if well founded, must be a matter of general notoriety, the cohabitation of a man and a woman under the Alyasantana system cannot be considered marriage so as to render punishable, under section 498 of the Penal Code, a person who entices away the woman with the intents specified in that section. KORAGA *v.* QUEEN [I. L. R., 6 Mad., 374

5. ——————— *Detaining enticed woman.*—A conviction cannot be had under the latter part of section 498 of the Penal Code for detaining an enticed woman, until the enticing has been proved. EMPRESS *v.* TIKA SINGH . I. L. R., 3 All., 251

6. ——————— *Enticing and taking away.*—Upon an indictment under section 498 of the Penal Code, charging that the prisoner took away one *A.*, who was then, and whom he then knew to be, the wife of one *M.*, with the intent that he might have illicit intercourse with the said *A.*,—*Held* that there was a taking within the meaning of the section, although the advances and solicitation had proceeded from the woman, and the prisoner had for some time refused to yield to her request. QUEEN *v.* KUMARASAMI . . . . . 2 Mad., 331

7. ——————— *Concealing or detaining.*—In a charge under section 498 of the Penal Code, the words of the section, "conceals or detains," must be taken to extend to the enticing or inducing a wife to withhold or conceal herself from her husband, and assisting her to do so, as well as to physical restraint or prevention of her will or action. Depriving the husband of proper control over his wife for the purpose of illicit intercourse is the gist of the offence, and a detention occasioning such deprivation may be brought about simply by the influence of allurements and blandishments. QUEEN *v.* SUNDARA DASS TEVAN . . . . . 4 Mad., 20

8. ——————— *Enticing away married woman.—Finding in words of section.*—A finding exactly in the words of section 498 of the Penal Code, that the prisoner took or enticed away a married woman from her husband, or some person having the care of her on his behalf, with intent that she should have illicit intercourse with some person, or concealed or detained such woman with a like intent, though not actually illegal when it is doubtful which of the several offences has been committed, is a finding which ought not to be resorted to if it can be avoided and it can be determined under which part of the section the prisoner is guilty. QUEEN *v.* MOTHOORA NATH ROY . 22 W. R., Cr., 72

——— s. 499.

See CASES UNDER DEFAMATION.

——— s. 500.

See DEFAMATION . I. L. R., 6 Mad., 381
[2 N. W., 473
I. L. R., 9 Mad., 387

PENAL CODE, s. 503.

See CRIMINAL INTIMIDATION.
[8 Bom., Cr., 101
I. L. R., 8 Mad., 140

See DEFAMATION . I. L. R., 6 Mad., 381

——— s. 508.

See CRIMINAL INTIMIDATION.
[I. L. R., 8 Mad., 140

See DEFAMATION.
[I. L. R., 6 Mad., 381

——— s. 509.

See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—PENAL CODE.
[7 W. R., Cr., 52

——— s. 511.

See CASES UNDER ATTEMPT TO COMMIT OFFENCE.

See FORGERY . I. L. R., 7 Calc., 352

See MISCARRIAGE . 19 W. R., Cr., 32

See RAPE . I. L. R., 5 Bom., 403

See SENTENCE—TRANSPORTATION.
[1 B. L. R., A. Cr., 5

PENAL CODE AMENDMENT ACT (VIII OF 1882), s. 4.

See SENTENCE—CUMULATIVE SENTENCES.
[I. L. R., 11 Calc., 349
I. L. R., 12 Calc., 495
I. L. R., 6 All., 121
I. L. R., 7 All., 29

PENAL CODE, EXCEPTIONS IN—

See CHARGE—FORM OF CHARGE—GENERAL CASES . . I. L. R., 4 Calc., 124

See EVIDENCE ACT, s. 105.
[I. L. R., 4 Calc., 124

PENALTY.

See DAMAGES—MEASURE AND ASSESSMENT OF DAMAGES . . 11 W. R., 558
5 W. R., S. C. C. Ref., 10
17 W. R., 94
6 W. R., Civ. Ref., 5
7 W. R., 303
I. L. R., 5 All., 238

See CASES UNDER INTEREST—STIPULATIONS AMOUNTING TO PENALTIES OR OTHERWISE.

See PROMISSORY NOTE—CONSIDERATION.
[I. L. R., 2 Calc., 202

See STAMP ACT, 1869, s. 20.
[I. L. R., 4 Calc., 259

See STAMP ACT, 1869, s. 34.
[I. L. R., 3 Mad., 251
I. L. R., 4 All., 462
I. L. R., 8 Calc., 645
9 C. L. R., 272

PENALTY—*continued.*

——— Tender of—

See APPELLATE COURT—REJECTION OR ADMISSION OF EVIDENCE ADMITTED OR REJECTED BY COURT BELOW.

[I. L. R., 4 Calc., 213
7 W. R., 439

PENSIONS ACT, VI OF 1849.

1. ——— **Arrears of pension, Succession to.**—*Heirs.—Succeeding grantee.*—Arrears or pension due to the deceased at the time of her death form part of her estate, and the person who is legal heir to the deceased is entitled to recover them. The grantee of the pension formerly enjoyed by the deceased has no right to such arrears which formed part of the deceased's estate. NOUSHABAH SOOLTAN BEGUM *v.* NUBEERAH SOOLTAN BEGUM

[3 Agra, 44

2. ——— **Agreement to pay portion of pension.**—A pension having been granted by Government to *B. P.* in lieu of a saranjam held by his grandfather, a claim to share the same by *M. P.* and his brothers was compromised by *B P.* agreeing to pay them a certain proportion thereof yearly. The Agent for Sardars, affirming the decree of the Assistant Agent, found the agreement to be null and void as an assignment of a future interest in a pension. *Held* that, as the pension was not granted "in consideration of past services and present infirmities or old age," the case did not come within the terms of Act VI of 1849, and that the agreement was a valid one. MADHAVRAV PANSE *v.* BAPURAV PANSE . . . . . 4 Bom., A. C., 62

3. ——— **Liability to attachment.**—*Deshmukh allowance.*—As the holder for the time being of a deshmukhi watan (an hereditary office) has only a life interest in the allowances pertaining to that watan, such allowances accruing due subsequently to his death cannot be attached as part of his estate. HANMANTRAV KHANDERAV *v.* BHAVANRAV BAJIRAV . . . . . 10 Bom., 299

4. ——— *Political pension.*—An order made by a District Judge, rejecting an application to attach a pension, on the ground that being a political pension it could not be attached under Act VI of 1849, was reversed, on petition, by the High Court, which directed the pension to be attached. IN THE MATTER OF THE PETITION OF HARBHAT BIN RAM CHANDRABHAT

[4 Bom., A. C., 67

5. ——— *Requisite proof for exemption from attachment.*—On a petition praying that an attachment placed on a pension, of which petitioner was the recipient, might be removed under Act VI of 1849, the High Court declined to interfere, as it had not been shown that the pension was one enjoyed in consideration of past services and present infirmities or old age. EX PARTE VITHALRAV ESHWANTRAV . . 4 Bom., A. C., 65

PENSIONS ACT, XXIII OF 1871.

1. ——— **Operation of Act.**—*Retrospective operation.*—The Pensions Act (XXIII of 1871) is not retrospective. JAMNADAS *v.* LALITARAM

[I. L. R., 2 Bom., 294

2. ——— **Construction of Act.**—*Grant by Government.—Ownership in the soil.*—Though, as stated in *Krishnarav* v. *Rangrav, 4 Bom., A. C., 1,* "sanadi grants in inam, saranjam, &c., are, *generally speaking,* more properly described as alienations of the royal share in the produce of the land (*i.e.,* of land revenue) than grants of land, although in popular parlance occasionally so called," yet such is not invariably the case. If words are employed in a grant which, expressly or by necessary implication, indicate that Government intends that, so far as it may have any ownership in the soil, that ownership shall pass to the grantee, neither Government, nor any person subsequently to the date of the grant deriving under Government, can be permitted to say that the ownership did not so pass, unless there are in the grant such detailed provisions as show that such words are limited in their operation. An enactment of a character so arbitrary as Act XXIII of 1871 ought to be construed strictly, and the Courts should not extend its operation further than the language of the Legislature requires. RAJVI NARAYAN MANDLIK *v.* DADAJI BAPUJI

[I. L. R., 1 Bom., 523

3. ——— *Suit for declaration of right to officiate as patil of village.—Jurisdiction of Civil Court.*—A suit for a declaration of the plaintiff's eligibility to officiate as patil of a village is not prohibited by Act XXIII of 1871. That Act should receive a strict construction, as being in derogation of the right of the subject to resort to the ordinary Civil Courts. *Babaji* v. *Rajaram, I. L. R., 1 Bom., 75,* distinguished. GURUSHIDGAVDA BIN RUDRAGAVDA *v.* RUDRAGAVDATI KOM DYAMANGAVDA . . . I. L. R., 1 Bom., 531

4. ——— *Political pension in lieu of grant of land resumed.—Impartible property.*—A saranjam is ordinarily impartible, and *semble* that a political pension granted in substitution of a resumed saranjam is so likewise. The Pensions Act (XXIII of 1871) prevents a Civil Court from declaring such a pension to be partible, unless the Collector should authorise it to do so; and the fact that the Collector authorises a suit for maintenance out of such a pension affords no ground for presuming that he authorises a suit for the partition of the pension. RAMCHANDRA SAKHARAM *v.* SAKHARAM GOPAL

[I. L. R., 2 Bom., 346

1. ——— **s. 3.**—"*Grant of money or land revenue.*"—*Grant of proprietorship of soil.*—The meaning of the expression "grant of money or land revenue," extended by section 3 of Act XXIII of 1871 to include "anything payable on the part of Government in respect of any right, privilege, perquisite, or office," is not of so wide a range as to include a grant of the proprietorship of the soil, or any suit involving the rights of a proprietor of the soil. *Krishnarav* v. *Rangrav, 4 Bom., A. C., 1;*

PENSIONS ACT, XXIII OF 1871, s. 3— *continued.*

Vaman Janardhan v. *Collector of Thana, 6 Bom., A. C., 191;* and *Ruttonji Edulji* v. *Collector of Thana, 11 Moore's I. A., 295,* distinguished. RAJVI NARAYAN MANDLIK *v.* DADAJI BAPUJI [I. L. R., 1 Bom., 523

2. ——— and s. 6.—*"Right," Meaning of.—Toda garas haks.—Mortgage of hak.*—Toda garas haks are within the scope of the Pensions Act, XXIII of 1871; and a suit in respect of them cannot be instituted without the certificate required by section 6 of the Act. Where a mortgagee of such haks had, before the date on which the Act came into operation, obtained a decree for the recovery of his mortgage-debt from the mortgaged haks and from the mortgagor personally, and a fresh suit was necessary to enforce execution of that decree against these haks,—*Held* that the Act did not apply to such fresh suit *Semble,*—That the word "right" in section 3 of Act XXIII of 1871 is equivalent to the word "hak" in its restricted sense of "allowance" or "fee." PARBHUDAS RAYAJI *v.* MOTIRAM KALYANDAS . . . I. L. R., 1 Bom., 203

1. ——— s. 4.—*Toda garas hak, Suit for money in lieu of.—Jurisdiction of Civil Courts.*—Act XXIII of 1871, section 4, prohibits the Civil Courts from entertaining a suit against Government upon an alleged agreement by it to pay moneys from its treasury in lieu of toda garas haks. MANSANG *v.* GOVERNMENT OF BOMBAY [I. L. R., 4 Bom., 443

2. ——— *Toda garas hak, Suit for money in lieu of.*—In part of Western India annual payments, known as toda garas hak, made by village communities and commuted by them into liabilities to garasias, have been recognised as a species of property, however unlawful their origin. In 1862 a resolution of the Government of Bombay described the position of the garasias at that time, and gave them the option of resuming the collection of the toda garas hak formerly levied, resorting only to legal proceedings to enforce their claims, or of receving, from the Government, allowances of an equivalent amount; the collections, in the latter case, being discontinued on all hands. The ancestors of the adoptive father of the plaintiff formerly levied toda garas hak; and after 1862 the Government in respect thereof made payments, under the resolution, to three brothers, of whom one was the plaintiff's father; the latter receiving a one-third share, which, on his death in 1865, was no longer paid. *Held* that a suit against the Government for payment of this third share with arrears fell under the Pensions Act, XXIII of 1871, section 4, which prohibits cognisance, save as in the Act provided, "of any suit relating to any pension or grant of money or land revenue conferred or made by the British or any former Government, whatever may have been the consideration for such pension or grant, or whatever may have been the nature of the payment, claim, or right for which such pension or grant may have been substituted." *Held* that there was no reason, either in the language of the [illegible] or in any antecedent legislation, for construing these words as applicable only to rights in the nature of pensions. MAHARAVAL MOHANSINGHJI JEYSINGHJI *v.* GOVERNMENT OF BOMBAY [I. L. R., 5 Bom., 408 L. R., 8 I. A., 77

Affirming the judgment of the High Court in the same case . . I. L. R., 4 Bom., 437

3. ——— *Jurisdiction of Civil Court.—Deshmukh.*—A suit in a Civil Court by a hereditary deshmukh relating to a grant of land revenue is prohibited by the Pensions Act, XXIII of 1871. NARO DAMODAR GHUGRI *v.* COLLECTOR OF POONA [I. L. R., 6 Bom., 209

4. ——— *Jurisdiction of Civil Court.—Suit relating to grant of money or land revenue.*—A plaintiff, alleging that, as the hereditary deshmukh of certain mehals, he was entitled to be paid directly by the ryots of these mehals a percentage on the revenue thereon assessed, sued to recover a portion of such percentage which had been collected along with the revenue and retained by the Government. *Held* that the claim was "a suit relating to a grant of money or land revenue," and as such excluded from the jurisdiction of the Civil Courts by section 4 of the Pensions Act (XXIII of 1871). VASUDEB SADASHIV MODAK *v.* COLLECTOR OF RATNAGIRI [I. L. R., 2 Bom., 99 L. R., 4 I. A., 119

5. ——— *Rent-free grant of land from Government.*—Section 4 of the Pensions Act, XXIII of 1871, debars the Civil Court from taking cognisance of any suit, whether the Government is a party to it or not, which relates to any pension or grant of money or land revenue conferred or made by the British or any former Government, without a certificate from the Collector or other authorised officer. Section 5 prescribes a remedy for the claimant of such pension or grant, and section 6 enables the revenue officer to refer the parties to the Civil Court for the determination of their respective interests in the income or other benefits, which the executive will, however, still, as against either or both of the litigants, be at liberty to allow or withhold. Lands held free of assessment under a grant from Government which bestows on the grantee the lands themselves, and not merely the Government revenue arising from them, do not fall within the provision of the Pensions Act. BABAJI HARI *v.* RAJARAM BALLAL . . . . I. L. R., 1 Bom., 75

6. ——— *Grant of land revenue.—Former suit for money.*—The plaintiffs formerly sued for a sum of money, and, obtaining a decree, attached, in 1861, two villages, the land revenue of which had been granted in inam. The attachment continued down to 1875, when the last holder of the villages died, and, the Government having resumed the villages, the attachment was raised. The plaintiffs now sued to have their right declared to satisfy their decree from the revenues of the villages. *Held* that the former suit was not a suit in respect of a pension or grant of money or land revenue, and that

PENSIONS ACT, XXIII OF 1871, s. 4— *continued.*

an attachment placed in pursuance of an ordinary money-decree before the date of the Pensions Act, XXIII of 1871, could not be treated as a suit in respect of a pension, grant of money, or land revenue instituted before such date, so as to exclude the operation of the Act under, section 1. SECRETARY OF STATE FOR INDIA IN COUNCIL *v.* JAMNADAS **[I. L. R., 6 Bom., 737**

7. ——————— *Inam.—Grant of land free of revenue.—Specific Relief Act, s. 42.*—A grant of lands free of revenue does not come within the purview of the Pension Act, 1871. PANCHANADAYYAN *v.* NILAKANDAYYAN **[I. L. R., 7 Mad., 191**

8. ——————— *Gratuitous pension.—Suit for share of annual grant made by Government.*—One *S.*, a servant of the Delhi Emperor, having been killed in Burdwan while fighting for his master, the Emperor built a tomb over his remains, and made a grant of land (five mouzahs) to his family for the purpose of maintaining it in the manner usual amongst Mahomedans. This grant was subsequently confirmed to a descendant of *S.* and his heirs. Some years later the land came into the possession of the Rajah of Burdwan, who paid to the grantees a certain sum of money annually. When the perpetual settlement was made, the British Government continued the payment on account of the Rajah, in whose zemindari four of the five mouzahs were incorporated. Owing to disputes in the family, a reference was made to Government, who reduced the money payment and appointed a mutwalli for the tomb. One of the descendants of *S.* then sued the Government and the mutwalli for a share of this annual payment. *Held* that the grant to *S.'s* family was not a gratuitous pension or allowance, and that the money payment by the zemindar of Burdwan was rent justly due to them for the use and occupation of their land, and that the fact of the payment being continued by Government did not alter its nature. Accordingly, the suit was not barred by Regulation XXIV of 1793, or Act XXIII of 1871. HAZARA BEGUM *v.* COLLECTOR OF BURDWAN **[23 W. R., 378**

9. ——————— *Grant by Nawab of Carnatic, Resumption of.—Substitution of money payment.—Suit to recover share of money.*—A jaghir having been granted by the Nawab of the Carnatic for the support of the grantee and his relatives, was resumed by Government, and a money payment, equivalent to the rent, substituted. *Held* that a suit by a relative of the original grantee to recover, as arrears of his share, money received by the representative of the grantee, was barred by section 4 of the Pensions Act, 1871. MAHOMMED ISAACK MUSHYACK *v.* AZEEZOON NISSA BEGAM . **I. L. R., 4 Mad., 341**

10. ——————— *Suit to recover matam service inam lands granted for support of temple.*—A suit by a lessee of the holders of a matam service inam (religious endowment for the support of the family of the grantees and of a temple) to recover the inam lands from strangers is not barred by the provisions of the Pensions Act, 1871. KOLANDAI MUDALI *v.* SANKARA BHARADHI **[I. L. R., 5 Mad., 302**

11. ——————— *Religious endowment.—Personal grant.*—When the object of the endowment was to provide for certain religious and pious purposes,—*Held* that the provisions of the Pensions Act were not applicable to it. "Pensions and grants" in that Act meant personal grants, and not grants to endowments. SECRETARY OF STATE FOR INDIA *v.* ABDUL HAKKIM KHAN . **I. L. R., 2 Mad., 294**

12. ——————— **and s. 6.**—*Jurisdiction of Civil Court.—Omission to obtain, previous to suit, certificate enabling Court to entertain suit.—Effect of certificate granted after the hearing.*—Part of the property in suit consisted of land, which was assumed in the Courts below to be held on terms bringing it within the Pensions Act, 1871. After the judgment, which disposed of the principal questions in the case, had been given, final judgment was suspended upon an objection that no certificate had been obtained under the Act. The certificate having been then obtained and delivered to the Court,—*Held* that the original defect did not prevent the suit proceeding. MAHAMMAD AZMAT ALI KHAN *v.* LALLA BEGUM . . **I. L. R., 8 Calc., 422 [L. R., 9 I. A., 8**

——————— **s. 6.**—*Mortgage of desaigiri hak.—Suit by mortgagee without certificate of Collector.—Sale in execution of decree passed in such suit.—Title of purchaser.—Jurisdiction.—Res judicata.—Estoppel.*—Where the mortgagee of a desaigiri hak, without obtaining the Collector's certificate under section 6 of Act XXIII of 1871, sued the representative of the mortgagor to enforce the mortgage-debt by a sale of the hak, and obtained a decree without jurisdiction,—*Held* that the proceedings in the suit were without jurisdiction, and that the decree could not constitute the basis of any title, or estop the representative from suing for a declaration of his right to the hak as a life-holder as against the purchaser at the auction sale held in execution of the decree. *Radhabhai* v. *Anantram Bhagvant, I. L. R., 9 Bom., 198,* followed. VASANJI HARIBHAI *v.* LALLU AKHU . . **I. L. R., 9 Bom., 285**

1. ——————— **s. 11.**—*Toda garas hak.—Liability to attachment.—Attachment.*—A toda garas hak is not exempted from attachment under a decree of a Civil Court by section 11 of the Pensions Act of 1871. The word "pension" in section 11 of the Pensions Act is used in its ordinary and well-known sense,—*viz.*, that of a periodical allowance or stipend granted, not in respect of any right, privilege, perquisite, or office, but on account of past service or particular merits, or as compensation to dethroned princes, their families and dependants. A toda garas hak does not come within the meaning of the word "pension," which denotes something different from "a grant of money or revenue" as defined in section 3 of the Act. SECRETARY OF STATE FOR INDIA IN COUNCIL *v.* KHEMCHAND JEYCHAND . **I. L. R., 4 Bom., 432**

PENSIONS ACT, XXIII OF 1871, s. 11— *continued.*

2. ——— *Attachment of bonus.—Liability to attachment.*—A bonus granted by Government in addition to a pension to an officer compulsorily retired on account of reductions in the public service is not a pension within the meaning of the Pensions Act, 1871, section 11, and was liable to attachment in execution proceedings begun prior to June 1, 1882. KHASIM *v.* CARLIER [I. L. R., 5 Mad., 272

——— s. 12.—*Assignment of pension before passing of Act.*—On the 12th February 1865, *A.*, who was in receipt of a zihakhi pension from Government, assigned by deed a portion thereof to his wife in lieu of her dower. After his death, disputes arose between the wife and the heirs of *A.* in regard to a portion of the amount thus settled on her; and she instituted a suit, on a certificate granted by the Collector under section 6 of the Pensions Act (XXIII of 1871), in which she prayed for a declaration of her proprietary right in respect of the said money, and of her power to transfer the same. *Held* that the assignment of the 12th February 1865 having been made before the passing of the Pensions Act, was not invalidated by section 12 of that Act, which had no retrospective operation. IMTIAZ BEGAM *v.* LIAKAT-UN-NISSA BEGAM . . I. L. R., 7 All., 886

Reversing, on a re-hearing of the case (the first hearing having been *ex parte*), IMTIAZ BEGAM *v.* LIAKAT-UN-NISSA BEGAM . I. L. R., 6 All., 630

PEONS, APPOINTMENT OF—

1. ——— **Nazir, Power of.**—*Beng. Act V of 1863, ss. 3, 12.*—By Bengal Act V of 1863 the appointment of peons was vested in the Nazir, subject to the approval of the Judge, by whatever title designated (sections 3 and 12), and no superior authority was competent to control such appointments or to restrict the choice of the Nazir. IN THE MATTER OF THE PETITION OF GOOROO DYAL SINGH [9 W. R., 333

2. ——— **Officers of Munsif's Court.**—*Power of Judge.*—All officers of a Munsif's Court are appointed by him, subject to the approval of the Judge, who should hear what any person aggrieved has to say, and determine whether the Munsif has rightly exercised his authority. IN THE MATTER OF GOOROODASS BHUTTACHARJEE . 11 W. R., 158

3. ——— **Appointment of officers in Munsif's Court.**—*Power of Judge.—Beng Act V of 1863.*—A Judge is not warranted in interfering with the appointment of peons made in a Munsif's Court under Bengal Act V of 1863, and approved by the Munsif. IN THE MATTER OF SOMEROODDEEN [11 W. R., 159

PERIM, ISLAND OF, LAW IN FORCE IN—

See JURISDICTION OF CRIMINAL COURT—OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—MURDER. [I. L. R., 10 Bom., 258, 263

PERJURY.

See APPEAL IN CRIMINAL CASES—PROCEDURE . B. L. R., Sup. Vol., 426

See CASES UNDER FALSE EVIDENCE.

See SANCTION TO PROSECUTION—WHEN SANCTION MAY BE GRANTED. [3 B. L. R., A. Cr., 10

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See CASES UNDER ENHANCEMENT OF RENT—EXEMPTION FROM ENHANCEMENT BY UNIFORM PAYMENT OF RENT, AND PRESUMPTION.

——— **Districts to which it has not been extended.**

See BENGAL RENT ACT, 1869, ss. 16 AND 17. [8 B. L. R., 280

1. ——— **Date of settlement.**—The date of the permanent settlement was March 22nd, 1793. RAJESSUREE DEBIA *v.* SHIBNATH CHATTERJEE [4 W. R., Act X, 42

DHUNPUT SINGH *v.* GOOMAN SINGH [W. R., 1864, Act X, 61

POHAN BEBEE *v.* ALLY KHAN [W. R., 1864, Act X, 61

2. ——— *District of Jessore.*—The date of the permanent settlement for the district of Jessore was April 11th, 1790. HURO NATH ROY *v.* AMEER BISWAS . . 1 W. R., 231

3. ——— **Permanent settlement, Reference to, in Act X of 1859.**—*Subsequent settlements.*—The words "Permanent Settlement" in Act X of 1859 refer to the permanent settlement of 1793, and not to permanent settlements subsequently made. SHEOBURN LALL *v.* RAM PURTAP SINGH . . . . 3 W. R., Act X, 20

PERPETUITIES.

See HINDU LAW—WILL. [2 B. L. R., O. C., 11
4 B. L. R., O. C., 103, 231
9 B. L. R., 377

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See CASES UNDER HINDU LAW—WIDOW—DECREES AGAINST WIDOW AS REPRESENTING THE ESTATE OR PERSONALLY.

See HUSBAND AND WIFE. [8 B. L. R., 372

PETITION, APPLICATION BY, FOR APPOINTMENT OF GUARDIAN.

See GUARDIAN—APPOINTMENT, &c. [I. L. R., 2 Calc., 357

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[6 B. L. R., 310

PHULKUR, RIGHT OF—

——— *Proprietorship in soil*—Phulkur, or the right of gathering fruits, is a right indicative of a certain dominion over the soil. LEELANUND SINGH *v.* MOHESHUR SINGH
[3 W. R., P. C., 19: 10 Moore's I. A., 81

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PLAINT—*continued.*

1. GENERAL CONSTRUCTION OF PLEADINGS.

1. ——— **Pleadings in Courts in India.**—Pleadings in Indian Courts should not be construed with the same strictness as they are in the English Courts. NAWAB NAZIM OF BENGAL *v.* AMRAO BEGUM . . . . . **21 W. R., 59**

See GIRDHARRE SINGH *v.* KOOLAHUL SINGH. **[6 W. R., P. C., 1: 2 Moore's I. A., 344**

MOKUDDIMS OF MOUZAH KUNKUNWADY *v.* ENAMDAR BRAHMINS OF MOUZAH SOORPAL **[7 W. R., P. C., 8 : 3 Moore's I. A., 383**

MOHESH CHUNDER MOOKERJEE *v.* RAMDHUN PAL . . . . . **13 W. R., 248**

2. ——— *Primary and secondary relief.*—*Z.* and his three minor sons were joint owners of a village which *Z.* hypothecated by deed of simple mortgage to *J.* Subsequently *Z.* executed another deed of mortgage to *J.*, part of the consideration whereof was the cancellation of the former bond, which was paid off and extinguished accordingly. *J.*, however, fraudulently caused it to appear from the novating document that the former mortgage was still alive, and after the death of *Z.* put the bond in suit against *Z.'s* widow, who, being ignorant of the fraud, confessed judgment as guardian of her minor sons; and the entire right and interest of *Z.'s* heirs were sold in execution of the decree obtained by *J.* Subsequently the fraud was discovered and *Z.'s* sons brought a suit to set aside the execution sale and to recover possession of the property first mortgaged. In regard to three fourths of this property they prayed that "possession might be awarded to them by establishment of their right and share by amendment of the revenue papers." In regard to the remaining one fourth, they prayed for possession "by right of inheritance to *Z.*" by cancelment of the execution-sale and of the fraudulent decree. *Held* that pleadings in the Indian Courts must not be construed with the same strictness as in English Courts; that although in an informal and loose way, what the plaint substantially set out, as the primary relief sought, was the entire avoidance of the decree and the proceedings resulting therefrom as vitiated by fraud, and, as secondary relief, to be granted, if the Court should not see its way to setting aside those proceedings, a declaration that they took effect only as regards one fourth of the property. *Nawab Nazim v. Amrao Begam, 21 W. R., 59,* referred to. NATHU SINGH *v.* JODHA SINGH . **I. L. R., 6 All., 406**

2. ADMISSION OF PLAINT.

3. ——— **Holiday.**—*Stamp-duty.*—The reception of a plaint for arrears of rent by the Collector on Good Friday, although by the Circular Order of the Board of Revenue such day is an authorised holiday, is not illegal. There is no illegality in the reception of a plaint engrossed on insufficient stamp paper, if the full amount of the stamp duty has been paid at the time. GOBIND KUMAR CHOWDHRY *v.* HARGOPAL NAG **[3 B. L. R., Ap., 72: 11 W. R., 537**

PLAINT—*continued.*

3. FORM AND CONTENTS OF PLAINT.

(*a*) DATE OF CAUSE OF ACTION.

4. ——— **Limitation.**—*Civil Procedure Code, 1859, s. 26.*—In a suit to recover possession, plaintiff is bound, under section 26, Act VIII of 1859, to give the date on which he was dispossessed as accurately as possible, especially where one of the issues is whether he has been in occupation of the land within twelve years of suit. BOYDONATH SURMAH *v.* OJAN BIBEE . . **11 W. R., 238**

5. ——— *Plaint not showing when cause of action arose.*—A plaintiff is bound by the Civil Procedure Code, to show on the face of the plaint that his cause of action accrued within the period of limitation. Where an assignment to himself is a material part of a plaintiff's cause of action he ought to allege the fact in his plaint. BROOKE *v.* GIBBON . . **21 W. R., 47**

6. ——— *Objection to cause of action being barred.*—Section 32 of Act VIII of 1859 imposes upon the Court of first instance the duty of taking any legal objection apparent on the face of the plaint; see *Balava kom Basangouda* v. *Shigouda valad Kadapa, 7 Bom., A. C., 99;* and the fact that a portion of the claim is evidently barred by the law of limitation from which no ground of exemption is stated, is an objection which ought to be noticed by the Court when receiving the plaint; or if not taken, notice of then it may be at any subsequent stage of the suit. SALUJI KESRAJI *v.* RAJSANGJI JALMSANGJI . **2 Bom., 169 : 2nd Ed., 162**

7. ——— *Taking plaint off the file.—Indefiniteness.—Omission to show suit not barred.*—A plaint which merely stated that the cause of action arose previous to 21st August 1869 and which did not show that the suit was not barred by limitation, was ordered to be taken off the file. SONAMULL *v.* SUNARAM ROTTI **[8 B. L. R., Ap., 23**

8. ——— *Plaint not showing when cause of action arose.*—The fact of *A.'s* plaint not showing when the cause of action arose, is ground for rejecting the plaint, but no ground for finding on the trial that the suit is barred upon an issue raised as to limitation. KALLYNAUTH SHAW *v.* RAJEEBLOCHUN MOZOOMDAR **[2 Ind. Jur., N. S., 343**

9. ——— *Omission to state when cause of action arose in plaint.—Amendment of plaint.*—A suit, in which the plaint discloses a cause of action falling within the period of limitation, should not be dismissed after the framing of issues merely because the Court considers that an erroneous date has been assigned in the plaint as the cause of action. The plaint should be amended. SHEORAJ SINGH *v.* NUR KHAN . . **7 N. W., 354**

PLAINT—*continued.*

3. FORM AND CONTENTS OF PLAINT —*continued.*

(*b*) FRAME OF SUITS GENERALLY.

10. ——— **Paper referred to in plaint.** —A paper referred to in a plaint is not a part of the plaint. TOULTON *v.* GWYTHER [Bourke, O. C., 273

11. ——— **Schedule to plaint.**—*Statement of cause of action.*—The schedule appended to a plaint cannot disclose a cause of action not revealed in the plaint. MUZHUR HOSSAIN *v.* DINOBUNDO SEN . . . Bourke, O. C., 8: Cor., 94

LUCKEY MONEY DOSSEE *v.* KHETTER COOMARY DOSSEE . . . 2 Ind. Jur., N. S., 117

12. ——— **Defects in plaint.**—*Plaint showing good cause of action.—Ground for dismissal of suit.*—A suit should not be dismissed for mere defects in the plaint, if the evidence shows there is a good cause of action. GOLAM ALI CHOWDHRY *v.* FUTTICK CHUNDER . . . 10 W. R., 460

13. ——— *Plaint showing good cause of action.—Ground for dismissal of suit.*—If a plaint discloses a cause of action, a Judge on appeal ought not to dismiss the suit, on the ground merely of defect in the allegations in the plaint. KASEENAUTH MOOR *v.* REEJOONISSA [Marsh., 198: 1 Hay, 467

14. ——— *Inaccuracy of language.—Ground for dismissal of suit.—Construction of plaint.*—A plaintiff's suit should not be dismissed because, in describing his cause of action, strictly accurate language has not been used. A plaint should not be construed literally, but according to the plaintiff's real meaning, unless such meaning is inconsistent with the words used in the plaint, so as to deceive the defendant and prejudice his defence. INGLIS *v.* RAM SINGH . W. R., F. B., 159

PITAMBUR MOOKERJEE *v.* HURRE NARAIN THAKOOR . . . . W. R., 1864, 50

15. ——— *Want of distinctness in plaint.—Ground for dismissal of appeal.*—A suit should not be dismissed at the last stage of the proceedings in regular appeal for want of sufficient distinctness in the plaint, but such defect may be cured by examining the plaintiff or his pleader on that point. JUGMOHUN TEWAREE *v.* BULDEO NAIK . . . . 3 Agra, 162

ABDOOLLAH *v.* SHAHA MUJEESOODDEEN [15 W. R., 286

16. ——— *Indistinctness and obscurity of plaint.—Ground for refusal to give decree.*—A Court is justified in refusing to give a decree upon a plaint which it deems to be intentionally indistinct and obscure. MAHOMED HOSSEIN *v.* KRISHNO CHURN MISSER . . 20 W. R., 147

See RAM DYAL DUTT *v.* RAM DOOLAL DEB [11 W. R., 273

PLAINT—*continued.*

3. FORM AND CONTENTS OF PLAINT —*continued*

(*b*) FRAME OF SUITS GENERALLY—*continued.*

17. ——— **Mistake in plaint.**—*Ground for dismissal of suit.*—A suit should not be dismissed for what is obviously a mere mistake in the plaint, *viz.*, the erroneous statement of the date of a mortgage made many years before the plaintiff acquired an interest in the property, where all the parties to it were dead, and the deed itself lost. LALLA DABEE PERSHAD *v.* BEHAREE LALL . . 3 Agra, 33

MOHUN LALL *v.* NOOR KHAN . 3 Agra, 218

18. ——— *Return and amendment of plaint.—Ground for dismissal of suit.*—A suit cannot be dismissed merely on the grounds that the plaint did not contain a specification of the land in the defendant's possession, and that there was an error in the plaint in the description of the defendant's residence. REZA ALI *v.* PURNANAND CHUCKERBUTTY [6 B. L. R., Ap., 84: 14 W. R., 474

19. ——— **Suit for account.**—*Principal and agent.*—Discussion as to form of plaint in suits for an account. GOBIND MOHUN CHUCKERBUTTY *v.* SHERIFF [I. L. R., 7 Calc., 169: 8 C. L. R., 357

SHOOSHI BHOOSUN PAL *v.* GURU CHURN MOOKHOPADHYA [I. L. R., 7 Calc., 89: 8 C. L. R., 285

20. ——— **Partnership suit.** — *Civil Procedure Code, 1877, sch. IV, form 113.*—The plaint in a partnership suit ought to be framed on the lines of form 113 in schedule IV of the Code, and the accounts should be taken as prayed in that form. RAM CHUNDER SHAHA *v.* MANICK CHUNDER MANIKYA . I. L. R., 7 Calc., 428: 9 C. L. R., 157

21. ——— **Suit to remove bunds on river.**—*Interruption to flow of water.*—How a plaint should be framed in a suit for removal of certain bunds which interrupted the plaintiff's right to a flow of water from a river, considered. COURT OF WARDS *v.* LILANUND SINGH [4 B. L. R., Ap., 30: 13 W. R., 48

22. ——— **Suit for fishing in tank without permission.**—*Suit for damages and trespass.*—Where the owner of a tank wishes to bring a suit against a person for fishing in the tank without his permission the plaint should be framed for the recovery of damages for trespass, and should not be based on an alleged dispossession by reason of the defendants fishing in the tank. LUKHIMONI DASI *v.* KORUNA KANT MOITRO . 3 C. L. R., 509

(*c*) PLAINTIFFS.

23. ——— **Suit by a firm.**—*Per* PEACOCK, *C. J.*—A suit by a firm should not be brought in the name of the firm, but in the names of the members

PLAINT—*continued.*

3. FORM AND CONTENTS OF PLAINT —*continued.*

(*c*) PLAINTIFFS—*continued.*

Suit by a firm—*continued.*

who constitute the firm. PULIN BEHARI SEN *v.* WATSON . . . **B. L. R., Sup. Vol., 904**

S. C. POOLIN BEHAREE SEN *v.* WATSON **[9 W. R., 190**

GOSSAIN GUNGA DUTT BHARUTEE *v.* DABEE DASS BABOO . . . . **25 W. R., 118**

24. ——— Suit by Company.—*Corporation, Suit by.—Plaintiff, Misdescription of.—Civil Procedure Code (Act XIV of 1882), s. 435.—Companies Act (VI of 1882), s. 41.*—A plaint was filed in which the plaintiff was described as *J.*, manager of the *X.* Company, Limited, and in the body of the plaint several allusions were made to the "plaintiff-company," and the claim made in the plaint was a claim made on behalf of the Company. It was not suggested that the *X.* Company was a Company authorised to sue or be sued in the name of an officer or trustee, nor was it shown that it was registered as a corporation under section 41 of the Indian Companies Act. *Held* that the suit was badly framed and that it should be dismissed. CAMPBELL *v.* JACKSON . . **I. L. R., 12 Calc., 41**

25. ——— Suit on behalf of minor.—*Suit by mother as guardian.—Description of plaintiff.*—It is not absolutely necessary for the mother to describe herself as guardian in the plaint, when the suit is evidently brought by her as mother of her minor son. GOONO MONEE DEBIA *v.* RAM KUMOL SANDLE . . . . . **17 W. R., 144**

26. ——— *Description of plaintiff.—Objection to frame of suit.*—In a suit brought on behalf of a minor by his next friend it is not necessary for the next friend to have a certificate under Act XL of 1858, provided he have in fact permission of the Court to sue. Where a suit was brought in the name of *A.* for self and as guardian of her daughter *B.*, a minor, and it was objected that it should have been brought in the names of *A.*, and of *B.*, a minor by her next friend and guardian,—*Held* that, as no one was misled or injured by the improper form of the plaint, the objection ought not to be held fatal, but the decree must be taken to be in favour of *A.* and of *B.* suing by *A.* as if the suit had been properly framed. ALIM BUKSH FAKIR *v.* JHALO BIBI . . . . **I. L. R., 12 Calc., 48**

27. ——— *Suit by manager of minors' property.—Beng. Act IV of 1870.*—A suit brought by minors through the manager of their property as next friend must follow the form prescribed by Bengal Act IV of 1870. JOYRAM LALL MAHTOON *v.* STEWART . . **20 W. R., 453**

28. ——— Suit against administrator of minor for an account.—*Minors Act (Bombay), XX of 1864.—Misconduct.*—A plaint under Act XX of 1864 by a relative of a minor against his administrator must specify one or more acts of misconduct, or assign some satisfactory reason for apprehending an injury to the estate of the minor by the administrator; otherwise it will be held to contain no cause of action. DAMODARDAS MANIKLAL *v.* UTAMARAM MANIKLAL . . **10 Bom., 414**

PLAINT—*continued.*

3. FORM AND CONTENTS OF PLAINT —*continued.*

(*c*) PLAINTIFFS—*continued.*

Suit against administrator of minor for an account—*continued.*

29. ——— Misdescription of plaintiff.—*Suit for rent.*—Plaintiff sued for rent, describing herself as holding a dur-mirasi jote, and the lower Appellate Court treated that description of her jote as misdescriptive, because the jumma-wasil-baki papers called her a mirasi-ijardar, and other papers showed her to be a dur-mirasi talookdar. *Held* on special appeal that the misdescription, if there were any, was an utterly insufficient ground for throwing out plaintiff's claim. BROOBUN MOYEE DASSEE *v.* RUFFICK MUNDLE . . . **17 W. R., 17**

30. ——— *Residence.—Civil Procedure Code, 1877, ss. 50-52.—Description of defendant.*—To describe the plaintiff as residing in Clitpore Road in the town of Calcutta is not a sufficient description, under section 50 of the Civil Procedure Code, of his place of abode; nor is it sufficient under that section to describe the defendant as formerly of Calcutta without alleging that the plaintiff has been unable to ascertain his place of residence more definitely. SOLOMON *v.* ABDOOL AZIZ **[4 C. L. R., 366**

(*d*) DEFENDANTS.

31. ——— Description of defendant.—*Act VIII of 1859, s. 26.—Titles of honour.*—Where the Government has recognised a person as having a right to bear particular titles, a plaint in a suit against such person does not contain "the description of the defendant" in accordance with section 26 of Act VIII of 1859 if such titles are omitted. In such a case the plaintiff should, on the objection being taken by the defendant, be ordered to amend the plaint; and if such order is not complied with, the plaint should be rejected. MAHARAJA OF VIZIANAGRAM *v.* LAKSHMI CHALLAYA **[12 B. L. R., P. C., 443: 18 W. R., 301**

Reversing decision of High Court in SETA RAMA KRISHNA RAYUDAPPA RANGA RAO *v.* VIJAYA RAMA GAJAPATY . . . . . **3 Mad., 31**

32. ——— *Act VIII of 1859, s. 26.—Title of honour.*—The object of section 26, Act VIII of 1859, is to identify the parties to the suit; and where it was clear on the defendant's own admission that the right party was sued, an objection by the defendant that the plaint was bad, as it omitted to style him "Roy Bahadoor," was overruled. KISSEN CHAND GOLACHA *v.* MEGRAJ KUTURIA ROY **[12 B. L. R., 445, note: 12 W. R., 450**

PLAINT—*continued.*

3. FORM AND CONTENTS OF PLAINT —*continued.*

(*d*) DEFENDANTS—*continued.*

33. ——— Suit against firm.—*Partners.*—In an action against a firm the names of the partners should be specified in the plaint, and a summons served on one or more of its members if resident within the jurisdiction. YEKNATH BABAJI *v.* CHAND KAHANJI . . . . **1 Bom., 85**

34. ——— Suit against a corporation or company.—*Act VIII of 1859, s. 26.*—A plaint described the defendants as *C. S.*, Deputy Agent of the East Indian Railway Company, and *W. B. L.*, District Engineer of Rajmehal and Beerbhoom, who were made joint defendants. The real defendants were the East Indian Railway Company. *Held*, the plaint did not contain the description of the defendants under section 26, Act VIII of 1859. The Company should be sued in its corporate name. RAMDAS SEN *v.* COLLECTOR OF MOORSHEDABAD **[2 B. L. R., S. N., 6**

S. C. RAM DOSS SEN *v.* STEPHENSON **[10 W. R., 366**

NUBEEN CHUNDER PAUL *v.* STEPHENSON **[15 W. R., 534**

35. ——— Suit against company.—*Ignorance of names of persons forming company.*—In the case of an unincorporated or unregistered company, the plaintiff, if he does not know of what persons the company is composed, may sue the company by the name under which they are carrying on business, stating in his plaint his inability to describe them better. KOYLASH CHUNDER ROY *v.* ELLIS . . . . . **8 W. R., 45**

(*e*) BOUNDARIES.

36. ——— Omission to specify boundaries.—*Suit for land.*—A suit to recover land without defining boundaries cannot be maintained, because, if decreed, the decree could not be executed. MAHOMED ISMAIL *v.* LALLA DHUNDUR KISHORE NARAIN . . . . . **25 W. R., 39**

37. ——— *Effect of omission on execution of decree.*—The mere omission from the schedule annexed to a plaint of the boundaries or other specifications of land will not exclude from the operation of the decree matters which are by name strictly claimed in the plaint and referred to as such in the decree, and which do not need any further specification. SHIB NARAIN BANERJEE *v.* RAM NARAIN LUSHKUR . . **20 W. R., 142**

38. ——— Specification of boundaries.—*Suit to prevent infringement of rights over land.*—Where the object of a suit is to prevent the plaintiff's rights over certain lands from being infringed upon, the boundaries of the lands should be given in the plaint. AJOODHIA LALL *v.* GUMANI LALL . . . . . **2 C. L. R., 134**

PLAINT—*continued.*

3. FORM AND CONTENTS OF PLAINT —*continued.*

(*e*) BOUNDARIES—*continued.*

39. ——— Description of immoveable property.—*Civil Procedure Code, 1859, s. 26, cl. 5.—Suit for land.*—Under Act VIII of 1859, section 26, clause 5, all that it is necessary for plaintiff to do is to describe the property in such a manner as may suffice for identification; it is not absolutely necessary to set forth the boundaries. AFTABOODDEEN *v.* SHUMSOODDEEN MULLICK **[18 W. R., 461**

40. ——— Description of estate.—*Civil Procedure Code, 1859, s, 26, cls. 4 and 5.—Boundaries, Specification of.*—From clauses 4 and 5 of section 26 of Act VIII of 1859, it would appear that where a whole estate bearing a name is sued for, the boundaries need not be given. RAMDOYAL KHAN *v.* AJOODHIA RAM KHAN **[I. L. R., 2 Calc., 1: 25 W. R., 425**

41. ——— Description of property.—*Indistinctness of boundaries.—Civil Procedure Code, 1859, s. 26.*—The indistinctness of boundaries is, under Act VIII of 1859, not a cause of nonsuit. JANOKEE CHOWDHRANEE *v.* DWARKANAUTH CHOWDHRY . . . . . **1 Hay, 555**

42. ——— Effect of misdescription.—*Misdescription of area and boundaries.—Suit for enhancement.*—As to the effect of misdescription of area and boundaries in a suit for enhancement of rent. TARINEE CHURN SANNYAL *v.* MOHIMA CHUNDER SHAHA . . . . . **22 W. R., 426**

43. ——— Procedure on omission to specify boundaries.—*Amending plaint.*—In a suit in which the plaintiff claimed several plots of land, but did not specify the boundaries in respect of one of them, it was held that the proper course was for the Court to call upon the plaintiff to amend his plaint. JONAB ALI MOLLAH *v.* GOLAM ASSAD CHOWDHRY . . . . **21 W. R., 187**

44. ——— Procedure in case of irregularity in form of plaint.—*Civil Procedure Code, 1859, s. 265, cl.—Amendment of plaint.*—If a plaint be drawn not in accordance with the provisions of clause 5, section 26, Act VIII of 1859, the plaintiff ought to be allowed to amend the plaint without the suit being at once dismissed. BISSUNDEN NARAIN SHAHEE *v.* GUNGERKISSEN SHAHEE . **2 Hay, 351**

45. ——— Contents of plaint.—*Civil Procedure Code, 1859, ss. 26, 27.*—Under section 26, Act VIII of 1859, the plaint is intended to be a statement of facts, and not merely a prayer for relief. The words "cause of action" in that section, as distinguished from the "relief sought for" and the "subject of the claim," mean the grounds entitling the plaintiff to the remedy he seeks. HURCHURN DOSS *v.* HAZAREEMULL . . . **1 Ind. Jur., O. S., 12**

46. ——— Suit for breach of contract.—*Sale and delivery of goods.—Omission to allege*

PLAINT—*continued.*

3. FORM AND CONTENTS OF PLAINT —*continued.*

(*e*) BOUNDARIES—*continued.*

Suit for breach of contract—*continued.*

readiness and willingness to pay on delivery.—In a suit by the plaintiffs to recover damages from the defendant, a surety upon a contract to deliver coffee to the plaintiffs, the plaint did not allege the willingness of the plaintiff to pay on delivery. *Held* on special appeal that such allegation was not necessary, its absence not having prejudiced the defendant. PIERCE *v.* OPENDRA SHETTI GANAPATHY [7 Mad., 364

47. ——— **Suit for contribution.**—*Requisites of claim.*—A claim for contribution should distinctly set forth the amounts due by each party sued, failing which the plaint should be rejected. BHOLANATH CHATTERJEE *v.* INDER CHAND DOOGUR . . . . . 14 W. R., 373

(*f*) SPECIAL CASES.

48. ——— **Suit for damages for tort.**—*Rules of English law.*—Plaints must state the relief sought for, the subject of the claim, the cause of action, and when it accrued; and in suits for damages for injury done, the nature of the injury ought to be set out. The strict rules of English law do not necessarily apply to plaints in this country. MOHESH CHUNDER MOOKERJEE *v.* RAMDHUN PAL [13 W. R., 248

In every such plaint, plaintiff should name the amount of damages which he seeks to recover as compensation for the injury of which he complains. GIRDHARLAL DAYALDAS *v.* JAGANNATH GIRDHARBHAI . . . . . 10 Bom., 182

49. ——— **Suit for declaration of title and to have sale set aside.**—*Amendment of plaint.*—Where a person, by right of inheritance, sued for a declaration of his title to a share in a certain sum of money to which the defendants laid claim, and the defendants met that allegation by setting up a sale, which the plaintiff admitted,—*Held* that the plaintiff was bound to mention in his plaint the fact that he had parted with his title, and to allege the particular circumstances—misrepresentation, undervalue, or fraud—on which he relies to have the sale set aside; also that the cause of action arose at some time within the period of limitation applicable to the case. If sufficient cause exists, the Court may require the plaintiff to amend the plaint. AZIMUDIN KHAN *v.* ZIA-UL-NISSA [I. L. R., 6 Bom., 309

50. ——— **Suit for possession and mesne profits.**—*Question raised in plaint.*—In a suit to recover, with mesne profits and other incidents, a jirayati village alleged by the plaintiff to form part of his zemindari and to be wrongfully held by defendant by virtue of the execution of a decree of the late Commissioner of the Northern Circars passed in 1854, the defendant pleaded that he held on a

PLAINT—*continued.*

3. FORM AND CONTENTS OF PLAINT —*continued.*

(*f*) SPECIAL CASES—*continued.*

Suit for possession and mesne profits—*continued.*

permanent lease, subject to a fixed quit-rent; that he and his ancestors had held on that tenure since and previously to the permanent settlement. *Held* that as the plaint praying for the recovery of possession proceeded on the ground, amongst others, of the validity of the grant relied on by the defendant, the question as to the validity of the permanent kuttubandi tenure claimed by the defendant was properly open for determination in the present suit. VAIRICHARLA SURYA NARAYANA (ZEMINDAR OF KURAPAM) *v.* NADIMINTI BHAGAVAT PATANJALI SHASTRI [3 Mad., 120

4. VERIFICATION AND SIGNATURE.

51. ——— **Inability to verify.**—*Civil Procedure Code, 1859, s. 28.*—Generally plaints should be verified by the plaintiff. The exception under section 28, Act VIII of 1859, in favour of persons unable to verify, should be separately pleaded and considered in each case. IN THE MATTER OF THE PETITION OF MUHESSUR BUKSH SINGH . 5 W. R., Mis., 33

52. ——— **Ground for not verifying personally.**—*Duty of Court on presentation of plaint.*—It is incumbent on all Courts, without regard to rank or station, to see that plaints and written statements are subscribed and verified by the parties in person, except when unable to do so by reason of absence or other good cause, when they may be allowed to be subscribed and verified by competent persons only. KEENOO SINGH ROY *v.* ESHAN CHUNDER ROY [6 W. R., 213

53. ——— *Duty of Court on presentation of plaint.*—A Court ought never to allow a person other than the plaintiff to verify the plaint, save strictly under the exception which the law permits,—namely, where the plaintiff, by reason of absence or other good cause, is unable to subscribe it: (see Act VIII of 1859, section 28). Whenever the plaint is not presented by the plaintiff in person, the Court should satisfy itself that the verification is actually signed by the plaintiff. NURSING DEB *v.* RAM MOHUN MOOKERJEE . . Marsh., 176

RAM MOHUN MOOKERJEE *v.* NURSING DEB [W. R., F B., 54: 1 Ind. Jur., O. S., 63 1 Hay, 379

54. ——— *Discretion of Court.*—*Civil Procedure Code, 1859, s. 28.*—When an application is made to a Court to permit a plaint to be subscribed and verified on behalf of the plaintiff, by a person other than the plaintiff, the Court must exercise the power vested in it by section 28, Act VIII of 1859, and must decide whether or not the plaintiff by reason of absence or other good cause, is unable to subscribe and verify the plaint himself. MOHESSUR BUKSH SINGH *v.* SHBO NARAIN SINGH [6 W. R., Mis., 59

PLAINT—*continued.*

4. VERIFICATION AND SIGNATURE—*continued.*

Ground for not verifying personally—*continued.*

55. ——————— *Absence on other good ground.*—A plaintiff may be excused from verifying his plaint, not only by reason of his absence, but also for any other good cause to the satisfaction of the Court. IN THE MATTER OF THE PETITION OF LEELA NUND SINGH . . . . 7 W. R., 168

56. ——— Verification by person other than plaintiff.—*Notice.*—When a plaint is subscribed and verified by a person other than the plaintiff, notice should be given to the defendant; nothing more formal need be done by way of notice to support an application for the admission of the plaint, if the person verifying is qualified in other respects according to the provisions of the Code of Civil Procedure. PUDDOMOKEY DOSSEE *v.* SHAMA CHURN CHUCKERBUTTY . . 1 Ind. Jur., N. S., 226

57. ——— Improper verification.—*Plaint alleging matter not personally known.*—Where the plaint alleges matter which cannot be personally known to the person making the verification, and which is not stated to be on information and belief, a verification which does not distinguish how much is true to the knowledge of the person making it, and what is alleged to be true on information and belief, does not fulfil the requirements of section 52, Act X of 1887. SOLOMON *v.* ABDOOL AZIZ [4 C. L. R., 366

58. ——— Personal knowledge of facts.—*Information and belief.—Personal knowledge.—Civil Procedure Code (Act X of 1877), ss. 50, 51.—Act XII of 1879, s. 11.*—In all cases, whether a plaint is verified by the plaintiff or by some other person, the party verifying should state shortly what paragraphs he verifies of his own knowledge, and what paragraphs he believes to be true from the information of others. IN THE MATTER OF UPENDRO LALL BOSE [I. L. R., 6 Calc., 675: 7 C. L. R., 413

59. ——————— *Allegation of fraud.—Practice.*—In a case where the plaintiffs set up gross fraud, and where the case depends mainly upon the personal knowledge of the plaintiffs, it is imperative on the plaintiffs, or one of them, to verify the plaint. PROTAP CHUNDER BANERJEE *v.* KRISHTO KISHORE SHAHA . . I. L. R., 8 Calc., 885

See JARDINE, SKINNER, & Co., *v.* SHURNOMOYEE [24 W. R., 215

60. ——— Effect of non-verification by real plaintiff.—*Benami mortgage.*—In a suit for possession after foreclosure, defendants urged that *C.* (and not *A.* and *B.*, the plaintiffs) was the actual mortgagee. This was denied by *A.* and *B.*, who obtained a decree. In a subsequent suit brought by the representatives of *A.* and *B.* for mesne profits, they, in conjunction with *C.*, urged that *C.* was the real mortgagee; and *C.* was made a co-plaintiff, but he did not verify the plaint. A decree was given for mesne profits in favour of *C.*, the plaintiff. *Held* that the fact that *C.* had not verified the plaint was no sufficient ground for dismissing the suit. ROY MOHANLALL MITTRA *v.* BISHNU CHUNDRA CHATTERJEE . . . 1 B. L. R., A. C., 100

S. C. ROY MOHUN LALL MITTER *v.* BUHOO SOONDUREE DEBIA . . . 10 W. R., 145

61. ——— Partners.—*Suit by firm.*—Where the plaintiffs described themselves as lately carrying on business under the name of *C. & Co.*—*Held* that there was no irregularity in the plaint being signed by *C. & Co.*, and verified only by *A. B.*, one of the partners. LACHLAN *v.* ABDULLA [5 B. L. R., Ap., 89

62. ——————— *Signature by one partner of the firm.—Act VIII of 1859, s. 27.—Practice.*—By the practice of the Court, in a suit brought by a firm, one partner can, without having obtained special leave, verify the plaint on his own behalf and also on behalf of his co-partners, *Quære,*—Whether such a practice is correct, or ought to be allowed to continue. RAMCHUNDER *v.* CHOONEE LALL . . . . . 12 B. L. R., 35

63. ——— False verification.—*Verification by mooktear.—Civil Procedure Code, 1859, s. 24.*—The verification of a plaint signed with the name of the plaintiff by her mooktear, and which does not aver what is false, but attempts to do what the law estops her from doing, is not a false verification within the meaning of section 24, Act VIII of 1859. ROSHUN JEHAN *v.* ENAYET HOSSEIN [W. R., F. B., 41: Marsh., 127 1 Ind. Jur., O. S., 44

64. ——— Subscription by agent.—*Civil Procedure Code, 1877, s. 51.*—Under section 51 of the Code of Civil Procedure, Act X of 1877, the Court may in its discretion admit a plaint which has been subscribed by an authorised agent of the plaintiff. SURNOMOYEE *v.* POOLIN BEHARY MUNDUL . . . . . 3 C. L. R., 15

65. ——————— *Civil Procedure Code, 1877, ss. 36, 51.*—Section 36, read along with section 51, of the Code of Civil Procedure (Act X of 1877), shows that a plaint which may be presented by an authorised agent, may in like manner be subscribed by him, and that subscription would be a compliance with section 51. DHUNPUT SINGH BAHADOOR *v.* JHOOMUK KHAWAS . 3 C. L. R., 579

66. ——— Signature and verification by agent.—*Civil Procedure Code (X of 1877 as amended by Act XII of 1879), ss. 51 and 52.*—A plaint, signed by a person holding a general power of attorney to sue on behalf of the plaintiff, is properly signed within the meaning of the proviso in section 51 of the amended Civil Procedure Code. The Court

PLAINT—*continued.*

4. VERIFICATION AND SIGNATURE—*continued.*

Signature and verification by agent—*continued.*

must be satisfied, under section 52, that a person, other than the plaintiff, verifying the plaint, is acquainted with the facts of the case; but in the case of a person holding a general power of attorney, or of any other recognised agent, the Court will not insist on any extreme stringency of proof. Section 52 does not require the verification of a plaint to be made in the presence of an officer of the Court; but, having regard to the necessity of satisfying the Court that the person, other than the plaintiff, who verifies the plaint, is acquainted with the facts of the case, it is desirable that a verification by such a person should be made in the presence of the Court, unless the Court be satisfied that there is sufficient ground for dispensing with his attendance. KASTALINO *v.* RUSTOMJI DADABHOY

[I. L. R., 4 Bom., 468

67. ———— Verification by unauthorised person.—*Removal from file.—Practice.*—When a plaint has been verified by a person who has not shown to the Court that he is a person competent to verify it, the Court will order the plaint to be removed from the file. OVEREND, GURNEY, & Co., *v.* STEELE . . **1 Ind. Jur., N. S., 39**

68. ———— Irregular verification.—*Dismissal on ground of improper verification after admission of plaint.*—The Judge on appeal dismissed a suit on the ground that the plaint was verified by an agent, when it might and ought to have been verified by the plaintiff himself. *Held* that the plaint having been admitted, the suit ought not to be dismissed for this defect, but the Judge might properly have required the verification of the plaintiff to be supplied. GOKUL CHUNDER *v.* BUREEK BEGUM

[Marsh., 344: 2 Hay, 325

69. ———— False verification.—*Waiver of objection.*—A case having come on for hearing, the verification of the plaint was found to be false. Upon this plaintiff applied to withdraw the suit with permission to bring a fresh suit. The Munsif rejected the application and dismissed the suit with costs. *Held* that, as the defendant had filed a written statement and had not objected to the verification, it was the duty of the Munsif to dispose of the case on its merits, dealing afterwards as he thought fit with the party making the false verification. SHAMA SOONDUREE DEDIA *v.* ROHIMOODDEEN SIRDAR

[24 W. R., 71

70. ———— Objection to verification.—*Verification of plaint by agent.*—It is not competent to a Judge of a Small Cause Court to raise any objection to the verification of a plaint by an agent, after such verification has been expressly sanctioned by him at the commencement of the suit. SUTTOCHURN GHOSSAL *v.* SUROOP CHUNDER DOSS

[12 W. R., 465

PLAINT—*continued.*

5. AMENDMENT OF PLAINT.

71. ———— Power to amend.—*Appellate Court.*—A plaint cannot be amended in an Appellate Court. ABDOOL GUFFOOR *v.* NUR BANU

[1 B. L. R., A. C., 78: 10 W. R., 111

72. ———— *Appellate Court.*—*Objection to plaint.*—An Appellate Court is competent at any stage to allow objections to be taken to an apparent defect in the plaint. COLVIN, COWIE, *v.* ELIAS . **2 B. L. R., A. C., 212: 11 W. R., 40**

73. ———— *Act VIII of 1859.*—The Court has power to amend a plaint after it has been filed, although no express power to do so is given by Act VIII of 1859. Under Act VIII of 1859, the Court has power to make all such amendments, first in the plaint, and afterwards in the issues, as may be necessary, in order to bring about a fair and proper trial of the matter which the plaintiff comes into Court to have tried. GABIND CHANDRA DUTT *v.* GANGA DHYE. NALIT MOHUN DAS *v.* GANGA DHYE . . . . **7 B. L. R., 339**

SAHIJI KESRAJI *v.* RAJSANGJI JALMSANGJI

[2 Bom., 169: 2nd Ed., 162

74. ———— Right to amend.—*Altering case in appeal.*—A plaintiff was not allowed to alter his case on second appeal. DASSORATHY HURI CHUNDER MAHAPATTRA *v.* RAMKRISHNA JANA

[I. L. R., 9 Calc., 526
13 C. L. R., 114

75. ———— *Ground for amendment.—Amendment at final hearing.—Semble,*—A defect which appears on the face of the plaint, which would have rendered it inadmissible, is not a matter for amendment at the final hearing of the suit. RAMASAMI AYYAN *v.* RAMU MUPAN

[3 Mad., 372

76. ———— *Application to amend with reference to objection taken at filing of plaint.*—A plaint may be amended upon subsequent application, with reference to an objection taken when it was filed. TOULTON *v.* GWYTHER

[Bourke, O. C., 273

77. ———— Time for amendment.—*Amendment after settlement of issues.*—Amendment of a plaint is not allowable after issues are fixed. AMUR NARAIN *alias* NERPUT SUHAYE *v.* RUGHOOBUNSEE KOONWUR . . . **5 W. R., 234**

78. ———— *Civil Procedure Code, 1877, s. 53.—Amendment subsequently to first hearing.*—The words in paragraph 1 of section 53 of the Code of Civil Procedure (Act X of 1877) "at or before the first hearing" are merely directory and not mandatory, and, therefore, a plaintiff may, subsequently to the "first hearing," amend his plaint, provided such amendment does not alter the original character of his suit. The plaintiffs (mortgagors) in a suit against their mortgagees sought only for production of the mortgage-deed or for an account, although

PLAINT—*continued.*

5. AMENDMENT OF PLAINT—*continued.*

Time for amendment—*continued.*

the averments in the plaint warranted a prayer for redemption. Subsequently to the first hearing of the suit they applied to be allowed to amend the plaint by adding a prayer for redemption. *Held* that the provisions of section 53 of the Civil Procedure Code (Act X of 1877) did not preclude the Court from permitting the amendment to be made. MOHDE *v.* DONGRE . . . I. L. R., 5 Bom., 609

79. ——————— *Amendment after return for amendment in fixed time.—Civil Procedure Code, 1877, s. 53.—Semble,*—That where at the first hearing of a suit the plaint is returned for amendment within a fixed time under the provisions of section 53 of Act X of 1877, and it is amended accordingly, it cannot afterwards be again returned for amendment. BADR-UN-NISSA *v.* MUHAMMAD JAN [I. L. R., 2 All., 671

80. ——————— *Civil Procedure Code 1882, s. 53.—Practice.—Amendment of plaint at a date subsequent to first hearing.—Held* (OLDFIELD, *J.*, dissenting) that, under section 53 of the Civil Procedure Code, a plaint can be rejected, returned for amendment, or amended by the Court of first instance only at or before the first hearing of the suit, and not after the first hearing thereof. *Modhe* v. *Dongre, I. L. R., 5 Bom., 609,* dissented from. *Soorjmukhi Koer's case, I. L. R., 2 Calc., 272; Burjore* v. *Bhagana, I. L. R., 10 Calc., 557: L. R., 11 I. A., 7;* and *Fazul-un-nissa Begam* v. *Mulo, I. L. R., 6 All., 250,* distinguished by MAHMOOD, *J.* *Per* MAHMOOD, *J.*—The plaint may, for causes other than those mentioned in section 53, be amended by the Court after the first hearing. DAMODAR DAS *v.* GOKAL CHAND . . . I. L. R., 7 All., 79

81. ——— Mode of amendment.—*Alteration of plaintiff's case.*—The Court is not to make a case for a plaintiff which he has not made for himself. PROSUNNO CHUNDER BANERJEE *v.* GOUREE DASS BHUTTACHARJEE . . 7 W. R., 478

82. ——————— *Alteration of plaintiff's case.—Variance between pleading and proof. Semble,*—The Court will not add an issue or amend the plaint so as to raise a wholly different question to that upon which the parties have come into Court. BIZJIE BIBEE *v.* MONOHUR DOSS [2 Ind. Jur., N. S., 118

See NEHORA ROY *v.* RADHA PERSHAD SINGH [I. L. R., 5 Calc., 64: 4 C. L. R., 353

83. ——————— *Allowing new cause of action.—Civil Procedure Code, 1859, ss. 29 and 31.*—Sections 29 and 31 of the Civil Procedure Code empower the Court to permit such amendment in the plaint as may enable the Court to give relief in respect of the wrong originally complained of, but not to allow totally new causes of action to be added by a supplemental plaint. RAILOO MULL *v.* NANUK [1 N. W., 171: Ed. 1873, 250

PLAINT—*continued.*

5. AMENDMENT OF PLAINT—*continued.*

84. ——— Ground for amendment.—*Insufficient disclosure of cause of action.*—Where the plaint does not sufficiently disclose the cause of action, and a cause of action exists, the plaintiff should have been allowed to amend it under section 32, Code of Civil Procedure, 1859; not being so allowed, he is at liberty to prove any cause of action which is not inconsistent with the plaint. LUCKHEE PREA DEBIA *v.* BRINDABUN DEY . . . 12 W. R., 313

85. ——————— *Misstatement of cause of action.*—The plaintiff having failed in an application under section 441 of the Penal Code, brought a suit in a Civil Court for possession and for the demolition of a wall or fence put up by the defendant, dating his cause of action from his failure in the Criminal Court. In the Court of first instance, he obtained a decree for possession. The Judge on appeal dismissed the plaintiff's suit on the ground that he had no power to set aside a Magistrate's order under the law cited. *Held* that, if the Judge was of opinion that the plaintiff had misstated his cause of action, he ought to have directed him to amend his plaint. DABOO JHA *v.* LUWA JHA 11 W. R., 223

86. ——————— *Rejection of plaint for prolixity.—Civil Procedure Code, 1859, s. 29.*—If a plaint not only asks for relief which a Court can afford, but seeks to open up matters already adjudicated upon in another suit, the Judge (instead of rejecting the plaint for prolixity under section 29) should entertain the suit and adjudicate upon the matters not adjudicated upon in the former suit, amending the plaint by striking out the issues relating to the matters adjudicated upon. ROSHUN JEHAN *v.* ENAYUT HOSSEIN [W. R., F. B., 41: Marsh., 127 [1 Ind Jur., O. S., 44: 1 Hay, 269

87. ——— Altering character of suit —*Civil Procedure Code, 1877, s. 53.—Adding prayer for possession to suit for declaration of title.*—Section 53 of the Civil Procedure Code, which provides that a plaint cannot be amended so as to convert a suit of one character into a suit of another and inconsistent character, does not prevent a plaintiff, who has been ousted after suit brought for declaration of title, from amending his plaint by adding a prayer for possession. MELLUS *v.* VICAR APOSTOLIC OF MALABAR [I. L. R., 2 Mad., 295

88. ——————— *Suit for possession and mesne profits.—Resumption.*—Where in the plaint the relief sought for was possession and mesne profits, and the plaint was in the course of the suit amended, and an additional stamp paid, so that the suit became one for resumption,—*Held,* the amendment was improperly made, and the suit must proceed as a suit for possession and mesne profits. GOBINDO MAHAPATRO *v.* GOPEENATH PUNDIT [B. L. R., Sup. Vol., 581: 6 W. R., 211

89. ——————— *Suit by manager to set aside deeds.—Suit for redemption by minors.*—Where the plaint, on the face of it, is one in which a

PLAINT—*continued.*

5. AMENDMENT OF PLAINT—*continued.*

Altering character of suit—*continued.*

manager suing on behalf of minors is himself plaintiff and which seeks to set aside deeds constituting a mortgage transaction, the Court cannot by amending the plaint turn the suit into a redemption suit on the part of the minors. JOYRAM LALL MAHTOON *v.* STEWART . . . . . **20 W. R., 453**

90. ——— *Suit on mortgage payable on demand.—Amendment of suit for interest by making it one for account.*—Where a mortgage-debt is payable on demand the suit ought to be brought not for interest only, but for an account and payment of what remains due on the mortgage for principal and interest up to the filing of the plaint. This amendment was allowed in this case. ANNAPA *v.* GANPATI . . . **I. L. R., 5 Bom., 181**

91. ——— *Civil Procedure Code, 1877, s. 53.—Suit for restoration of land to its former condition.—Suit for declaration of right.*—By the amendment of the plaint, a suit for the restoration of a pond, which it was alleged the defendants were wrongfully filling up, to its original condition, was altered into one for the protection of the plaintiffs from any infringement of, or for a declaration of, their right to a share in the produce, and the use of the water, by way of easement. *Held* that the alteration in the plaint was a material one. FARZAND ALI *v.* YUSUF ALI . . **I. L. R., 2 All., 669**

92. ——— **Plaintiff asking for relief he is not entitled to.**—*Suit for enhancement.*—Where a suit for a kabuliat at an enhanced rate of rent was dismissed on the ground that it was not for enhancement of plaintiff's share of the rent, but for a kabuliat at an enhanced rate for the rent of a specific portion of land, although plaintiff's agent in his examination deposed that the suit had reference not to a specific portion of land, but to a certain jumma,—*Held* that the Court below might permit plaintiff to amend or explain his plaint, or, if he had asked too much, might give him what he was entitled to under the law. POORNO CHUNDER ROY *v.* STALKARTT **[10 W. R., 362**

93. ——— **Giving plaintiff more relief than he prays for.**—*Suit for redemption.*—The Court should not give the plaintiff more than he claims in his plaint, therefore where a mortgagor brings a suit to redeem mortgaged land on payment of such sum as shall be found due to the mortgagee, the Court is not justified in decreeing possession without payment in favour of the mortgagor, merely because the mortgagee denies the existence of the mortgage. DADA VALAD VALLI *v.* BAVASHA VALAD KASAM . . . . . **6 Bom., A. C., 9**

94. ——— **Amendment by Appellate Court.**—*Omission of lower Court to return plaint for misjoinder.*—When a plea of misjoinder has been allowed and the suit decided and an appeal brought, the Court of Appeal should dispose of the suit in the mode in which the lower Court ought to have disposed of it, by returning the plaint for amendment.

PLAINT—*continued.*

5. AMENDMENT OF PLAINT—*continued.*

Amendment by Appellate Court—*continued.*

Farzand Ali v. *Yusuf Ali, I. L. R., 2 All., 669,* dissented from. LINGAMMAL *v.* CHINNA VENKATAMMAL . . . . . **I. L. R., 6 Mad., 239**

95. ——— **Suit on promissory notes.**—*Variance between pleading and proof.—Addition of issue as to items of account.*—Where a suit was instituted under Act V of 1866 for the sum due on two promissory notes, and the defendant was afterwards allowed to come in and defend, and written statements were filed, and the plaintiff's written statement set out all the facts under which the notes were given, it was found that the items of the account were not properly in issue. The Court allowed the plaint to be amended and an issue to be framed as to the amount due in respect of the consideration for the note. JOSEPH *v.* SOLANO **[9 B. L. R., 441: 18 W. R., 424**

96. ——— **Suit for breach of contract.**—*Variance between pleading and proof.*—The plaint alleged a contract to deliver on the 2nd March, and the evidence showed an extension of time to the 31st March, but the pleading alleged that the breach was on 2nd March. *Held* that an amendment might be allowed, as the defendant would not be prejudiced thereby, he having been perfectly aware of the case he had to meet on this point. PIERCE *v.* OPENDRA SHETTI GANAPATHY . . . **7 Mad., 364**

97. ——— *Variance between pleading and proof.—Relief in respect of tort.*—The plaintiff sued the defendant, overseer of or for the municipal office, for the recovery of money due on a contract under which the plaintiff had done certain work, the defendant contracting for the municipality, and for the performance of work known by the plaintiff to be municipal work. The municipality ignored the contract, and the Court held the defendant could not be made personally liable. *Held* that the plaintiff could not be allowed to amend his plaint so as to make the defendant liable in tort for misrepresentation of his authority. MODHOOSOODUN DEY *v.* MOHENDRONATH MOOKERJEE **[9 W. R., 206**

98. ——— **Plaint disclosing no cause of action.**—*Contract Act, s. 22.—Wagering contract.—Suit to recover deposit paid on such contract.—Bombay Act III of 1865, s. 1.—Deceit.—Unilateral mistake.*—On the 21st of January 1883 the plaintiff contracted to purchase from the defendant the right to receive dividend on 50 shares of the Empress Mill at R37 per share, the plaintiff being under an impression that the dividend was to be declared on some subsequent day. The plaintiff deposited R100 with the defendant as part payment of the purchase-money. Subsequently it was ascertained that the dividend had been already declared on 17th January 1883 (*i.e.*, four days before the contract) at R25. The plaintiff thereupon sued the defendant to have the contract declared cancelled, and sought to recover

PLAINT—*continued.*

5. AMENDMENT OF PLAINT—*continued.*

Plaint disclosing no cause of action— *continued.*

the deposit of R100, with interest. The Judge of the Court of Small Causes at Broach, being of opinion that the contract was in its nature a sutta, or wagering contract, rejected the plaintiff's claim. The plaintiff applied to the High Court, under its extraordinary jurisdiction, to set aside the lower Court's decision. *Held* that, in the first instance, the plaint, as framed, not disclosing any cause of action, ought to have been returned for amendment. It should either have alleged a mistake common to both parties to the contract, or should have contained an allegation of fraud, on the defendant's part, inducing the plaintiff to enter into the agreement. The mere circumstance that the contract was "caused by one of the parties to it being under a mistake as to a matter of fact" would not, under section 22 of the Contract Act (IX of 1872), have made the contract voidable. The High Court reversed the lower Court's decision in order that the plaintiff might be given an opportunity to amend his plaint so as to show that his action was one for deceit. DAYABHAI TRIBHOVANDAS *v.* LAKHMICHAND PANACHAND . . . **I. L. R., 9 Bom., 358**

99. ——— Suit for pre-emption.—*Right to relief on different ground from that relied on.—Raising new issue.—Pre-emption.*—Where a plaintiff claimed in his plaint a right of pre-emption as copartner of the vendor,—*Held* that he could not be entitled to a decree on the ground of vicinage. KUNJABEHARI LAL *v.* GIRIDHARI LAL **[1 B. L. R., S. N., 12: 10 W. R., 189**

SHIU SUHAI MULLICK *v.* LALA HARI SUHAI SINGH . . . **3 B. L. R., Ap., 142**

100. ——— ——— *Conditional decree.*—Where the plaintiff in a suit to enforce the right of pre-emption sued alleging that the actual price of the property was not the price entered in the sale-deed but a smaller price, and claimed the property on payment of such smaller price, and did not allege in his plaint that he was ready and willing to pay any price which the Court might find to be the actual price, and on the day that his suit was finally disposed of presented an application to the Court stating that he was ready and willing to do so, —*Held* that the Court was not bound to allow him to amend his plaint and bring into Court the larger sum. DURGA PRASAD *v.* NAWAZISH ALI **[I. L. R., 1 All., 591**

101. ——— ——— *Alteration of claim on appeal.—Special agreement.—Custom.*—The plaintiff in a suit to enforce a right of pre-emption in respect of certain shares in certain villages founded his claim on a special agreement contained in the village administration papers, and such claim was tried and determined in the lower Court as so founded. *Held* that the plaintiff could not on appeal set up a claim to enforce such right founded on custom. CHADAMI LAL *v.* MUHAMMAD BAKSH **[I. L. R., 1 All., 563**

PLAINT—*continued.*

5. AMENDMENT OF PLAINT—*continued.*

Suit for pre-emption—*continued.*

102. ——— ——— *Alteration of claim on appeal.—Right founded on agreement.—Custom.*—Where the existence in a certain village of the right of pre-emption was recorded in the village administration paper as a matter of agreement and not of custom, and a suit was brought to enforce such right founded on the agreement, and was tried and determined in the lower Court as so founded, the plaintiff could not on special appeal claim such right as a matter of custom in virtue of the entry. A claim to the right of pre-emption founded on a special agreement does not exclude a claim to such right founded on Mahomedan law. MARATIB ALI *v.* ABDUL HAKIM . . **I. L. R., 1 All., 567**

103. ——— Suit for property misappropriated.—*Omission of allegation of demand and refusal.*—In 1874 plaintiff sued to recover certain property, or its value, "dishonestly misappropriated" on the 21st January 1872 by first defendant, assisted by the other defendants. The lower Court held that the right to sue did not accrue until the property had been demanded and refused; that the plaint contained no allegation of such demand and refusal; that the plaint could not be amended by the insertion of such an allegation after answer filed; and that, therefore, the suit could not be maintained. *Held*, reversing the decree, that even if the present case were one in which the provision as to demand could have any application at all, still the suit ought not to have been dismissed on that technical ground, when the defendant by his answer traversed the whole of the allegations in the plaint and pleaded the statute of limitation. MANIKYA ROW LAKSHMAYYAH *v.* MANIKYA ROW GOPAL ROW **[7 Mad., 400**

104. ——— Suit to set aside sale for arrears of revenue and for possession.—*Purchase by fraud.—Forfeiture of tenancy.—Trustee for owner in equity.*—The plaintiff sued to recover possession of certain land, and prayed to set aside the sale of it by the revenue authorities for arrears of assessment due on the land. He alleged that he had let the land to the defendant, on condition of the latter paying the Government assessment and certain rent in cash and kind to the plaintiff; that the defendant having intentionally made a default in payment of the assessment, fraudulently caused the land to be sold by the revenue authorities and purchased it himself. The defendant traversed the plaintiff's allegations, and stated that he was in possession of the land as purchaser at the revenue sale. The Subordinate Judge rejected the plaintiff's claim, holding that he failed to prove either the defendant's liability to pay the assessment, or any fraud on his part with respect to the sale of the land, and that the sale could not be set aside. His decree was affirmed, on appeal, by the Assistant Judge on the sole ground that the sale could not be set aside. He did not go into the merits of the case. On appeal to the High Court,— *Held* that the plaint ought not to have contained any prayer for setting aside the sale, but that as it con-

PLAINT—*continued.*

5. AMENDMENT OF PLAINT—*continued.*

Suit to set aside sale for arrears of revenue and for possession—*continued.*

tained a prayer for possession, it might be read as praying (or at least that the plaintiff might have been permitted to amend it so that it might simply pray) that the defendant should, under the circumstances alleged by the plaintiff, be declared a trustee of the land for the plaintiff. *Held*, also, that if the plaintiff's allegations were true, the plaintiff would be entitled to such a declaration, and the defendant would be discharged of his sub-tenancy in consequence of his conduct, which worked a forfeiture of any right to be continued as tenant. BALKRISHNA VASUDEV *v.* MADHAVRAV NARAYAN . **I. L. R., 5 Bom., 73**

105. ——— Suit for possession on ground of exclusive right.—*Appellate Court, Power of.—Variance between pleading and proof.*—When a plaintiff sues to recover possession of property on the allegation that he had purchased it with his own money, and the suit is dismissed in the Court of first instance, the Court of Appeal is not justified in giving the plaintiff a decree for a portion of the property, on the ground that the whole was the property of a joint Hindu family in which the plaintiff was a co-sharer. MUKHODA SOONDURY DASI *v.* RAM CHURN KARMOKAR

[I. L. R., 8 Calc., 871 : 11 C. L. R., 194

106. ——— Suit for possession of share of joint Hindu family before partition.—*Suit for partition.*—*A.*, one of three members of an undivided Hindu family, mortgaged his share in the immoveable family property to *B.* The mortgage recited that the money was raised in order to enable *A.* to sue his coparceners for partition of the family property and possession of his share therein. *A.* subsequently did bring a suit with that object against his coparceners, but allowed it to be dismissed against him for default. *B.* now brought a suit against *A.* and his coparceners for possession of *A.'s* share in such family property. *Held* that *B.'s* suit, being a suit for possession, was wrongly framed, and was not maintainable, there never having been any partition of the joint family property. Leave, however, was given to *B.* on certain terms, to amend his plaint, so as to make his suit a suit for partition. KRISHNAJI LAKSHMAN RÂJVADE *v.* SITARAM MURARRAV JAKHI

[I. L. R., 5 Bom., 496

107. ——— Suit for money received for plaintiff.—*Addition of prayer for account.—Amendment of plaint on appeal.—Civil Procedure Code, 1882, s. 54.*—Plaint allowed by the High Court on a regular appeal to be amended by insertion of a prayer for an account. BAI ANOPE *v.* MULCHAND GIRDHAR . . . **I. L. R., 9 Bom., 355**

108. ——— Alternative case.—*Omission to put case in alternative.*—Where the plaintiff has not put forward an alternative case as he might have done, he may have leave to amend his plaint and to state his case correctly therein if the Court thinks that he has rested his claim upon wrong grounds

PLAINT—*continued.*

5. AMENDMENT OF PLAINT—*continued.*

Alternative case—*continued.*

from misinformation, ignorance of law or fact, mistake or misconstruction of documents. LAKSHMIBAI *v.* HARI BIN RAVJI . . . . **9 Bom., 1**

109. ——— Omission to put case in alternative.—*Civil Procedure Code, 1882, s. 53.*—Where a plaintiff's claim as originally stated in his plaint was based on the allegation of the invalidity of a will, an application at the hearing of the case to amend the plaint by inserting a clause submitting that, even if the will were valid, it did not dispose of the whole of the testator's property, was refused,—the Court holding, under section 53 of the Civil Procedure Code (XIV of 1882), that the case made by the proposed amendment would be inconsistent with the case made in the plaint as originally framed. DAMODAR MADHOWJI *v.* PURMANANDAS JEEWANDAS . . . . **I. L. R., 7 Bom., 155**

110. ——— Omission to ask for alternative relief.—*Frame of suit.—Account and discovery.*—After parties have come to trial to determine which of two stories is true, the plaintiff cannot be allowed to amend his plaint by abandoning his own story and adopting that of the defendant, and asking relief on that footing: for the question, whether on that footing the plaintiff is entitled to relief, is one to which the defendant's attention has not been called, and which he has had no opportunity of answering. In a suit to recover a specified sum for the hire of cargo-boats and not asking for any other relief, the defendant alleged and proved that he was merely the agent of the plaintiff to find hirers for the boats, and that he was not liable for the hire of the boats. *Held* that, although *primâ facie* a principal is entitled to an account and discovery from his agent, the plaintiff could not obtain such relief in the suit as framed, and that he could not, after coming to a hearing, be allowed to amend his plaint by inserting an alternative prayer for relief, upon the footing of the case set up by the defendant. SHIBKRISTO SIRCAR *v.* ABDOOL HAKEEM

[I. L. R., 5 Calc., 692 : 5 C. L. R., 455

111. ——— Amendment in respect of parties.—*Striking names out of plaint.—Amending issues.*—Four plaintiffs sued as partners, but it was found, during the trial, that they were not all partners at the time the cause of action accrued; and the Judge thereupon amended the issue which had been raised on that point, and raised the question whether the plaintiffs were or were not partners: and it being decided in the negative, the Judge ordered two of the plaintiffs' names to be struck out of the plaint, and gave a decree in favour of the other plaintiffs. *Held* that the Judge acted rightly in amending the issue, but that he should have done so without striking the names of the plaintiffs out of the plaint. EAST INDIAN RAILWAY COMPANY *v.* JORDAN

[4 B. L. R., O. C., 97 : 14 W. R., O. C., 11

112. ——— Hindu widow.—*Joinder of plaintiffs one of whom has no right to*

PLAINT—*continued.*

5. AMENDMENT OF PLAINT—*continued.*

Amendment in respect of parties—*continued.*

sue for pre-emption.—The plaintiffs in a suit to enforce a right of pre-emption based on the wajib-ul-urz of a village, which gave the right to "co-sharers," alleged themselves to be jointly interested in the village, and, in their plaint, claimed relief jointly. One of the two plaintiffs was the widow of a co-sharer in the village, who, at the time of his death, was a member of a joint Hindu family, and it was held she could not claim pre-emption. *Held*, with reference to the manner in which the plaint was framed, that the other plaintiff could not claim pre-emption entirely on his own account without amending the plaint, but that it was too late for him to take such a course. *Damodar Das* v. *Gokal Chand, I. L. R., 7 All., 79*, referred to. KARAN SINGH *v.* MUHAMMAD ISMAIL KHAN

[I. L. R., 7 All., 860

113. ——————— *Joinder of causes of action.—Same parties suing in different capacities.—Civil Procedure Code, 1877, ss. 26 and 31.*—By the Memorandum and Articles of Association of the New Dhurumsey Poonjabhoy Spinning and Weaving Company, the plaintiffs' firm of *M. F. & Co.* were appointed agents of the company for twenty-five years, and it was provided that they should have the general control and management of the company. Clause 98 of the Articles provided that the said firm, as such agents, should have full power and authority (*inter alia*) to appoint and employ, in or for the purposes of the transaction and management of the affairs and business of the company, such solicitors as they should think proper. An agreement, dated 26th August 1874, was also entered into between the company and the partners in the firm of *M. F. & Co.*, their executors, administrators, and assigns, *for the time being constituting the partnership firm of M. F. & Co.*, whereby it was agreed that the said firm should be agents to the company for twenty-five years to buy and sell, &c., and particularly to exercise all the powers contained in clause 98 of the Articles of Association. *Messrs. C. & B.* were duly appointed solicitors to the company, and acted as such for a considerable time. *M.*, one of the members of the said firm of *M. F. & Co.*, died in the middle of March 1876. The plaintiffs complained that *G.*, one of the shareholders in the company, became desirous of ousting the plaintiffs from the position of agents of the company, and of becoming the managing director of the company; that in July 1881 he procured his own election and that of certain nominees of his as directors of the company; and on the 8th August 1881 procured the passing of a resolution at a Board meeting to the effect that as *Messrs. C. & B.*, the company's solicitors, were also the solicitors of the agents, it was desirable, for the interests of the company, that a change should be made, and that *Messrs. H., C., & L.* be appointed solicitors of the company. The plaintiffs alleged that the only object of passing the said resolution was to facilitate the design of *G.*, of ousting the plaintiffs from their agency, and getting the management of the company for himself; that *Messrs. H., C., & L.* had been for a long time the solicitors of *G.*, and had been advising him in his designs upon the company and upon the plaintiffs, and they contended that the resolution was a breach of the contract between the company and the plaintiffs and a violation of the Articles of Association of the company. The plaintiffs sued *G.*, and two other directors of the company, and the company itself, and prayed for an injunction against the defendants to restrain them from committing any breach of the agreement of 26th August 1874 and in particular from carrying into effect the resolution appointing *Messrs. H., C., & L.* as solicitors for the company, and to restrain them from doing anything inconsistent with the Memorandum and Articles of Association. The defendants contended that the contract of the 26th August 1874 had been determined by the death of *M.*, and that the powers conferred on the agents by clause 98 of the Articles were, subject to the general powers of management, vested in the directors by the Articles, and that the case was not one in which an injunction could be granted. Counsel on behalf of the plaintiffs sought to obtain the injunction on the ground that the resolution of the 8th August 1881 appointing *Messrs. H., C., & L.* solicitors of the company, was contrary to the Memorandum of Association, and, therefore, *ultra vires*; and, in order that this point might be pressed against the defendants, it was proposed that the plaint should be amended by alleging a cause of action in two of the plaintiffs as shareholders as well as a cause of action in all the plaintiffs as *parties contracting* with the company. *Held* that, under the provisions of sections 26 and 31 of the Civil Procedure Code (Act X of 1877), the amendment could not be allowed. The plaintiffs, as shareholders and contractors, had not the same cause of action, by which words were meant not only the act complained of, but also the right violated by that act. The rights of the plaintiffs as contractors, alleged to be violated by the resolution, were rights given to them by their agreement; but the rights of the plaintiffs as shareholders were rights secured to them by the Articles of Association. NUSSERWANJI *v.* GORDON

[I. L. R., 6 Bom., 266

114. ——————— *Amendment of plaint on appeal—Adding parties.*—In a suit for arrears of rent of the plaintiff's share of a talook it appeared that, in the year 1279, a partition was effected of the zemindari in which the defendant's talook was situated, and that the talook ceased to be held exclusively by the plaintiff, but was divided between him and certain other persons, who were not made parties to the suit. *Held* that the plaint could not be amended by making the co-sharers parties at the hearing of the appeal. OBHOY GOBIND CHOWDHRY *v.* HURYCHURN CHOWDHRY

[I. L. R., 8 Calc., 277

PLAINT—*continued.*

5. AMENDMENT OF PLAINT—*continued.*

Amendment in respect of parties—*continued.*

115. ——————— *Suit by parties for title to partnership property.*—Where a partner sued to establish his exclusive title to the partnership property attached and seized in execution of a decree against another partner, the High Court, on appeal, allowed the plaintiff to amend his plaint by converting that suit into one for a dissolution of partnership and an account, and remanded the case, with a direction to the lower Court to make the other partners parties to it and to take an account. KARIMBHAI *v.* CONSERVATOR OF FORESTS

[I. L. R., 4 Bom., 222

116. ——————— *Amendment on appeal.*—Under the circumstances the plaintiff was allowed to amend his plaint on appeal, so as to make it a plaint against one debtor alone, he having sued others who, as he framed his cause of action, were not liable, while he would be prejudiced by the dismissal of the suit as against them. MAHOMED ZAHOOR ALI KHAN *v.* RUTTA KOER

[11 Moore's I. A., 468: 9 W. R., P. C., 9

See PROBY *v.* BELL . . . **20 W. R., 6**

117. ——————— *Civil Procedure Code (Act X of 1877), s. 416.—Procedure.—Substitution of parties.—Criminal Procedure Code (Act X of 1872), s. 521.—Order by Magistrate for removal of obstruction from a public thoroughfare.—Suit against Magistrate to establish right.*—Under section 521 of the Criminal Procedure Code, Act X of 1872, a first class Magistrate in charge of a talooka made an order declaring certain land to be part of a public thoroughfare, and directing the plaintiff to remove the obstruction caused by him to it. The plaintiff sued the Magistrate to establish his right to the land, alleging that it was his private property, and that the Magistrate's order was wrong. The Assistant Judge who tried the suit dismissed it, holding that it did not lie against the Magistrate. On appeal to the High Court,—*Held* that the Assistant Judge might have properly permitted the plaintiff to amend his suit by striking out the name of the first class Magistrate as defendant, and substituting in that capacity the Secretary of State for India in Council. The High Court, accordingly, reversed the decree of the Assistant Judge, and remanded the suit for re-trial on the merits, after making the amendment directed. NILKANTHAPA *v.* MAGISTRATE OF SHOLAPUR

[I. L. R., 6 Bom., 670

118. ——————— On the 11th August 1879 the defendant, as a Magistrate in charge of a talooka, made an order under sections 523 and 526 of the Criminal Procedure Code (Act X of 1872), directing the plaintiff to remove a certain "ota" on the ground that it had been built upon a public thoroughfare. The plaintiff thereupon sued the Magistrate for a declaration that the "ota" and site belonged to him, and prayed for a reversal of the Magistrate's order. The Assistant Judge who tried the suit dismissed it, holding that it did not lie against the defendant. On appeal, the High Court, following the decision in *Nilkanthapa Malkapa* v. *Magistrate of Sholapur, I. L. R., 6 Bom., 670,* reversed the decree of the Assistant Judge, and remanded the case, in order that the plaintiff might amend his suit by striking out the name of the first class Magistrate as defendant, and substituting in that capacity the Secretary of State for India in Council, and directing the lower Court to determine the suit upon its merits after the above amendment and due service of process. BALARAM CHATRUKLAL *v.* MAGISTRATE OF IGATPURI . . **I. L. R., 6 Bom., 672**

119. ——————— *Allowing substitution of parties and new cause of action.*—The plaintiff brought a suit against the Secretary of State, which the Judge dismissed; on the petition of the plaintiff, he allowed the plaint in the suit so disposed of to be amended, and the name of a new defendant to be substituted, and a different cause of action to be stated. *Held* that the Judge acted illegally, and that the plaintiff should have been referred to a new suit. SETH DHUNRAJ *v.* SECRETARY OF STATE FOR INDIA

[1 N. W., 118: Ed. 1873, 204

120. ——————— *Substitution of parties as defendants.*—In an application to amend a plaint by substitution of the name of a firm for the Official Assignee as defendants, it was shown that the firm had been adjudicated insolvents, and one of them had obtained his permanent discharge; that the cause of action arose prior to the insolvency; and that no written statements had been filed. The application was granted, the costs to be paid by the plaintiff. DELHI AND LONDON BANK *v.* MILLER

[7 B. L. R., Ap., 65

121. ——————— *Amendment by striking out name of defendant.—Suit for damages for wrongful acts of Government servant.—Distinct averments against each party.*—The plaintiff had purchased at a Government auction a license to vend spirituous liquors, paid the first instalment of the purchase-money, and demanded a license; but did not receive it until six days later. Meantime he opened a shop and sold "tari" for three days, when the sale was stopped by the Extra Assistant Commissioner, notwithstanding the plaintiff represented that he was a license-holder. The present suit was brought against the Government represented by the Deputy Commissioner for damages on account of wrongful acts of the Extra Assistant Commissioner, who was made second defendant. The Judge, holding that where a servant does a wrongful act maliciously he is personally liable and the master is free, left it to the plaintiff to say against whom he would proceed. The plaintiff elected to proceed against Government and obtained a decree for a part of his claim. In the lower Appellate Court the Judges were divided in opinion, the Recorder holding that the first Court was justified in allowing the plaintiff to aban-

PLAINT—*continued.*

5. AMENDMENT OF PLAINT—*continued.*

Amendment in respect of parties—*continued.*

don his suit against the second defendant, to whom malice had been imputed, and that the suit was still maintainable against the Government; and the Judicial Commissioner considering it irregular to allow this action, inasmuch as the claims for damages on account of the illegal and malicious acts of the second defendant and for damages for non-issue of license by the first defendant were inconsistent with each other. *Held* by the High Court that the view of the Recorder was correct. Nevertheless, the plaintiff ought not to have been put to the option of abandoning his suit against one or other defendant, but the suit should have been tried out. *Held*, too, that the allegations against the two defendants were distinct but not inconsistent, and that the Judicial Commissioner had taken too strict a view of the plaint. VYTHEELINGUM *v.* GOVERNMENT . **21 W. R., 199**

122. ——— Suit brought under wrong Act.—*Suit erroneously brought under Rent Act.*—Where a suit had been erroneously brought under Bengal Act VIII of 1859, section 30, and the plaintiff applied to have it amended in that respect, whereupon the Munsif dismissed the suit, the case was returned by the High Court with directions to allow the plaintiff to amend the plaint on payment of the costs. IN THE MATTER OF THE PETITION OF GOBIND CHUNDER GHOSE. GOBIND CHUNDER GHOSE *v.* BYKUNT NATH GHOSE . **19 W. R., 61**

6. RETURN OF PLAINT.

123. ——— Form of order of return.—*Civil Procedure Code, 1859, s. 29.*—Where a plaint is returned for amendment, under section 29 of the Code of Civil Procedure, the order of return should specify a time for such amendment. ISMAIL SAHIB *v.* ARUMUGA CHETTI . . . **1 Mad., 427**

124. ——— Time for return.—*Presentation of plaint—Civil Procedure Code, 1877, s. 57.*—Although section 57 of Act X of 1877 contemplates the return of the plaint, should error be patent when it is first presented, yet there is nothing in the wording of that section which forbids the return of the plaint at a later stage in the suit. ABDUL SAMAD *v.* RAJENDRA KISHORE SINGH **[I. L. R., 2 All., 357**

125. ——— Ground for return.—*Irregular plaint.—Plaint in language not that of the Court.*—A plaint drawn up in what is, practically, Persian, ought not to be admitted on the file, but should be rejected or returned for amendment and presentation in Urdu, the ordinary language of intercourse and business in use in the district (Patna). AMEER KOOLEE KHAN *v.* RUSSICK LALL SINGH **[8 W. R., 495**

126. ——— *Schedule to plaint.—Irregular plaint.—Filing fresh plaint.—Costs.*—A plaint which in the first count did not

PLAINT—*continued.*

6. RETURN OF PLAINT—*continued.*

Ground for return—*continued.*

sufficiently disclose the subject of claim, without reading the schedule annexed as part of the plaint, or when the action accrued, and in the second count did not show any right to sue in the plaintiff, was rejected by the Court as irregular, but with liberty to the plaintiff to bring a fresh suit. *Semble,*—The Court will not make the payment of costs, in respect of the former plaint, a condition precedent to filing a fresh plaint, where there is no suggestion of *mala fides.* LUCKHEY MOONEY DOSSEE *v.* KHETTER COOMARY DOSSEE . . **2 Ind. Jur., N. S., 117**

127. ——— *Prolixity.—Argument.—Irrelevancy.*—A plaint which is unnecessarily prolix, or argumentative, or which contains irrelevant matter, ought to be rejected by the Court to which it is presented, or ought to be returned to the plaintiff for amendment. A plaint which contains a prayer that the defendant may be criminally prosecuted for forgery should be rejected. BISHEN SUHAYE SINGH *v.* BEER KISHORE SINGH **[8 W. R., 295**

128. ——— *Want of jurisdiction.*—Where there is a want of jurisdiction in the Court in which a plaint is presented, to try the cause of action mentioned in it the plaint should be returned to the plaintiff. KHANDU MORESHVAR *v.* SHIVJI BIN GORKOJI . **5 Bom., A. C., 212**

KHOOSHAL CHUND *v* PALMER . **1 Agra, 280**

SURNOMOYEE *v.* DOORGA MONEE DOSSEE **[10 W. R., 335**

129. ——— *Want of jurisdiction.*—If a party bring a suit in a Court which, on his own showing, has no jurisdiction to try it, he cannot, after failing in that Court, have the plaint returned to him in order that he may file it in a proper Court. IN RE TUFANI SINGH **[6 B. L. R., Ap., 141**

130. ——— *Court having no jurisdiction.—Procedure.—Civil Procedure Code, 1859, s. 30.*—Where the Appellate Court decides that the lower Court had no jurisdiction to entertain the suit, it should return the plaint to the plaintiff, in order that it may be presented to the proper Court. BAI MAHKOR *v.* BULAKHI CHAKU **[I. L. R., 1 Bom., 538**

DHERAJ MAHTAB CHUND *v.* DAMOODER SINGH **[W. R., 1864, 65**

SHURUT SOONDUREE DEBIA *v.* KHEMUNKUREE DEBIA . . . **5 W. R., Act X, 87**

131. ——— *Case found to be entertained without jurisdiction.—Act XXIII of 1861, s. 3.*—Where a Subordinate Judge, after registering a plaint and allowing the parties to go to issue on the question of jurisdiction, found that he had no jurisdiction, it was held that he did wrong, under Act XXIII of 1861, section 3, in dismissing the suit. He ought to have returned the plaint to

PLAINT—*continued.*

6. RETURN OF PLAINT—*continued.*

Ground for return—*continued.*

the plaintiff. KARTICK NATH PANDAY *v.* ROY NUNDEPUT MAHATAB . . . **23 W. R., 263**

132. ——————— *Return for amendment and presentation to the proper Court.—Misjoinder of Government officer as defendant.*—Where a plaint is presented to the Judge of a district, in which plaint an officer of Government is added as a nominal defendant, no cause of action being alleged against him, the proper course for the District Court to adopt, is either to reject the plaint, or to call upon the plaintiff to amend it by striking out the name of the officer improperly added as a defendant, and, upon the plaintiff consenting to do so, to return the plaint to the plaintiff for presentation to the Court of the lowest grade competent to try it. Where the District Judge did not adopt this course, but proceeded to try the cause, the High Court annulled his decree and (the plaintiff consenting to amend his plaint) returned it to him for amendment and presentation to the proper Court. SHRIDHAR HARI *v.* CHIMA VALAD LADU . . . **10 Bom., 17**

133. ——————— *Suit or appeal filed in a wrong Court.—Return of plaint or memorandum of appeal for presentation in proper Court.—Practice of the High Court.—Civil Procedure Code (Act XIV of 1882), s. 373.—Cancellation of court fee stamps.*—The Code of Civil Procedure (Act XIV of 1882) does not allow of a plaint or memorandum of appeal being returned to the plaintiff, or appellant, after a case has been heard on its merits, and just as the plaintiff or appellant discovers that the Court is about to pronounce an adverse decision. There is no provision in the Code for the return of a plaint to a plaintiff after it has been admitted, and the court fee stamps thereon cancelled. Even if the Code allowed the High Court to return a plaint after the court fee stamps have been cancelled, the plaint could not be again legally presented in any Court without new stamps being affixed to it. The executive Government alone have power to remit court fees and no Court or Judge has legal authority to admit a plaint which bears only cancelled stamps, or to direct a subordinate Court to admit such a document. JAGJIVAN JAVHERDAS SETH *v.* MAGDUM ALI . . . **I. L. R., 7 Bom., 487**

134. ——————— *Return of plaint for presentation to proper Court.—Jurisdiction.—Construction.—Civil Procedure Code, Act VIII of 1859, ss. 30 and 32.—Civil Procedure Code, Act XIV of 1882, ss. 53 and 57.*—Where, after a trial has begun, or even after it has concluded, it appears that the Court has not jurisdiction to hear the case, the plaint should be returned in order that it may be presented to the proper Court, and no additional court fees are payable. *Jagjivandas Javherdas Seth* v. *Magdum Ali, I. L. R., 7 Bom., 487,* overruled. PRABHAKARBHAT *v.* VISHWAMBHAR . . . . **I. L. R., 8 Bom., 313**

135. ——————— *Civil Procedure Code, s. 57.—Decree passed on plaints.*—The ruling in the case of *Prabhakarbhat* v. *Vishwambhar, I. L. R., 8 Bom., 313,* which approves of the practice of returning the plaint for presentation to the proper Court when the trying Court has no jurisdiction prevailing in the mofussil Courts and on the Appellate Side of the High Court of Bombay, does not govern, and is distinguishable from, cases in which there have been decrees passed on the plaint. *Per* BAYLEY, *J.*—The practice on the Original Side of the High Court of Bombay has always been to retain a plaint, unless it has been returned on presentation. IN THE MATTER OF THE APPLICATION OF BAI AMRIT . **[I. L. R., 8 Bom., 380**

136. ——————— *Return of, on second appeal.*—The plaintiff sued three defendants on a bond alleged to have been executed by them to the plaintiff. Two of the defendants did not appear or make any defence to the suit. The second defendant only appeared, and objected to the jurisdiction of the Court; but his objection was overruled, and a decree was made against all three defendants. On appeal the lower Appellate Court reversed the decree, holding that the Court of first instance had no jurisdiction. *Held* that, on finding that the Court of first instance had no jurisdiction, the lower Appellate Court ought to have ordered the plaint to be returned. It not having done so, the High Court on second appeal ordered the plaint to be returned, in order that it might be presented to the proper Court. BABAJI *v.* LAKSHMIBAI . **I. L. R., 9 Bom., 266**

137. ——————— *Return on second appeal.—Suit in wrong Court.*—Where a suit cognisable by a Small Cause Court was brought in the ordinary Civil Court and tried there, on second appeal the High Court declaredt he proceedings in the lower Courts null and void and directed the plaint to be returned for presentation in the proper Court. KALIAN DAYAL *v.* KALIAN NARER **[I. L. R., 9 Bom., 259**

138. ——————— *Civil Procedure Code, 1882, s. 57.—Want of jurisdiction.*—The defendants, who resided and carried on business at Bombay, acted as the agents of the plaintiff for the sale, purchase, and despatch of goods to Tellicherry, where the plaintiff resided. To the claim arising out of the agency transactions the plaintiff joined a claim on account of a partnership transaction, which claim was triable by the Court of the District Munsif at Tellicherry. The Subordinate Judge held that he had no jurisdiction to try the claim arising out of the agency transaction, found that nothing was due to the plaintiff on account of the partnership transaction, and dismissed the suit. *Held* that the plaint ought to have been returned to the plaintiff with the proper endorsement as required by section 57 of the Code of Civil Procedure, 1882. KHIMJI JIVRAJU SHETTU *v.* PURUSHOTAM JUTANI **[I. L. R., 7 Mad., 171**

139. ——————— *Return of plaint to be presented to the proper Court.—Civil Proce-*

PLAINT—*continued.*

6. RETURN OF PLAINT—*continued.*

Ground for return—*continued.*

dure Code, 1877, s. 57.—Rejection of plaint.—Cause of action.—N.-W. P. Rent Act, XVIII of 1873, s. 29.—The plaintiff in this suit claimed in a Civil Court (1) a declaration of his right to certain land; (2) that certain leases of such land, so far as their terms exceeded the term of settlement, should be cancelled; and (3) arrears of rent for such land. The Court held as regards claim (1) that the plaint did not disclose a cause of action, as it was not alleged that the defendant had disputed the plaintiff's right; as regards claim (2) that, with reference to the terms of section 29 of Act XVIII of 1873, the plaintiff's cause of action had not yet arisen; and as regards claim (3) that it was cognisable in a Court of Revenue;—and it directed that under section 57 of Act X of 1877 the plaint should be returned to the plaintiff to be presented to the Revenue Court. *Held* that, under the circumstances, the plaint should have been rejected and not returned. NAGAR MAL *v.* MACPHERSON . . I. L. R., 3 All., 766

140. ——————— *Return for undervaluation.*—Where it appears that the relief sought in a suit has been undervalued, and that the Court is not competent, by reason of the real value of the relief sought, to try the suit, the plaint must be returned to the plaintiff under section 57 of the Civil Procedure Code, although the defendant may have been called upon to enter upon his defence and has filed his written statement. An order dismissing a suit on the ground that, by reason of the value of the relief sought, the Court has no jurisdiction, is an order affecting the merits, and an appeal lies from such order. See *Muzhur Ali* v. *Basoo, 8 W. R., 47.* KHOGENDRO NARAIN CHOWDHURY *v.* GOURI KANT NATH . . . . . 11 C. L. R., 300

141. ——————— *Civil Procedure Code, s. 57.—Suit filed in wrong Court.*—In a suit filed in a District Munsif's Court to recover certain land, the defendants alleged that the value of the land was understated by the plaintiff and exceeded by far the pecuniary limit of the Court's jurisdiction. Upon inquiry the Munsif found this allegation to be true, and directed the plaint to be returned to the plaintiff for presentation in a superior Court. The plaint having been presented in the Subordinate Judge's Court, the Subordinate Judge, on the authority of *Jagjivan Javerdhas Seth* v. *Magdum Ali, I. L. R., 7 Bom., 487,* dismissed the suit. *Held* that the procedure adopted by the Munsif was correct. KANDU *v.* KONDA . I. L. R., 8 Mad., 62

142. ——————— *Suit for ejectment.—Mortgage exceeding pecuniary limit of jurisdiction.*—If, in a suit for ejectment in which the defendant shows he is a mortgagee, the defendant consents to a decree for redemption, and the amount secured by the mortgage exceeds the limit of the pecuniary jurisdiction of the Court, the Court should not proceed further, but return the plaint to be presented in a superior Court. CHANDU *v.* KOMBI [I. L. R., 9 Mad., 208

PLAINT—*continued.*

6. RETURN OF PLAINT—*continued.*

Ground for return—*continued.*

143. ——————— *Undervaluation of suit.—Civil Procedure Code, 1877, s. 57.—Dismissal of suit.*—A Munsif, after hearing the evidence on both sides, found that the suit had been undervalued; but, instead of returning the plaint under section 57 of Act X of 1877, he dismissed the suit. *Held* that the provisions of section 57 were imperative, and might be put into force at any stage of the hearing; and that such dismissal of the suit was a matter which affected the merits of the case, and formed a proper subject for an appeal. BHADESHWAR CHOWDHRY *v.* GOURIKANT NATH [I. L. R., 8 Calc., 834

144. ——————— *Undervaluation of suit.—Civil Procedure Code, 1859, ss. 30, 31, 32.—Dismissal of suit.*—If at the hearing of a suit it proves to be undervalued, and if the Court would not have jurisdiction to entertain it if properly valued, the suit ought to be dismissed. MUZHUR ALI *v.* BASOO . . . . . 8 W. R., 47

KOYLASHNAUTH ROY *v.* BODUN MONEE DABEA [2 Hay, 386

It is only at the time of presentation of the plaint that the plaintiff in a suit which has been brought in a Court, in which, with reference to its proper valuation, it should not have been brought, can claim the benefit of sections 30, 31, and 32 of the Code of Civil Procedure, 1859. MUZHUR ALI *v.* BASOO [8 W. R., 47

But *see contra,* JADU *v.* HIFAZAT HOSSEIN [5 B. L. R., Ap., 15

S. C. EDOO *v.* HEFAZUT HOSSEIN [13 W. R., 358

7. REJECTION OF PLAINT.

145. ——— Duty of Court.—*Allowing additional stamp.—Undervaluation of suit.*—Where the Court is of opinion that the suit is undervalued, it is the duty of the Court in which such suit was preferred to give the suitor the option of supplying such additional stamp as is thought necessary before rejecting the plaint. THAKOOR PATUCK *v* RAMSOOMBUN LALL [1 N. W., 17: Ed. 1873, 16

146. ——— Ground for rejection.—*Undervaluation of suit.—Civil Procedure Code, 1859, s. 31.*—In a suit in a Munsif's Court it was found, after issues had been fixed and some evidence recorded, that the claim had been undervalued, and that the proper valuation would carry it beyond the jurisdiction of the Munsif. The plaint was accordingly returned, and additional stamps having been filed, the case was tried by the Principal Sudder Ameen. The Judge on appeal held that the plaint had been illegally returned by the Munsif, and that the act of the Principal Sudder Ameen in proceeding to try the case was illegal. He accordingly dismissed the suit. *Held* that the Munsif was right, under section 31, Act VIII of 1859, in

PLAINT—*continued.*

7. REJECTION OF PLAINT—*continued.*

Ground for rejection—*continued.*

not dismissing the suit, but rejecting the plaint; and that, when the same plaint was filed with the proper amount of stamp duty in the Court of the Principal Sudder Ameen, that Court had jurisdiction to try the case. RAM GUTTY *v.* GOONOMONEE DABEE [11 W. R., 177

147. ——— *Undervaluation of suit.—Allowing additional stamp.—Civil Procedure Code (Act XIV of 1882), s. 54.—Court Fees Act, VII of 1870, s. 12.*—The decision of the Court of first instance, that a plaint is undervalued, is binding upon the Court of appeal, reference, or revision; but the Court of first instance is not justified in rejecting the plaint without giving to the plaintiff an opportunity of affixing the proper stamp. BAI ANOPE *v.* MULCHAND GIRDHAR [I. L. R., 9 Bom., 355

148. ——— *Undervaluation of suit.—Civil Procedure Code, 1859, s. 31.*—Where the lower Court rejected a plaint on the ground of an improper joinder of causes of action, and also that the suit was not sufficiently valued, and the High Court was of opinion that there had been no improper joinder of causes of action, the order of the lower Court was reversed, and the Civil Judge directed to deal with the case in accordance with section 31, Act VIII of 1859. KRISTNA AIYANGAR *v.* PERUMAL NADAN . . . . . 2 Mad., 436

149. ——— *Civil Procedure Code, 1859, s. 32.—Ground for rejecting plaint.*—A plaint will not be rejected, under section 32 of Act VIII of 1859, if the subject-matter alleged raises a fair question of claim or right for trial and determination between the parties. The mere unlikelihood of the plaintiff's success is not enough to justify the rejection of his plaint. LAKSHMI AMMAL *v.* TIKA RAM TOVAJI . . . . . 1 Mad., 240

150. ——— *Civil Procedure Code, 1859, s. 39.—Document sued on not produced with plaint.—Held* that the Court to which a plaint is presented has no authority to reject it merely because the document upon which the plaintiff sues is not produced with the plaint, as directed by section 39 of Act VIII of 1859, and that the High Court has power to set aside such an order of rejection, as well as the decision of the District Court confirming it on appeal, and to direct that the plaint be received. EX PARTE RAYCHAND AMICHAND [2 Bom., 391: 2nd Ed., 369

151. ——— *Reference to document not in plaint.—Claim for damages for malicious prosecution.*—A Judge, in considering, under section 32 of the Civil Procedure Code, whether he should admit or reject a plaint, is wrong in referring to documents and facts not stated in, or annexed to, the plaint, nor ascertained by him by interrogation of the plaintiff, although such documents and facts may have been on record in other proceedings in the Judge's Court. In a plaint claiming damage

PLAINT—*continued.*

7. REJECTION OF PLAINT—*continued.*

Ground for rejection—*continued.*

for an unsuccessful criminal prosecution of the plaintiff by the first defendant, and sanctioned by the second defendant as a Subordinate Judge, the plaintiff (though stating in the plaint that the second defendant "maliciously and without authority" sanctioned the prosecution, and that the Magistrate before whom it was brought held that there was no cause whatever for the charge) did not allege in the plaint that the first defendant prosecuted him (plaintiff) maliciously and without any reasonable or probable cause, or that the prosecution was sanctioned by the second defendant without reasonable or probable cause. *Held* that the plaint was properly rejected, and that there was no good ground for allowing the plaint to be amended, the plaintiff having delayed the filing of it until the last day but one allowed by the law of limitation. GIRDHARLAL DAYALDAS *v.* JAGANATH GIRDHARBHAI . . . . . 10 Bom., 182

152. ——— *Civil Procedure Code, 1859, s. 32.—Omission of specific statement of time cause of action arose.*—Where the plaint, in a suit to establish a right to landed property and to recover arrears of rent, alleged no specific acts of ownership since 1845, but contained a statement general enough to let in evidence of such acts, and it did not appear that the plaintiff had been questioned,—*Held* that the plaint should not have been rejected under section 32 of Act VIII of 1859, on the ground that it appeared to the Court that the right of action was barred by lapse of time. UDAYA VARMA *v.* NAYAR CHAMBITHU . . . . . 1 Mad., 322

153. ——— **Time for rejection.**—*Civil Procedure Code, 1877, s. 54.*—A plaint can only be rejected under section 54 of Act X of 1877 before it is registered. HUBIBUL HOSSEIN *v.* MAHOMED REZA [I. L. R., 8 Calc., 192: 10 C. L. R., 385

154. ——— *Rejection of plaint after registration.*—Though a plaint has been registered, the Court may reject it under Act VIII of 1859, section 32, as barred by the Act of Limitation. CHETTI GAUNDAN *v.* SUNDARAM PILLAI [2 Mad., 51

155. ——— **Effect of rejection.**—*Right to sue on same cause of action.—Limitation.*—Where a plaint is rejected under section 32, Act VIII of 1859, the plaintiff can bring a suit on the same subject-matter, provided he is not barred by lapse of time. KADUMBINEE DOSSIA *v.* UNNOPOORNA DAYE [14 W. R., 289

8. PROCEDURE.

156. ——— **Assumption of facts as stated in plaint.**—*Decision on issues of law.*—Where a plaintiff on certain alleged facts seeks relief and is unable to obtain a trial of the facts by reason of certain conclusions of law which the Judge forms on the case in its then condition, the Courts are bound to proceed upon the facts as they are stated by the plaint, and upon the assumption of the truth of

PLAINT—*continued.*

8. PROCEDURE—*continued.*

Assumption of facts as stated in plaint—*continued.*

those facts. The assumption of the truth of the facts alleged in the plaint must, however, be limited to the consideration of the legal effect of the facts alleged on the bars raised against the trial of those facts. SIDHEE ALI KHAN *v.* OJOODHYARAM KHAN [5 W. R., P. C., 83 10 Moore's I. A., 540

PLAINTIFF, IMPRISONMENT OF, FOR COSTS OF SUIT.

See INSOLVENCY — INSOLVENT DEBTORS UNDER CIVIL PROCEDURE CODE. [10 B. L. R., Ap., 27

PLAINTIFFS.

See CASES UNDER PARTIES—ADDING PARTIES TO SUITS—PLAINTIFFS.

See PARTIES—SUBSTITUTION OF PARTIES—PLAINTIFFS.

PLEA.

1. ——— **Plea of not guilty.**—*Procedure.—Plea by counsel.*—An accused should plead by his own mouth and not through his counsel or pleader, though his counsel or pleader may at the proper time address the Court on his behalf. QUEEN *v.* ROOPA GOWALLA . . 15 W. R., Cr., 42

2. ——— **Nature of plea.**—*Charge of grievous hurt.—Illegal conviction.—Misconstruction of statement of accused.*—In a case of causing grievous hurt to *B.*, the prisoner, on having the charge read to him, stated that he had had a quarrel with *B.*, and struck him twice with a stick in anger. *Held* that the Sessions Judge was wrong in treating this statement as a plea of guilty and in convicting thereon, and the conviction was quashed and the case remanded for trial. QUEEN *v.* JAIPAL KOIREE [11 W. R., Cr., 6

3. ——— *Penal Code, s. 211.—False charge.—Irregular procedure.*—A prisoner, charged under section 211 of the Penal Code with having brought a false charge with intent to injure, by accusing *A.* of having caused the death of a person by doing a rash or negligent act not amounting to culpable homicide under section 304 (*a*), stated at the trial that the original complaint made by him was false, and that he made it unthinkingly. The Sessions Judge treated this statement as a plea of guilty, and sentenced the prisoner to rigorous imprisonment. No record of the prisoner's plea, as required by section 237 of the Criminal Procedure Code, appeared on the proceedings, nor did it appear that the charge had been explained as well as read to the prisoner, and the Judge considered that the original complaint did not amount to a false charge of an offence under section 304 (*a*). *Held* that the conviction was bad. EMPRESS *v.* GOPAL DHANUK [I. L. R., 7 Calc., 90: 8 C. L. R., 471

PLEA—*continued.*

4. ——— **Qualified plea.**—*Denial of commission of offence.*—When a prisoner pleads guilty, but goes on to say that he did not commit the offence with which he is charged, the plea is really one of not guilty. QUEEN *v.* MITTUN CHOWDHRY [11 W. R., Cr., 53

QUEEN *v.* SONAOOLLAH . 25 W. R., Cr., 23

5. ——— *Charge of murder, Statement by the accused in answer to.—Penal Code, ss. 302, 300, exc. 1, and expl.—Criminal Procedure Code (Act X of 1882), ss. 271, 299.*—An accused person, in answer to a charge of murder, stated that he had killed his wife, but that he had done so in consequence of his having discovered her in an act of adultery on the previous day. *Held* that such a statement did not amount to a plea of guilty on the charge, and that it was the duty of the Court to try whether the provocation therein disclosed was sufficiently grave and sudden to reduce the offence. NETAI LUSKAR *v.* QUEEN-EMPRESS [I. L. R., 11 Calc., 410

PLEA OF GUILTY ON ONE OF TWO CONTRADICTORY CHARGES.

See FALSE EVIDENCE—CONTRADICTORY STATEMENTS . 8 B. L. R., Ap., 25

PLEADER.

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See PRIVY COUNCIL, PRACTICE OF—SPECIAL LEAVE TO APPEAL. [I. L. R., 2 All., 511

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1. APPOINTMENT AND APPEARANCE.

1. ——— **Appointment.**—*Power of others than mooktears to appoint.*—Not merely authorised mooktears, but other persons generally, are at liberty to appoint pleaders by vakalatnamahs. IN THE MATTER OF NUBEE BUKSH . 7 W. R., 481

PLEADER—*continued.*

1. APPOINTMENT AND APPEARANCE —*continued.*

Appointment—*continued.*

2. ——————— *Vakalatnamah, Nature of.*—The acceptance of a vakalatnamah by a pleader of the High Court should in all cases be unconditional. IN THE MATTER OF GOPEENATH MUDDUCK . . . . . 14 W. R., 7

3. ——— Appearance.—*Filing vakalatnamah.—Criminal Procedure Code, 1872, s. 186.*—An authorised pleader appearing in defence of an accused person under section 186, Criminal Procedure Code, should not be required to file a vakalatnamah. ANONYMOUS . . . . 7 Mad., Ap., 41

4. ——————— *Civil Procedure Code, 1859, s. 18.—Right of pleader to appear in Appellate Court and subsequent stages of suit.*—When a pleader appears in a regular appeal before the High Court, he is competent under that vakalatnamah, unless it is revoked, to appear for the client in the subsequent stages of that case, and in the appeal, if preferred to the Privy Council,—section 18 of Act VIII of 1859 applying to Appellate as well as Original Courts. MUKHUN LALL *v.* SEEEKISHEN SINGH . . . . . 8 W. R., 92

5. ——————— *Vakil.—Claim under s. 246, Act VIII of 1859.—Fresh vakalatnamah.*—The vakil retained by the plaintiff in a suit in which a decree has been given for the plaintiff, is competent to plead for his client in answer to a claim advanced (under the first portion of section 246 of the Civil Procedure Code) to property attached in execution of such decree, without the production of a fresh vakalatnamah. GOPAL JAYACHAND *v.* HARGOVIND KHUSHAL . 5 Bom., A. C., 83

6. ——————— *Fresh vakalatnamah.—Application for new trial.*—A fresh vakalatnamah is not necessary to enable a pleader to appear in an application for a new trial before a Small Cause Court, when the pleader presenting the application is one who was employed in the original suit. SUTTO CHURN GHOSSAL *v.* SUROOP CHUNDER DOSS [12 W. R., 465

7. ——————— *Remand of case.—Vakil changing sides on remand.—Mad. Reg. XIV of 1816, s. 22.*—When a suit is remitted by order of an Appellate Court for re-hearing or finding on an issue, the proceedings are in the trial of the suit, and consequently, under section 22 of Regulation XIV of 1816, a vakil cannot change sides and hold a vakalatnamah for the party opposed to the one for whom he appeared at the first hearing. ANONYMOUS [4 Mad., Ap., 43

8. ——————— *Act XX of 1865.*—There is nothing in the provisions of Act XX of 1865 which restrains any person from coming into the presence of the Judge and supplying information to the vakils. The word "appearance" does not mean actual presence before the Judge in Court,—

PLEADER—*continued.*

1. APPOINTMENT AND APPEARANCE —*continued.*

Appearance—*continued.*

e.g., of a mooktear standing behind the pleader. IN THE MATTER OF GUGRAJ SINGH [10 W. R., 355

9. ——————— *Act XX of 1865, s. 20.—Appearance of party by pleader.—Held*, in a case under Act X of 1859, in which the plaintiff had appeared at the preliminary hearing when the issues were framed, and where he was not required to appear in person on the day of the trial, that the presence of the plaintiff's pleader and revenue agent was an appearance within the meaning of the law, having reference to section 20, Act XX of 1865. SONATUN DOSS *v.* KALEE PERSHAD DOSS [13 W. R., 146

10. ——————— *Vakil of High Court.—Right to plead in Small Cause Court.*—A vakil of the High Court in Calcutta is entitled to practise as a pleader in the Calcutta Court of Small Causes. IN RE TOOLSEE DOSS SEAL [2 Ind. Jur., N. S., 133 : 7 W. R., 228

11. ——————— *Act XX of 1865, s. 12.—Small Cause Court, Calcutta.*—A pleader holding a certificate under section 12 of Act XX of 1865 is not thereby entitled to be admitted to practise in the Court of Small Causes at Calcutta. IN RE SHASHI BHUSHAN BHADURY [1 B. L. R., A. C., 45 : 10 W. R., 82

12. ——————— *Barristers.—Attorneys.—Civil Procedure Code (Act XIV of 1882), ss. 2 and 36.—Presidency Small Cause Court Act, XV of 1882, ss. 38 and 76.—Right to practise.—Rules.—Power to make rules.—Per* BAYLEY, WEST, and LATHAM, *JJ.*—None but barristers and attorneys have a legal right to practise in the Bombay Court of Small Causes. Neither sections 2 and 36 of the Code of Civil Procedure (Act No. XIV of 1882), nor sections 38 and 76 of the Presidency Small Cause Court Act (No. XV of 1882), give the pleaders of the Bombay High Court that right. The provisions of section 47 of Regulation II of 1827, authorising persons holding sanads from the High Court to practise in the mofussil Courts, are still in force. *Per* BAYLEY, WEST, PINHEY, and LATHAM, *JJ.*—Section 2 of the Code of Civil Procedure, 1882, does not give every pleader a title to appear and plead; it only enacts that "pleader" means every person entitled to appear and plead for another in Court, and includes an advocate, a vakil, and an attorney of a High Court. Consequently, if pleaders or vakils, who are the same class of practitioners, are not entitled by law to appear or plead for another in Court, the definition of "pleader" gives them no new right or status. The words in section 36 of the Code of Civil Procedure, Act XIV of 1882, "by a pleader duly appointed to act on his behalf," do not simply mean a person duly appointed by the party in the suit, but a pleader duly appointed according to the law regarding pleaders in force in the particular Court. *Per* PINHEY, SCOTT,

PLEADER—*continued.*

1. APPOINTMENT AND APPEARANCE —*continued.*

Appearance—*continued.*

and LATHAM, *JJ.* (WEST, *J., dissentiente*).—The High Court has the power of making rules for the admission of pleaders to practise in the Bombay Court of Small Causes; and the Bombay Court of Small Causes, under section 9 of the Presidency Small Causes Court Act, XV of 1882, also has the power of making similar rules with the sanction of the High Court. IN RE PLEADERS OF THE HIGH COURT, BOMBAY [I. L. R., 8 Bom., 105

13. ——— *Prosecution.—Right to appear in Criminal Courts.*—A counsel or pleader is entitled to appear and act on behalf of the prosecution in the Criminal Courts. CHANDI CHARAN CHATTERJEE *v.* CHANDRA KUMAR GHOSE [5 B. L. R., Ap., 70 : 14 W. R., Cr., 23

14. ——— *Admitting vakils to defend in Criminal Courts.*—The practice of admitting private vakils to defend parties in Criminal Courts is not illegal. It was discretionary with the Magistrate to hear such agents or not under section 186 of the Criminal Procedure Code, 1872. ANONYMOUS . . . . . 7 Mad., Ap., 37

15. ——— *Right of pleader to appear.—Inquiry under Criminal Procedure Code, s. 180.*—At an inquiry held by a Magistrate under section 180 of the Criminal Procedure Code, 1861, a complainant has no right to be represented by a pleader. BINDACHARI *v.* DRACUP . 8 Bom., A. C., 202

16. ——— *Private prosecutor.—Criminal reference to High Court.—Criminal Procedure Code (Act XXV of 1861), s. 434.*—Private prosecutor not allowed to appear by pleader on a reference to the High Court under section 434 of the Criminal Procedure Code, 1861. QUEEN *v.* RAMJAI MAZUMDAR . . . 6 B. L. R., Ap., 46

S. C. SUDDURUDDEEN SIRCAR *v.* RAM JOY MOZOOMDAR . . . 14 W. R., Cr., 51

Quære,—Whether they could appear at all in such cases. LALOO *v.* ADAM SIRCAR. GOVERNMENT *v.* SURJAKANT ACHARJIA . . 17 W. R., Cr., 37

17. ——— *Act XX of 1865, s. 5.—"Act."—Acting as private agent.*—The word "act" in section 5 of the Pleaders and Mooktears Act, XX of 1865, means the doing something as the agent of the principal party which shall be recognised or taken notice of by the Court as the act of that principal. There is nothing in the words of the Act or in its spirit to prevent a person as private agent from going between the prisoner and the duly authorised vakil upon whom the real responsibility of the defence rests. IN THE MATTER OF THE PETITION OF FUZZLE ALI . . . . 19 W. R., Cr., 8

18. ——— *Inability to go on with appeal.—Duty of Judge.*—When one of the pleaders for an appellant states his inability to go on with an appeal, the Judge is not bound to send for any other pleader for the appellant and ask him if he is ready to proceed with the case, but may at once dismiss the appeal. BROJO SOONDUREE DOSSIA *v.* GILMORE . . . . . 7 W. R., 336

19. ——— Non-appearance.—*Neglect of pleader.—Absence for reasonable cause.—Discretion of Court.*—Neglect on the part of a pleader should not be visited on an innocent client when it is within the power of the Court to mitigate the result by the exercise of a little indulgence. A case having been fixed for hearing at a particular time, the pleader for the defendant was unable to attend by reason of the sickness of a friend. The plaintiff's pleader was willing that the case should be postponed, but the Subordinate Judge insisted upon the case being proceeded with *ex parte*. *Held* that there had been a failure on the part of the Court to exercise a proper judicial discretion. ACHUMBIT JHA *v.* JEWUN [11 C. L. R., 11

20. ——— Control of case.—*Senior pleader.—Arguments.*—The senior pleader who is present has the entire control of a case in the High Court, and it is not open to the junior pleader to take any ground of appeal which his senior has not thought fit to argue, except only when the senior has obtained the permission of the Court that the course should be taken. SREENEEBASH ROY *v.* UMBIKA CHURN ROY . . . . . 12 W. R., 375

2. AUTHORITY TO BIND CLIENT.

21. ——— Statement by pleader.—*Admissions made in conduct of suit.*—When a pleader in the conduct of a suit makes admissions on behalf of a client, the client is bound by such admissions. BERKELEY *v.* CHITTUR KOOAR . 5 N. W., 2

22. ——— *Admission by pleader in conduct of case.*—A party is bound by the admission of his duly constituted vakil, when the admission is one of a fact which, but for such admission, the opposite party would have had an opportunity of proving. NARAIN ROY *v.* SREENATH MITTER . . . . . 9 W. R., 485

23. ——— *Admission of vakil in criminal case.*—Admissions of a vakil cannot bind his client in a criminal case. QUEEN *v.* KAZIM MUNDLE . . . . 17 W. R., Cr., 49

24. ——— *Mofussil Courts.—Questions of law and fact, Admissions in respect of.—Per* JACKSON, *J.*—A vakil in the Courts of the mofussil is not empowered to make admissions on points of law on behalf of his client, although he may make admissions on points of fact. JUSODA KOONWAR *v.* GOUREE BYJNATH PERSHAD [1 Ind. Jur., N. S., 365

ABDOOL GUNNEE *v.* GOUR MONER DEBIA [9 W. R., 375

PLEADER—*continued.*

2. AUTHORITY TO BIND CLIENT—*continued.*

Statement by pleader—*continued.*

25. ——————— *Erroneous consent of vakil.*—Where a vakil upon a mistaken view of the law goes beyond and contravenes his instructions, his erroneous consent cannot bind his client. RAM KANT CHOWDHRY *v.* BRINDABUN CHUNDER DOSS . . . . . 16 W. R., 246

26. ——————— *Statements by vakil out of ordinary scope of his authority.*—The greatest caution should be exercised by the Courts before acting upon statements out of the ordinary scope of the vakil's authority in the particular matter for which he was employed. VENKATARAMANNA *v.* CHAVELA ATCHIYAMMA . . . 6 Mad., 127

27. ——————— *Verbal admission made by pleader.*—In a suit to set aside a sale in execution on the ground of fraud,—*Held*, in reference to the terms of certain statements made by the plaintiffs' pleader, from which the lower Appellate Court had inferred that the plaintiffs must have become aware of the fraud at a date earlier than that alleged by them, that verbal admissions made by the pleader of a party to a suit must be received with caution, must be taken as a whole, and must not be unduly pressed. NATHA SINGH *v.* JODHA SINGH [I. L. R., 6 All., 406

28. ——————— *Power to make admissions or statements to bind client.—Relinquishment of part of defence.*—In a suit to recover possession, where defendants' pleader stated before the Munsif that if the thak map (which was not at the time in Court) could show that the lands in dispute had been surveyed as part and parcel of the plaintiff's talook, his client would give up his claim,—*Held* that the statement was not one which was within the scope of the pleader's authority to make, and was not binding upon the client. CHUNDER COOMAR DEO *v.* SUDAKUT MAHOMED KHAN . 18 W. R., 436

29. ——————— *Consent of pleader.—Effect of admission.*—The admission of a vakil made with due authority will bind his client though not present at the time of making it. Where, therefore, an order was made for the payment of a certain sum, being the moiety of the profits of an estate founded on the amount for which security had been taken as the rental of a zemindari when possession was given up, and that amount was admitted and assented to by the vakil in Court, and the order made accordingly,—*Held* by the Judicial Committee, affirming the judgment of the Court below, that such consent was binding on the client, and precluded him from afterwards opening the account. RAJUNDER NARAIN RAE *v.* BIJAI GOVIND SINGH [2 Moore's I. A., 253

30. ——————— *Admission of liability by vakil.*—A distinct admission of liability made by a vakil, who represented the defendant and whose authority was not questioned, was held to be sufficient to warrant a decree in favour of the plaintiff. DOSSEE *v.* PITAMBUR PUNDAH [21 W. R., 332

PLEADER—*continued.*

2. AUTHORITY TO BIND CLIENT—*continued.*

Statement by pleader—*continued.*

31. ——————— *Admission by vakil.—Evidence of receipt of money.*—The admission of a defendant's vakil in Court was held to be legal evidence of the receipt of money, and to do away with the necessity for other proof. KALEEKANUND BHUTTACHARJEE *v.* GIREEBALA DEBIA [10 W. R., 322

32. ——— Power of pleader.—*Power to compromise case.*—Ordinarily a vakil who is employed to conduct the case on behalf of his client has no implied authority to compromise it. In the absence of any express provision in the vakalatnamah, he can make no compromise which will be binding upon his client, except with his consent. PREM SOOK *v.* PIRTHEE RAM . . . . . 2 Agra, 222

33. ——————— *Power to compromise suit.*—Pleaders, unless specially empowered so to do, have no authority to compromise cases conducted by them. SIRDAR BEGUM *v.* IZZUT-OOL-NISSA . . . . . 2 N. W., 149

34. ——————— *Consent to matter beyond scope of suit.*—A consent by the vakil of a party to a decree being made binding on property other than what the parties to the suit may have an interest in, is a consent to what is beyond the scope of the suit, and can neither be binding on the party nor acted upon by the Court. AVUL KHADAR *v.* ANDHU SET . . . . . 2 Mad., 423

35. ——————— *Relinquishment of defence.*—Where a pleader authorised only to conduct the defence in the usual way pledged his client to relinquish his defence if the plaintiff would assert on oath that the defendant was not the owner of the property in dispute, it was held that he had exceeded his power, and that his client was not bound by his act. HAKEEMOONNISSA *v.* BULDEO [3 Agra, 309

36. ——————— *Unauthorised relinquishment by pleader.*—It is not within the ordinary scope of a pleader's duties to relinquish any portion of his client's case without express authority from the client, who is not bound by such relinquishment, unless it was authorised by himself. GOUR PERSHAD DOSS *v.* SOOKDEB RAM DEB [12 W. R., 279

37. ——————— *Relinquishment of part of claim.*—A vakil has no authority under an ordinary vakalatnamah to give up a portion of the claim already decreed, and any such abandonment will not be binding on his client. When a case is remanded with the specific declaration that the plaintiff shall obtain "possession of the disputed property," the lower Court has no jurisdiction to debar the plaintiff from any portion thereof by reason of a relinquishment made by the vakil. ABDUL SABHAN CHOWDHRY *v.* SHIBKISTO DAW [3 B. L. R., Ap., 15

PLEADER - *continued.*

2. AUTHORITY TO BIND CLIENT—*continued.*

Power of pleader—*continued.*

38. ——————— *Withdrawal from suit.—Vakalatnamah.*—A vakalatnamah given by a plaintiff, and couched in general terms, suffices *primâ facie* to authorise the vakil to apply on behalf of the plaintiff for leave to withdraw from the suit; and in the absence of anything to show that the vakil acted contrary to his instructions, or otherwise was guilty of misconduct in making the application, the client is bound by the act of his vakil. RAM COOMAR ROY *v.* COLLECTOR OF BEERBHOOM **[5 W. R., 80**

39. ——————— *Power of vakil to transfer decree.*—A vakil by his ordinary employment as vakil enjoys no authority authorising him to transfer a decree. NOHUR *v.* JAFFER HOSSEIN **[2 N. W., 195**

3. REMUNERATION.

40. ——— **Amount of remuneration.**—*Vakil.*—Although a vakil is entitled to whatever charge his client agrees to, yet if he acts under an engagement constituting him his client's mooktear and legal adviser, he is bound by the same rules as an attorney, and is therefore entitled only to such reasonable remuneration as the law allows. USMUT KOOWAR *v.* TAYLER . . . **2 W. R., 307**

41. ——————— *Suit for fees.—Costs between party and party.*—In a suit by a pleader for the balance of vakil's fees where it was found that there was no contract,—*Held* that, in considering the proper fee to be allowed, the lower Appellate Court had nothing else to guide it but what, according to the practice of the Court, was allowed as costs between party and party. JUDOONATH DUTT *v.* RUSHAD ALI . . . . **19 W. R., 105**

42. ——————— *Suit by vakil for fees.—Act I of 1846, s. 7.—Beng. Reg. XXVII of 1814, s 25.—Costs.*—In a suit brought by a vakil against his client for the amount of his fees, and instituted after the passing of Act I of 1846, but before the Pleaders and Mooktears Act, XX of 1865, came into operation,—*Held* that, where the services in respect of which the fees were claimed consisted of the conduct of a suit which was dismissed for a deficient plaint, under section 29 of Act VIII of 1859, the vakil is not entitled to the full amount of costs under Act I of 1846, section 7, or the scale fixed by Regulation XXVII of 1814, section 25; but in the absence of an express agreement he is only entitled to a reasonable sum as remuneration for his work and labour as a pleader. So much of Regulation XXII of 1814 as was before January 1866 unrepealed, and the whole of Act I of 1864, are repealed by Act XX of 1865, which came into operation on January 1st, 1866. AMEERUNNISSA *v.* CHAPMAN **[1 Ind. Jur., N. S., 334: 6 W. R., 108**

43. ——————— *Costs as between pleader and client.—Bom. Reg. II of 1827, s. 52.—Act I of 1846, ss. 6 and 7.*—The provisions of Regulation II of 1827, section 52, clauses 1 and 2, and of Act I of 1846, section 7, regarding the award of pleaders' costs by way of a percentage, relate only to costs as between party and party, and (inasmuch as section 52 of Regulation II of 1827 is, by section 6 of Act I of 1846, expressly rendered inoperative for any purpose except for the purposes of section 7 of the latter Act) there is not any statutable provision for costs as between pleader and client, so that, in the absence of an agreement between them, the pleader is left to his remedy on a *quantum meruit.* GANGJI VITHAL *v.* SITARAM SHRIDHAR **[9 Bom., 33**

PLEADER—*continued.*

3. REMUNERATION—*continued.*

Amount of remuneration—*continued.*

44. ——— **Right of suit for fees.**—*Cause of action.—Uncompleted case.*—Where a vakil has undertaken the conduct of a suit, he is bound to proceed with it, and cannot sue for his fee, in the absence of a special agreement, until the suit is completed, unless where the client has dispensed with his services. BUCKAPATNAM THATHACHARLU *v.* KAJAMIYA . . . . . **6 Mad., 265**

45. ——— **Right to additional fee.**—*Fees of vakil for applications in suit when he is bound to carry suit to its conclusion.*—Where, under the practice existing in the Courts, a vakil receiving a fee for prosecuting or defending a suit is bound to carry the suit to an end, and to make all necessary applications in the execution department without further fee, no second fee is allowable to a vakil for applications presented in the execution department, unless it can be shown that the services of the vakil originally employed were not available. TAKEE ALI KHAN *v.* GOOL MAHAMED KHAN **[1 N. W., 69: Ed. 1873, 123**

46. ——— **Agreement for further remuneration in successful case.**—*Inam patras.—Act I of 1846, s. 7.*—Inam patras or agreements, oral or written, made contemporaneously with the vakalatnamahs by clients with their pleaders for the payment of rewards in addition to the regulation fees, provided their cases are decided in their favour, are not *nudum pactum,* and, having regard to section 7 of Act I of 1846, cannot be considered as illegal. PARSHRAM *v.* HIRAMAN . **I. L. R., 8 Bom., 413**

47. ——————— *Suit by pleader for fees.*—An application was made for leave to sue defendant *in formâ pauperis,* and he agreed with certain vakils to give them full fees, according to the valuation of the claim, in case they should succeed in having the application rejected. *Held* that this was a valid agreement, and that the vakils, having performed their part, were entitled to recover upon it. RAM KANT NANDI *v.* SHIB NANDA RAI **[2 C. L. R., 166**

48. ——— **Right to recover fee.**—*Legal Practitioners Act, ss. 27, 28, 30.—Suit by pleader to recover fee from client.—Contract Act, s. 70.—Civil Procedure Code, s. 622.*—The Legal Practitioners Act does not debar a pleader from recovering

PLEADER—*continued.*

3. REMUNERATION—*continued.*

Right to recover fee—*continued.*

a fee from his client when no contract in writing is made. RAMA *v.* KUNJI . I. L. R., 9 Mad., 375

49. ——— Division of fee where more than one pleader.—*Mad. Reg. XIV of 1816, s. 30.—Fee, Division of, where two vakils appointed.*—The rule under Regulation XIV of 1816, section 30, that each of two vakils appointed by a party to a suit shall be entitled to a moiety of the fees payable, applies only to cases where they are appointed by the same vakalatnamah. KISARA RUKKAMMA RAU *v.* CRIPATA VIYYANNA DIKSHATULU [1 Mad., 369

50. ——— Fee allowed for registration petition.—*Act I of 1846, s. 7.*—The fee to be allowed to a pleader upon a petition to the Court to establish the right to have a document registered under Act XX of 1866, section 84, was one fourth of the fee allowable in a regular suit, as was provided by Act I of 1846, section 7. COLLECTOR OF THANA *v.* GANA RAMJI PATIL . . 7 Bom., A. C., 132

51. ——— Fees in suit under Registration Act, 1864, s. 15.—*Regular suit.*—A suit under section 15, Act XVI of 1864, was not a summary but a regular suit, and full fees were awarded for pleaders. MOWLA BUKSH *v.* ALI KHAN [9 W. R., 101

52. ——— Fees in suit for judicial separation.—*Divorce Act, IV of 1869.—Estimation of fees.*—In a suit for a judicial separation and alimony decided under the Indian Divorce Act (IV of 1869), the only basis for the estimation of pleader's fees is ten times the amount of alimony for one year. SCOTT *v.* SCOTT . . . . . 7 Mad., 394

53. ——— Fees in partition suit.—*Hearing fee.*—The ordinary rule for assessing the hearing fee according to the market value of the property in suit is not applicable to a suit for partition, and the Court in each such case ought to fix the amount of the fee. KIRTEE CHUNDER MITTER *v.* ANATH NATH DEB . . . . . 13 C. L. R., 253

54. ——— Fees in suit for pre-emption.—*Act XX of 1865, s. 37.—Pleader's fees on what valuation of property calculated.—Held,* in a suit for pre-emption, where it was found by the Court that the actual price of the property was less than the price stated in the deed of sale, and the Court gave the plaintiff a decree with costs, that the amount payable by the defendant in respect of the fees of the plaintiff's pleader ought to be calculated, not on a valuation of the property which was found to be false, nor on the amount on which the Court fee on the plaint was paid, but on the real value of the property as found by the Court. DEBI SINGH *v.* BHUP SINGH . . . I. L. R., 1 All., 709

4. REMOVAL, SUSPENSION, AND DISMISSAL.

55. ——— Removal.—*Power to remove vakil.—District Judge.*—A District Judge has no power to remove a vakil against his will from a Court to which he has once been allotted, except for a criminal offence, misbehaviour, or neglect of duty. IN THE MATTER OF VAMANAJI KONERA [1 Bom., 136

PLEADER—*continued.*

4. REMOVAL, SUSPENSION, AND DISMISSAL —*continued.*

Removal—*continued.*

56. ——— *Removal of pleader from one Court to another.*—A Zillah Judge has no authority to oblige a pleader to leave a Court in which he has been practising and to proceed to another. IN THE MATTER OF THE PETITION OF MAHOMED MANAFF . . . . 10 W. R., 332

57. ——— Suspension.—*Act XX of 1865.—Power to suspend pleader.*—A Zillah Judge has no power, under Act XX of 1865, to suspend a pleader of the High Court from practising in the Courts of his district on the ground of incompetency. His proper course is to make a representation to the High Court. IN THE MATTER OF KISHORBE LALL SIRCAR . . . . . 14 W. R., 217

58. ——— *Act XX of 1865.—Improper conduct.*—The omission of a pleader to examine the record of the case before making an application to stay execution proceedings upon the ground of a compromise, was held not to amount to grossly improper conduct: and his not verifying the statement of the parties who came to him and made their statements (one of them being a mooktear) was considered at the most to amount to carelessness, but not grossly improper conduct; whilst his omission to obtain the authority or concurrence of the senior pleader in the case could not be said to be improper conduct within the meaning of Act XX of 1865—certainly not such grossly improper conduct as to call for the punishment of suspension for six months. IN THE MATTER OF THE PETITION OF SREENATH ROY [17 W. R., 405

59. ——— *Unprofessional conduct.—Commission to mooktears.—Act XX of 1865.—Criminal offence.*—*A.*, a pleader, was engaged by *B.*, who was acting on behalf of *C.*, to defend certain persons charged with the offences of rioting and of having caused grievous hurt. Two of the accused persons were relatives of *C.* *A.* agreed with *B.* that, if all the accused were acquitted, his fee was to be R500; if the two who were the relatives of *C.* were acquitted, then he was to receive R250; but in the event of none of the accused being acquitted, he was to receive only R40. Before the trial *B.* paid *A.* R475; this having come to the knowledge of *C.*, he telegraphed, saying that the fee was exorbitant, and *A.*, upon being remonstrated with, handed over R250 to a banker to be placed to his (*A.'s*) credit. *A.* alleged that, out of R225 which remained with him, he paid R140 to *B.* as commission, and that R25 were paid to his mohurir. *Held* that *A.* was guilty of fraudulent and grossly improper conduct. He was suspended from practising for the period of one year. *Per* PONTIFEX, *J.*—If a mook-

PLEADER—*continued.*

4. REMOVAL, SUSPENSION, AND DISMISSAL —*continued.*

Suspension—*continued.*

tear, paid for his services by his employer, were to receive in addition, without the knowledge of his employer, a percentage or commission from the pleader, he would be answerable, not only in the Civil Court, but also in the Criminal Court, to a charge of obtaining money improperly from his employer. IN THE MATTER OF PEARY MOHUN GOOHO [11 B. L. R., 312

60. ——————— *Power of interim suspension.—Legal Practitioners Act (XVIII of 1879), s. 14, cl. 5, and s. 40.*—The power of *interim* suspension given under section 14 (clause 5) of Act XVIII of 1879, when read with section 40 of the same Act, can only be exercised after the pleader has been heard in his defence and pending the investigation and orders of the High Court. IN THE MATTER OF THE PETITION OF KRISTO LALL NAG [I. L. R., 10 Calc., 256

61. ——— **Misconduct of pleader.**—*Legal Practitioners Act (XVIII of 1879), ss. 10, 32.—Mooktear.—Illegal practising.*—A pleader or mooktear practising in contravention of the provisions of section 10 of Act XVIII of 1879 is punishable under section 32 of that Act only by the Court before which he has so practised. IN THE MATTER OF THE PETITION OF GANGA DAYAL . I. L. R., 4 All., 375

62. ——————— *Refusal to argue case after signing memorandum of appeal.—Semble,*—Where a pleader who has signed the memorandum of appeal refuses to argue the case on the ground of being unable and unprepared, he is liable to be either dealt with by the Court for neglect of duty, or sued by the client for neglect of his interests. BULDEO MISSER *v.* AHMED HOSSEIN [15 W. R., 143

63. ——————— *Omission to examine record before certifying appeal.*—A pleader is not guilty of grossly improper conduct, but substantially and sufficiently complies with the 2nd of the Rules of 23rd May 1871, if he examines copies of the record, and not the original record, before he draws the grounds of appeal and certifies them. IN THE MATTER OF NOOR AHMED . 17 W. R., 338

64. ——————— *Legal Practitioners Act (XVIII of 1879), ss. 15 and 40.—Interim suspension.—Police papers.*—Depositions of witnesses, or confessions taken at a police investigation, are not, as far as their subject-matter is concerned, any more the property of the police than the property of the prisoners, and a pleader is not guilty of misconduct of any kind in making use of such documents for the benefit of his client, when delivered to him by the client, however improperly the client may have become possessed of such documents, provided the pleader is neither party nor privy to obtaining them. IN THE MATTER OF THE PETITION OF KRISTO LALL NAG . . . I. L. R., 10 Calc., 256

PLEADER—*continued.*

4. REMOVAL, SUSPENSION, AND DISMISSAL —*continued.*

Misconduct of pleader—*continued.*

65. ——————— *Unauthorised statement.*—It having appeared that, without any instructions to that effect, the pleader conducting a suit in the lower Appellate Court had suggested, of his own motion, that the mother was a frail woman, and, being in improper intimacy with the defendant, had executed the kobalas for him,—*Held* that the pleader had acted with gross impropriety, and should be called up and censured by the District Judge. GUNGA RAM SADHOOKHAN *v.* PANCH COWREE PORAMANICK [25 W. R., 366

66. ——————— *Striking pleader off the rolls.—Act XX of 1865, s. 16.*—Case in which the High Court declined on the facts to strike a pleader off the rolls for using improper expressions during the argument of a case before a Zillah Judge, who recommended, after observing the requirements of section 16, Act XX of 1865, that such punishment should be awarded. The Zillah Judge should have called the pleader to order, and required him to apologise. IN THE MATTER OF CRUISE [14 W. R., Cr., 53

67. ——— **Power to suspend pleader.**—*Act XX of 1865.*—A Zillah Judge had no power after the 1st January 1866 to make an order under Act XVIII of 1852 dismissing a pleader. He should have proceeded under section 10, Act XX of 1865, and referred the matter, with his report, to the High Court. Even under Act XVIII of 1852, under which the Judge erroneously acted in this case, a pleader was liable to dismissal only on proof of conviction of a criminal offence by a competent Court, or on proof of a declaration or finding by a competent Court (in a suit or proceeding to which the pleader was a party) that he was guilty of a breach of trust, or for fraudulent or dishonest conduct in the discharge of his professional duty, and this also after notice and adjudication as prescribed by section 4. IN THE MATTER OF THE PETITION OF AHMEENOODDEEN AHMED [6 W. R., Mis., 5

68. ——— **Procedure.**—*Pleader or mooktear, Charge of misconduct against.*—Any charge of misconduct against a pleader or mooktear holding a certificate under Act XX of 1865, other than a recorded conviction of a criminal offence, must be made and substantiated, and a report submitted to the High Court, as provided by section 16. IN THE MATTER OF SUDDEROODEEN MAHOMED [7 W. R., 316

69. ——————— *Act XX of 1865, s. 14.—Misconduct of pleader.*—When conduct is charged against any pleader of a subordinate Court, which, if proved, would amount to an offence, that conduct should be inquired into, not simply as improper conduct, but as an offence to be made the ground, if established, of his dismissal under section 14, Act XX of 1865. IN THE MATTER OF GUNESH CHUNDER GANGOOLY . . 13 W. R., 456

PLEADER—*continued.*

4. REMOVAL, SUSPENSION, AND DISMISSAL —*continued.*

Procedure—*continued.*

70. ——————— *Act XX of 1865, s. 16.—Power of Zillah Judge.*—A Zillah Judge has no authority to initiate proceedings against a pleader of the lower grade under section 16, Act XX of 1865, which requires that the inquiry should be made by the Court in which the pleader committed the act of misconduct. IN THE MATTER OF THE PETITION OF KOMLAKANT DEGHAL . . **11 W. R., 127**

71. ——————— *Act XX of 1865. —Report to Judge on acquittal of pleader by subordinate Court.*—In a case tried under the provisions of section 16, Act XX of 1865, where the subordinate Court is of opinion that the pleader should be acquitted, it is not necessary that there should be any report to the Judge. IN THE MATTER OF RAM KINKUR SEIN . . . . . **13 W. R., 67**

72. ——————— *Legal Practitioners Act. XVIII of 1879 s. 12.—Conviction of pleader of criminal offence.—Case reported to the High Court.—Argument allowed to show that conviction was illegal.*—A District Judge reported to the High Court for orders the case of a pleader who had been convicted of cheating under section 417 of the Penal Code, and who, in the opinion of the District Judge, was unfit to be allowed to practise. Upon the hearing of the case, counsel was permitted to go behind the conviction in order to show that the acts of the pleader did not amount at law to the offence of cheating. IN THE MATTER OF DURGA CHARAN **[I. L. R., 7 All., 290**

5. PURCHASE OF DECREES BY PLEADER.

73. ——— **Purchase by pleader of decree in suit which he has conducted.**—*Right to execute decree.*—It is not expedient that pleaders should by purchase become the persons entitled to execute decrees in suits in which they have been engaged. GOSHAIN JUG ROOP GEER *v.* CHINGUN LAL **[2 N. W., 46**

74. ——————— *Sale in execution of decree.—Collusion of vakil of judgment-debtor with decree-holdgr.*—The conduct of a vakil who, having acted in that capacity on behalf of a judgment-debtor in certain proceedings in execution of a decree, subsequently became partner with the decree-holder in the purchase of the property, remarked upon. *Quære,*—Whether, under such circumstances, the purchase by the vakil, or the purchase by the decree-holder in conjunction with him, could not be set aside. ROY NANDIPAT MAHATA *v.* URQUHART . **4 B. L. R., A. C., 181 : 13 W. R., 209**

WAJED HOSSEIN *v.* AHMED REZA **[17 W. R., 480**

PLEADERSHIP EXAMINATION.

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES—APPEALABLE ORDERS . . **I. L. R., 6 All., 163**

PLEADINGS.

See CASES UNDER ADMISSION—ADMISSIONS IN STATEMENTS AND PLEADINGS.

See CASES UNDER ESTOPPEL—STATEMENTS AND PLEADINGS.

See LIEN . . **I. L. R., 4 Calc., 322**

See CASES UNDER PLAINT.

See VENDOR AND PURCHASER—CONSIDERATION . . **6 B. L. R., 530**

See CASES UNDER WRITTEN STATEMENT.

——————— *Rules of pleading in India.*—The Courts in India are not governed by the technical rules of pleading which obtain in Courts administering English law. PITAMBUR PYNE *v.* TOOLSEE DOSSEE . . . . . **7 W. R., 39**

PLEDGE OF GOODS.

See BAILMENT . **5 B. L. R., Ap., 31**

See CONTRACT ACT, s. 178. **[I. L. R., 4 Calc., 497**

POISONOUS DRUGS ACT (BOMBAY).

See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—BOMBAY ACT VIII OF 1866 **[I. L. R., 4 Bom., 167**

POLICE ACT, XXIV OF 1859 (MADRAS POLICE ACT).

——————— **s. 48.**

See FINE . . . **3 Mad., Ap., 9**

See JURISDICTION OF CRIMINAL COURT—EUROPEAN BRITISH SUBJECTS. **[5 Mad., Ap., 25**

See MADRAS POLICE ACT, 1859.

See SENTENCE—IMPRISONMENT. **[3 Mad., Ap., 9**

——————— **s. 53.**

See ESTOPPEL—ESTOPPEL BY CONDUCT. **[5 Mad., 466**

See RIGHT OF SUIT—MONEY HAD AND RECEIVED . . **5 Mad., 466**

——————— **(ACT V OF 1861).**

——————— **s. 13.**—*Cost of constable.*—A Magistrate has no power under the Police Act, 1861, to realise the cost of a police constable from an individual. QUEEN *v.* ROHIMKANT GHOSE **[1 W. R., Cr., 15**

——————— **s. 23.**—*Arrest.—Duty of police officer.*—Under section 23, Act V of 1861, a police officer is not bound to arrest a person against whom no proceedings have been directed if he believes that he has not sufficient grounds for apprehending him. IN THE MATTER OF THE PETITION OF GRISH CHUNDER NUNDEE . . **26 W. R., Cr., 8**

——————— **s. 25.**—*Unclaimed property.—Timber.*—Timber claimed by a landowner as having

POLICE ACT (ACT V OF 1861), s. 25 —*continued.*

been washed on his estate by a river, is not unclaimed property within the meaning of section 25 and following sections of Act V of 1861. CHUTTER LALL SINGH *v.* GOVERNMENT. . . **9 W. R., 97**

——— **s. 29.**

See CANTONMENT MAGISTRATE.
[1 Agra, Cr., 24

See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—POLICE ACT, 1861.
[4 W. R., Cr., 2
1 W. R., Cr., 5

1. ——— *European British subjects.* —*Magistrate.*—In a prosecution under the Police Act, V of 1861, the Magistrate is bound to take into consideration and determine the prisoner's plea that he is a European British subject. Section 29 of Act V of 1861 does not give to the Magistrate jurisdiction over European British subjects. QUEEN *v.* HEARN . . . . . **3 N. W., 128**

2. ——— *Persons not police officers.* —Section 29 of Act V of 1861 is not applicable to persons who are not police officers. IN THE MATTER OF RAMKUMAR . . . **10 C. L. R., 521**

3. ——— *Rashness or negligence of police officers—Search for stolen property.*—Mere rashness or negligence on the part of a police officer before ordering the search of a man's house for stolen property, does not constitute an offence amounting to a violation of duty under section 29, Act V of 1861. The violation there intended must be wilful intentional violation of some clear duty or other. QUEEN *v.* BOLAKI LALL . . . **19 W. R., Cr., 7**

4. ——— *Overstaying leave without permission.*—The failure of a police constable to resume his duty on the expiration of his leave does not constitute an offence under section 29, Act V of 1861. IN THE MATTER OF THE PETITION OF JANOKINATH GUPTA. EMPRESS *v.* JANOKINATH GUPTA
[I. L. R., 6 Calc., 625 : 8 C. L. R., 56

5. ——— *Police officer withdrawing from the duties of his office without permission.* —*Police officer overstaying leave.*—A police officer obtained leave of absence for one month, a substitute being appointed, and overstayed his leave twenty-nine days. *Held* that such absence without leave did not amount to "withdrawal from the duties of his office without permission," within the meaning of section 29 of Act V of 1861. QUEEN-EMPRESS *v.* SALIG RAM . . . . . **I. L. R., 6 All., 495**

6. ——— *Submitting incorrect report. Penal Code, s. 218.*—A police officer negligently or improperly submitting an incorrect report of a local investigation may be punished under section 29 of Act V of 1861, in cases where the proof is insufficient to bring the case under section 218 of the Penal Code. QUEEN *v.* BORODA KANT MOOKHOPADHYA
[15 W. R., Cr., 17

POLICE ACT (ACT V OF 1861), s. 29 —*continued.*

7. ——— *Offence committed by police officer while under suspension.*—A police officer was suspended by the District Superintendent and ordered to remain in the police lines, which he did not do. He was arrested and convicted under section 29, Act V of 1861, for disobeying the orders of his superior officer, and withdrawing from his duties without permission. *Held* that his conviction was illegal; after suspension he was no longer a police officer under section 8 of the Act, and therefore could not be legally convicted under section 29. QUEEN *v.* DINANATH GANGOOLY
[8 B. L. R., Ap., 58 : 17 W. R., Cr., 12

8. ——— *Neglect to act on information while on other duty.*—A police officer charged under section 19, Act V of 1861, with a violation of his duties in not acting on information given to him of the likelihood of a breach of the peace, which afterwards actually occurred, set up in defence that he was, when he received the information, engaged *bonâ fide* in duties as a police officer in regard to another offence. He was, however, found guilty and convicted. *Held* the conviction was illegal. For a conviction under section 29, more than mere neglect of duty must be shown: a deliberate and intentional violation of his duty is necessary. QUEEN *v.* RADHU SING
[8 B. L. R., Ap., 60 : 17 W. R., Cr., 34

9. ——— *Power to depute subordinate* —*Police officer.*—*Neglect of duty.*—A police officer being authorised by law to depute his subordinate to proceed to a place where a crime is reported to have been committed, cannot be supposed to have contravened the law by not proceeding to the spot himself; and therefore the conviction of the prisoner on the charge of wilful violation of duty was illegal. GOVERNMENT *v.* KARAMUT KHAN . **1 Agra, Cr., 1**

10. ——— *Police constable,—"Neglect of duty."—"Lawful order."—Extra drill.*—A District Superintendent of Police directed his constables to cut down the jungle in the vicinity of their lines, and on their refusal to comply ordered them extra drill every day. One of such constables not turning out to such extra drill was therenpon prosecuted and convicted of neglect of duty under section 29, Act V of 1861. *Held* that section 29 provided for no such offence, and that any neglect of duty short of a violation of duty does not amount to an offence under that section. *Held*, further, that the omission to attend such extra drill did not amount to an offence under that section, as the words "lawful order" used in the section mean an order which the authority mentioned therein is competent to make, and it did not appear that a District Superintendent of Police was competent to order his constables to cut down the jungle in the vicinity of their lines, and, on their refusal to do so, to order them extra drill. IN THE MATTER OF THE PETITION OF BHOLA NATH DAS
[I. L. R., 12 Calc., 427

11. ——— *Criminal Procedure Code, 1872, s. 148.—Summons cases.*—Acts or omissions punishable under Act V of 1861, section 29, come within the category of "offences punishable under

POLICE ACT (ACT V OF 1861), s. 29 —*continued*

any law other than the Penal Code" (Code of Criminal Procedure, section 8), and those offences likewise fall within the terms of section 148 of the same Code. QUEEN *v.* GOLAM ARABEE . **25 W. R., Cr., 20**

——— **s. 34.**—*Placing tanbans in public road.*—Placing tanbans in a public thoroughfare is an offence under section 34, Act V of 1861. QUEEN *v.* AMEER . . . . . **2 N. W., 5**

——— **s. 42.**

See APPELLATE COURT—OBJECTION TAKEN FOR FIRST TIME ON APPEAL—SPECIAL CASES—NOTICE OF SUIT.

[2 W. R., 425

1. ——— *Objection to want of notice of action.*—A suit against a police officer under Act V of 1861 should not be dismissed merely because notice under section 42 has not been given, unless the objection be taken in the first Court. NARAIN DEEN TEWAREE *v.* RAM DASS . **8 W. R., 425**

2. ——— **and s. 29.**—Section 42 of Act V of 1861 has no bearing on, or connection with, section 29 of the Act. QUEEN *v.* HAZAR MIR KHAN **[7 N. W., 237**

——— **s. 44.**

See PENAL CODE, s. 177.

[21 W. R., Cr., 30

POLICE AMENDMENT ACT, XLVIII OF 1860.

——— **s. 8.**

See ESCAPE FROM CUSTODY.

[6 Bom., Cr., 15

POLICE INQUIRY.

1. ——— **Power of Magistrate.**—*Criminal Procedure Code (Act XXV of 1861), ss. 133, 180.—Held per* GLOVER, *J.*—Under section 133, Act XXV of 1861, a Magistrate may order a police inquiry "into any offence punishable under the Penal Code." *Held per* LOCH, *J.*—The Magistrate had no authority to order a police inquiry in a case under Chapter XIV of the Criminal Procedure Code, section 180 not having been extended to cases under that chapter. QUEEN *v.* FOKTU SHAH

[2 B. L. R., S. N., 6: 10 W. R., Cr., 49

2. ——— **Order for further detention in custody.**—*Criminal Procedure Code, 1861, ss. 152, 146.—Offering inducement to disclosures.*—Circumstances may exist in which a special order of the nature contemplated in section 152 of the Criminal Procedure Code may properly be passed: for instance, if, in the case into which the police are inquiring, the suspected or confessing parties have voluntarily offered to conduct the police to a place where the stolen property will be found, and such offer cannot be carried into execution within the limited period of twenty-four hours, the power which the above-mentioned section confers on a Magistrate

POLICE INQUIRY.—Order for further detention in custody—*continued.*

may be rightly exercised. But to return accused persons to the police, that they may be forced to give a clue to the stolen property, is to abuse the provisions of section 152, with a view to the breach of the injunctions of section 146 of the Criminal Procedure Code. QUEEN *v.* RUGONATH PERSHAD

[3 N. W., 275

3. ——— **Irregular inquiry.**—*Cases under Chap. XIV, Criminal Procedure Code, 1861.*—An inquiry by the police into complaints falling under Chapter XIV of the Code of Criminal Procedure was not warranted by law. QUEEN *v.* HARRAKCHAND NOWLAKA . . . . **8 W. R., Cr., 12**

4. ——— **Investigation by police officer.**—*Criminal Procedure Code, s. 160.—Summons to answer complaint.*—Section 160 of the Code of Criminal Procedure, which authorises a police officer making an investigation under Chapter V of the Code to require the attendance before himself of any person (within certain limits) who appears to be acquainted with the circumstances of the case, does not empower such officer to require the attendance of an accused person to answer the complaint made against him. QUEEN-EMPRESS *v.* SAMINADA

[I. L. R., 7 Mad., 274

POLICE MAGISTRATE.

See TRANSFER OF CRIMINAL CASE—GENERAL CASES . **15 B. L. R., Ap., 14**

[12 Bom., 217

1. ——— **"Police office."**—*Clerk of Magistrate of Police.—Act XLVIII of 1860, s. 2.*—A clerk in the Police Magistrate's office, having been convicted, under section 2 of Act XLVIII of 1860, as a person employed in a police office, a rule for quashing the conviction was made absolute. *Held* that the words "Police office" in section 2, Act XLVIII of 1860, did not apply to a Police Magistrate. IN RE JUDOO NATH MOOKERJEE . **Bourke, O. C., 186**

2. ——— **Power of Magistrate.**—*Beng. Act IV of 1866, s. 26.—Penal Code (Act XLV of 1860), s. 116.*—A Police Magistrate had power to convict summarily, under Bengal Act IV of 1866, section 26, for an offence punishable under section 116 of the Penal Code. QUEEN *v.* MAHBUB KHAN

[1 B. L. R., O. Cr., 39

POLICE OFFICER.

See MADRAS ABKARI ACT, s. 26.

[I. L. R., 9 Mad., 97

See PENAL CODE, s. 221.

[I. L. R., 3 All., 60

——— **Answer by prisoner to—**

See CASES UNDER EVIDENCE—CRIMINAL CASES—STATEMENTS TO POLICE OFFICERS.

——— **Confession to—**

See CASES UNDER CONFESSION—CONFESSIONS TO POLICE OFFICERS.

POLICE OFFICER—*continued.*

1. ——— **Powers of arrest.**—*Detention of prisoners.—Torture.*—Exposition of a police officer's power of arrest and detention of accused persons and witnesses, with a view to the suppression of the practice of torture. QUEEN *v.* BEHARY SINGH [7 W. R., Cr., 3

2. ——— **Powers in discharge of his duties.**—*Rioting.*—Where a man is grievously wounded in a riot, the police are bound to act without taking into consideration who was the aggressing party. In the discharge of their duties, and in the absence of any proof that they exceeded their duty, the police were held entitled to the protection of the Court. QUEEN *v.* DAMOO SINGH [8 W. R., Cr., 36

3. ——— **Liability of police officer.**—*Penal Code, s. 79.—Criminal Procedure Code, 1861, s. 100, cl. 5.—Illegal arrest by police officer.*—The general exception provided by section 79 of the Penal Code, and the power conferred by clause 5, section 100, of the Code of Criminal Procedure, was held not to protect a police officer who did not act in good faith,—that is, with due care and intention. Clause 5, section 100, Code of Criminal Procedure, refers to property which is proved to have been stolen, and not to anything which a police officer may choose to imagine has been stolen. SHEO SURUN SAHAI *v.* MAHOMED FAZIL KHAN . . 10 W. R., Cr., 20

POLICE REPORT.

See COMPLAINT—INSTITUTION OF COMPLAINT, AND NECESSARY PRELIMINARIES. [5 B. L. R., 274 8 Bom., Cr., 113

See CASES UNDER EVIDENCE—CRIMINAL CASES—POLICE EVIDENCE, DIARIES, PAPERS, AND REPORTS.

See NUISANCE—UNDER CRIMINAL PROCEDURE CODES . 3 B. L. R., A. Cr., 4

See RECOGNISANCE TO KEEP THE PEACE—CREDIBLE INFORMATION. [10 W. R., Cr., 41 4 B. L. R., F. B., 46 12 W. R., Cr., 60

POLICY, CONSTRUCTION OF—

See CASES UNDER INSURANCE—MARINE INSURANCE.

POLICY OF ASSURANCE.

See STAMP ACT, 1869, ss. 34, 41. [I. L. R., 3 Calc., 347

POLITICAL AGENT, ORDER MADE BY, IN HIS EXECUTIVE CAPACITY.

See JUDICIAL OFFICERS, LIABILITY OF— [7 B. L. R., 452, note

POLITICAL RESIDENT AT ADEN, COURT OF—

See JURISDICTION OF CRIMINAL COURT—OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT. [I. L. R., 10 Bom., 258, 263

See LOCAL GOVERNMENT. [I. L. R., 10 Bom., 274

See TRANSFER OF CRIMINAL CASE—GENERAL CASES . I. L. R., 10 Bom., 274

PORT OF CALCUTTA.

——— *Limits of port.—Act XXII of 1855.—Suit for damages for breach of contract.—P. & Co.,* agents for the ship *F. A.*, contracted by a shipping order with *G.* for freight, with option to *G.* to cancel the contract if the *F. A.* should not arrive at the port of Calcutta by the 15th of January. On that day she anchord at Atcheepore, and remained there till the morning of the 16th. *G.* refused to fulfil the contract, and *P. & Co.* sued him thereupon. *Held* that there is no custom governing the construction of the words "the port of Calcutta" in shipping orders; and that an arrival at Atcheepore is not an arrival at the port of Calcutta. POTTER *v.* GENTLE [Bourke, O. C., 41

PORT RULES (CALCUTTA), 1856.

See SHIPPING LAW—COLLISION. [Bourke, Ad., 1, 15

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See SHIPPING LAW—COLLISION. [6 Bom., O. C., 98

PORTUGUESE SUCCESSION.

See ENGLISH LAW—PRIMOGENITURE. [5 Bom., O. C., 172

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See RIGHT OF OCCUPANCY—ACQUISITION OF RIGHT MODE OF ACQUISITION. [1 B. L. R., S. N., 25 21 W. R., 400 9 W. R., 449 13 B. L. R., 276, note; 281, note

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See CASES UNDER TITLE—EVIDENCE AND PROOF OF TITLE—LONG POSSESSION.

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See CASES UNDER VARIANCE BETWEEN PLEADING AND PROOF—SPECIAL CASES—POSSESSION, SUIT FOR—

——— Suit for confirmation of—

See VARIANCE BETWEEN PLEADING AND PROOF — SPECIAL CASES — POSSESSION, SUIT FOR. . I. L. R., 4 Calc., 46

1. EVIDENCE OF POSSESSION.

1. ——— **Statement as to fact of possession.**—*Evidence.*—A statement by a witness that a party was in possession is, in point of law, admissible evidence of the fact that such party was in possession. MANIRAM DEB *v.* DEBI CHARAN DEB [4 B. L. R., F. B., 97; 13 W. R., F. B., 42

2. ——— *Acts of ownership.*—A witness's statement that a party "is in possession" is no evidence of the fact. The question of possession is a mixed one of law and fact, and the evidence produced must give the various acts of ownership which go to constitute possession, so that the Court may arrive at its own conclusion. ISHAN CHUNDER BEHARA *v.* RAM LOCHUN BEHARA [9 W. R., 79

3. ——— **Visiting and making use of house.**—*Possession as of right.*—Occasionally visiting and making use of a house is ample evidence of possession, unless shown to have been done by the claimant in the capacity of a visitor, and not in his own right. UNUNTO RAM SEAL *v.* BROJO BULLUB SEAL . . . . . 11 W. R., 136

4. ——— **Acts of ownership.**—*Omission to show acts of ownership.*—In special appeal, the High Court held that evidence which did not allude to any specific acts of ownership was not sufficient evidence to prove possession. The finding of the fact of possession by the lower Appellate Court upon such evidence reversed on special appeal. JAGABANDHU DAS GAJENDRA MAHAPATRA *v.* DINABANDHU DAS GAJENDRA MAHAPATRA [2 B. L. R., Ap., 30

POSSESSION—*continued.*

1. EVIDENCE OF POSSESSION—*continued.*

Acts of ownership—*continued.*

5. ——— *Suit for recovery of forest land from Government.*—Where a tract of land with a defined boundary has been throughout claimed by a person as owner, and acts of ownership have been done on various portions of it, such acts may be accepted as evidence of the possession of the whole tract. *Bhaskarappa* v. *Collector of North Kanara, I. L. R., 3 Bom., 452,* distinguished. SIVASUBRAMANYA *v.* SECRETARY OF STATE FOR INDIA [I. L. R., 9 Mad., 285

6. ——— **Thakbust award.**—*Boundary, Question of.*—A thakbust award of boundary would in any case be material evidence of possession. PRAHLAD SEN *v.* RAJENDRA KISHORE SINGH [2 B. L. R., P. C., 111 (137); 12 W. R., P. C., 6 11 Moore's I. A., 293

7. ——— **Survey proceedings.**—*Survey by revenue authorities.—Records in Government maps.*—Plaintiff sued in 1876 to recover certain alluvial lands which had been in existence over twelve years, together with recent accretions thereto which he alleged appertained to his talook. The alluvial lands had been surveyed by the revenue authorities in 1863, as appertaining to no permanently-settled estate, and claimed by the Government. The plaintiff's predecessor, however, subsequently, in 1864, laid claim to the lands; and the Collector, abandoning the claim of Government, recorded him in the Government maps and papers as proprietor in possession. *Held* that, although the fact of the land having been measured by the revenue authorities as appurtenant to a certain talook is *primâ facie* evidence of possession of that land at the time of the survey, no presumption from the survey proceedings could arise in favour of the plaintiff in 1863. KUSSESSUR ROY *v.* JOGGODISHURI . . . . 7 C. L. R., 269

8. ——— *Measurement of land by Government officers.*—The evidence of Government having sent its officers to measure the land, and to surround it with pillars, is the very best evidence of possession of a lately-formed chur. COLLECTOR OF FURREEDPORE *v.* KALEE DOSS HAZRAH [17 W. R., 195

9. ——— **Decree for rent.**—*Subsequent suit for possession.*—A decree against the registered tenant, in a suit for rent against him and another, is not conclusive evidence of the possession of such tenant, as between him and the other, in a subsequent civil action. HURRO NATH BHUTTACHARJEE *v.* HARVEY . . . . . 25 W. R., 23

10. ——— **Receipt of rent.**—*Failure to show collection of rent for portion of property.*—Receipt of rent is good evidence of possession, but it does not necessarily follow that a party in possession has been disturbed because he cannot prove that he has collected rent of a particular portion of the property. PUDAR BINDOO MAHANTEE *v.* MOHESH CHUNDER SEN . . . . 20 W. R., 183

POSSESSION—*continued.*

1. EVIDENCE OF POSSESSION—*continued.*

Receipt of rent—*continued.*

Receipt of rent is only evidence of possession ABDOOL ALI *v.* ABDOOR RUHMAN [21 W. R., 429

11. ——— **Receipt for revenue.**—Possession of receipts for Government revenue, though evidence of possession, does not prove it. LALLEE SINGH *v.* AMRIT KOOER . . 17 W. R., 490

12. ——— **Registration of tenure.**—*Suit for possession.—Registration under Beng. Act VII of 1876.—Quære,*—Whether, in a suit founded upon possession alone, or in which the relief sought depends solely upon possession, registration under Bengal Act VII of 1876 ought not to be treated as *primâ facie* evidence of actual possession at the date when the registration was effected. RAM BUSHAN MAHTO *v.* JEBLI MAHTO . I. L. R., 8 Calc., 853

13. ——— *Decision of Collector.—Beng. Act VII of 1876, s. 55.—Per* GARTH, *C. J.—Semble,*—That section 55 of Bengal Act VII of 1876 constitutes the Collector a competent Court under particular circumstances for determining as between two disputants the question of possession, and his recorded decision upon that question in the register might be evidence of the fact of possession as between those two parties. *Ram Bushan Mahto v. Jebli Mahto, I. L. R., 8 Calc., 853,* explained. SARASWATI DASI *v.* DHANPAT SINGH [I. L. R., 9 Calc., 431: 12 C. L. R., 12

14. ——— **Finding as to possession.**—*Mamlatdar.—Magistrate.—Criminal Procedure Code, 1872, s. 530.—Irregularity in taking possession.*—A Mamlatdar's finding as to the point of actual possession is not conclusive. A Magistrate's finding is conclusive under section 530 of Act X of 1872. LILLU *v.* ANNAJI PARASHRAM [I. L. R., 5 Bom., 387

15. ——— *Dispute as to possession between purchaser from heir and grantees from widows.—Effect of decision of Magistrate as to possession.*—In a former suit appellant sought as purchaser from the heir to a former proprietor, to establish her mokurrari right to certain lands as against the grantees from the widows of such proprietor, upon the death of the last surviving widow. She obtained a decree establishing such right, and, on proceeding to take out execution, was opposed by the respondents, who claimed the lands as being a putni tenure which had been sold by auction for arrears of rent due by *B. S.*, the former putnidar, and which had been purchased by *K. B.* and *H. B.*, who had granted a dur-putni of the same to the respondents, in 1849. In 1841 there was a proceeding before the Magistrate as between the grantees of the dur-mokurrari right under the widows and *B. S.*, the putnidar, the result of which investigation was that the Magistrate quieted the former in possession as dur-mokurraridars under the widows, and ordered the putnidar to institute a suit in the Civil Court to enforce his

POSSESSION—*continued.*

1. EVIDENCE OF POSSESSION—*continued.*

Finding as to possession—*continued.*

claim, which suit was never brought. The claim of the respondents was tried as a regular suit between the objectors (respondents) as plaintiffs and the decree-holder (appellant) as defendant, and was decided in favour of the respondents in the lower Courts. On appeal to the Privy Council, their Lordships held that the proceeding in 1841 was conclusive of the present case, as showing that the actual possession then was in the grantees of the widows; that it was in the highest degree improbable that they, having established their possessory right against *B. S.*, would, without a struggle, have allowed themselves to be turned out of possession by their relatives as purchasers of the same *B. S.'s* right; that the possession of the grantees was obtained and continued under the widow's title, and was referable solely to the title which was now vested in the appellant; and that the right of the appellant should in nowise be affected by the acquisition of the putni title in 1849. SHEROOCOOMAREE DEBIA *v.* KESHUB CHUNDER BOSOO . . . **18 W. R., P. C., 1**

2. EVIDENCE OF TITLE.

16. ——— Evidence of possession and enjoyment.—Evidence of possession and enjoyment for a series of years is of itself, if unanswered, cogent evidence of title. BAGRAM *v.* COLLECTOR OF BHULLOOA. COLLECTOR OF RUNGPORE *v.* RAM JADUB SEIN . . . . . **W. R., 1864, 243**

COLLECTOR OF BAREILLY *v.* GHUSEE RAM **[1 Agra, 260**

KIRPA SHUNKUR *v.* PAL PANDEY **[1 Agra, Rev., 47**

RUNG LALL MISSER *v.* RUGHOOBUR SINGH **[9 W. R., 169**

DINOBUNDHOO SUHAYE *v.* COURT OF WARDS **[11 W. R., 347**

RAMRUDEEGOWDA *v.* DESSAI SAHIB **[17 W. R., P. C., 8**

17. ——— Length of possession.—Possession need not be long in order to be some evidence of title. PURAN CHUNDER MOOKERJEE *v.* PROTAP NARAIN PAUL . . **9 W. R., 120**

18. ——— Proof of possession and forcible dispossession.—*Onus of proof.*—Possession is evidence of title, and if a plaintiff proves that he had possession and that the possession has been forcibly disturbed by defendant, he makes out a *primâ facie* title which it is for defendant to rebut. AYESHA BEEBEE *v.* KANHYE MOLLAH **[12 W. R., 146**

19. ——— Effect of possession as evidence of title.—*Onus of proof.*—Possession, except where it is of such a length and character as of itself to constitute title, is merely evidence of title, and is so only because undisturbed possession without anything more is presumed to be referable to rightful

POSSESSION—*continued.*

2. EVIDENCE OF TITLE—*continued.*

Effect of possession as evidence of title—*continued.*

title and to absolute ownership: it is open to the other side to show that such *primâ facie* presumption is ill-founded. KALEE CHUNDER SEIN *v.* ADOO SHAIKH . . . . . **9 W. R., 602**

20. ——— *Presumption.*—A person in possession of property ought to be presumed to be in lawful possession until the contrary be shown. Beyond this, possession is only evidence to be taken conjointly with other evidence to establish or impugn a title. SELAM SHEIKH *v.* BAIDONATH GHATAK . **3 B. L. R., A. C., 312 : 12 W. R., 217**

21. ——— *Ejectment.*—Possession is evidence of title, and gives a good title against a wrong-doer; but a person who has not had possession cannot, without proof of title, turn another out of possession, even though that other may have no title; for possession is a good title against any one who cannot prove a better. CLARKE *v.* BINDABUN CHUNDER SIRCAR **[Marsh., 75 : W. R., F. B., 20 1 Ind. Jur., O. S., 97 : 1 Hay, 137**

22. ——— Title by possession.—*Right to retain possession.*—In India the title of possession must prevail until a good title is shown to the contrary. PEDDA VENCATAPA NAIDOO *v.* AROOVALA ROODRAPA NAIDOO **[6 W. R., P. C., 13 : 2 Moore's I. A., 504**

WISE *v.* BROJENDRO COOMAR ROY **[18 W. R., P. C., 91**

23. ——— *Right to retain possession.*—A person in possession with a bad title is entitled to remain in possession until another person can disclose a better title. GOPEE NATH DOSS *v.* DYANIDHEE SOONDURA MOHAPATTUR **[7 W. R., 485**

SOODUKHINA CHOWDHRAIN *v.* RAJ MOHUN BOSE **[11 W. R., 350**

24. ——— *Right of person in possession against wrong-doer.*—When a plaintiff's evidence fails to show title in him, but does not show title in another, the plaintiff may recover upon his possession against a defendant wrong-doer. DOE D. KULLAMMAL *v.* KUPPU PILLAI . **1 Mad., 85**

25. ——— *Possession commencing in wrong.*—A possession on the part of one party, which is not shown to have commenced in wrong, can only be disturbed by distinct proof of a superior title in another party. ARUMUGAM CHETTY *v.* PERRIYANNAN SERVAI . **25 W. R., P. C., 81**

26. ——— *Right to sue for ejectment.—Failure to prove title.*—Possession is a good title against all persons except the rightful owner, and entitles the possessor to maintain ejectment against any other person than such owner who dispossesses him. The above rule held to be appli-

POSSESSION—*continued.*

2. EVIDENCE OF TITLE—*continued.*

Title by possession—*continued.*

cable where the plaintiff alleged title by conveyance, and also relied upon possession, but failed to prove his title, while his possession was held proved. PEMRAJ BHAVANIRAM *v.* NARAYAN SHIVARAM KHISTI [I. L. R., 6 Bom., 215

KRISHNARAV YASHVANT *v.* VASUDEV APAJI [I. L. R., 8 Bom., 371

27. ——————— *Undisputed and continuous possession.*—Evidence of possession and enjoyment is good evidence of title as against the real owner only where it has been undisputed and continuous. GOOROO PERSHAD ROY *v.* BYKUNTO CHUNDER ROY . . . . . 6 W. R., 82

RUTTUN BEBEE *v.* MAKARUM ALI [2 Agra, 309

28. ——————— *Long possession.*—A long possession would not confer any title on the occupant if it be proved that the possession was a permissive one. GUNGA DEEN CHOWDHRY *v.* HUR SAHAI SINGH . . . . . 3 Agra, 261

TOOLSEERAM *v.* NAHUR SINGH . 3 Agra, 271

ALI BUX *v.* ROOP KOOER . . 2 N. W., 106

29. ——————— *Limitation.—Unoccupied and uncultivated land.*—Where land, the right to which is disputed, has been uninhabited and uncultivated, and no acts of ownership by any person can be proved to have been exercised over it, it is often necessary, for the purpose of deciding the question of limitation, to rely upon slight evidence of possession, and sometimes possession of the adjoining land, coupled with evidence of title, such as grants of leases; and the Courts are justified in presuming, under such circumstances, that the party who has the title has also the possession. But where the land has been occupied, it is generally proper, for purposes of limitation, to deal with the question of possession as distinct from the question of title; for while the title may be in one person, a twelve years' possession may have barred that title. MOHIMA CHUNDER DEY SIRCAR *v.* HURRO LALL SIRCAR [I. L. R., 3 Calc., 768: 2 C. L. R., 384

30. ——————— *Limitation Act (XV of 1877), arts. 143, 144.—Conflicting evidence of possession.—Presumption of title.*—Where two adverse parties are each trying to make out a possession of twelve years, and the evidence is conflicting and not conclusive on either side,—*Held* that the presumption that possession goes with the title must prevail. DHARM SINGH *v.* HUR PERSHAD SINGH [I. L. R., 12 Calc., 38

31. ——————— *Long possession.*—Uninterrupted possession for a long time is *primâ facie* sufficient proof of title, and the security which being in possession affords should not be weakened. RUGHOO NATH RAI *v.* CHUNDOO LALL [2 Agra, Pt. II, 195

POSSESSION—*continued.*

2. EVIDENCE OF TITLE—*continued.*

Title by possession—*continued.*

32. ——————— *Mokurrari title.—Evidence.*—Mere proof of possession for more than twelve years does not amount to proof of a mokurrari title. SHIU DAYAL PURI *v.* MAHABIR PRASAD [2 B. L. R., Ap., 8

33. ——————— *Long possession.—Omission to give notice.*—Long possession itself does not give a title to a settlement if the parties asking for the settlement have not complied with the requirements of the law. GOLUCK CHUNDER CHOWDHRY *v.* ALI MOLLAH . . 11 W. R., 378

34. ——————— *Onus of proof.*—In a suit for possession of property the plaintiff relied on his previous twelve years' possession, and gave no further evidence of his title. *Held* that a previous possession for twelve years of the property sought to be recovered did not dispense with the necessity which lay on the plaintiff to prove his title to that property. He is not on that fact alone entitled to be replaced in possession of the property without regard to any right which may be alleged by the defendant. LAKHI KUMAR *v.* RAM DUTT CHOWDHRY [3 B. L. R., Ap., 44: 11 W. R., 447

35. ——————— *Long possession.*—*A.* brought a suit under Act X of 1859 to recover arrears of rent in respect of certain lands. *B.* was made a party under section 77, but *A.* obtained a decree and ousted *B.* *B.* therefore sued *A.* in the Civil Court for possession and declaration of his right to the lands, alleging that they were his lakhiraj and devatra lands. The High Court held that proof by *B.* of possession for twelve years was sufficient, and gave him a decree. BISWANATH *v.* BRAJAMOHAN CHUCKERBUTTY [1 B. L. R., S. N., 1: 10 W. R., 61

36. ——————— *Onus of proof.—Suit for possession.*—Where a plaintiff seeks to recover possession upon a title recently acquired, he is not invariably required to prove the origin of his vendor's title. Long and undisturbed possession on the part of the vendor, when positive evidence of title cannot be had, may in many cases constitute proof of title. In a suit to recover immoveable property in the possession of the defendant, a plaintiff cannot ordinarily succeed merely by showing that the title has accrued to him. JOYKISHEN MOOKERJEE *v.* RAJ KISHEN MOOKERJEE . . . 12 W. R., 315

37. ——————— *Limitation Act, 1859, s. 15.—Wrong-doer.*—In considering the subject of possession as creating title, irrespective of section 15 of Act XIV of 1859,—*Held* that possession for a period of sixty years and upwards is sufficient to create a title in the possessor which no one in the world can question or repudiate; that adverse possession for any period sufficient under the Limitation Act is itself a title, even against the rightful owner himself; that prior possession, however short, is itself a title against a mere wrong-doer. ENAETOOLLAH CHOWDHRY *v.* KISHEN SOONDUR SURMA . . 8 W. R., 386

POSSESSION—*continued.*

2. EVIDENCE OF TITLE—*continued.*

Title by possession—*continued.*

38. ——————— ——— *Lost records.—Proof of long possession.*—The plaintiff claimed a right of pre-emption as safee-sharikh, or partner in the thing sold. The Court of first instance gave him a decree on the ground of long possession as proprietor. The lower Appellate Court reversed the decision on the ground that the plaintiff's title depended on a deed of purchase, which it was admitted had been set aside in a former suit in 1855, and that the plaintiff had failed to show that the decision in that suit had been reversed. The plaintiff proved that he had preferred an appeal from that decision, and alleged that it had been overruled; but there was no proof of the result of the appeal, as the records of that suit had been burnt in the Mutiny. *Held* on appeal to the High Court that, under the circumstances, proof of long possession as proprietor was sufficient. TUFANI SINGH *v.* DURGABAN . **4 B. L. R., Ap., 21**

39. ——————— *Undisturbed possession.—Held,* on the evidence in the case, that defendants' long possession was confirmatory of their title based on a mortgage-bond of old date, and that plaintiff's suit for possession was rightly dismissed. DEVAJI GAYAJI *v.* GODABHAI GODBHAI **[2 B.L. R., P. C., 85: 11 W. R., P. C., 35**

40. ——————— *Limitation.—Act XIV of 1859, s. 15.—Dispossession.*—In a suit for recovery of possession of certain brahmattar land, of which the defendant had dispossessed the plaintiffs by virtue of an award passed under section 15, Act XIV of 1859, declaring his right by purchase, the defence set up was that the deed of purchase was a forgery, and that the suit was barred by lapse of time. *Held* that, although the plaintiffs failed to prove their title-deeds, yet their title was sufficiently established by oral evidence of long possession prior to their dispossession two or three years previous to suit. RAM CHANDRA CHOWDHRY *v.* BRAJANATH SARMA . . . . **3 B. L. R., Ap., 109**

41. ——————— *Long possession.—Limitation Act, IX of 1871, s. 29.—Limitation Act. XIV of 1859.—Bom. Reg. V of 1827, s. 1.—Prescription.—Adverse possession.*—Some lands in the village of Shirasgam in the Puna Collectorate, commonly called "Kholhati Bawas Inam," originally belonged to His Highness Scindia. Plaintiff's family were proved to have been in actual possession of them from 1841 to 1854, and in constructive possession during their attachment by the Inam Commission from 1854 to 1863, when, by a mistake in carrying out the orders of the British Government, the lands passed into the possession of Scindia, and remained with His Highness till 1872, in which year the British Government, by exchange of lands, came into possession. In a suit brought on 29th July 1872,—*Held* that the plaintiff's possession, not extending over thirty years, gave him no proprietary title under section 1 of Regulation V of 1827, which as a law of positive prescription, was not repealed by Act XIV of 1859. Under the former Limitation Act, twelve years' adverse possession barred the suit without extinguishing the title: so that if a proprietor who had been out of possession for more than twelve years happened to regain it, the person who had been in adverse possession must fail in any suit to eject the proprietor, unless he sued within six months under section 15 of the Act. The effect of Act IX of 1871, section 29, however, is not merely to bar the remedy, but to extinguish the title of the original proprietor after twelve years of a possession adverse to him. RAMBHAT AGNIHOTRI *v.* COLLECTOR OF PUNA **[I. L. R., 1 Bom., 592**

42. ——————— *Mirasidars.—Long possession.—Local inam and custom.—Sanad.*—Where a plaintiff claimed to hold certain lands in miras and under a right of perpetual cultivation by the custom of the country, and sought to recover the lands from the defendant, who claimed as purchaser, at a Court sale, of the right, title, and interest of the inamdar of the said lands, and the lower Court dismissed the suit on the ground that the plaintiff had failed to prove any right of perpetual cultivation, the District Court, on appeal, observing that no term of occupation as a tenant of inam land would confer a right of perpetual cultivation, and that nothing short of a regular sanad would confer on the plaintiff his alleged right in the lands, the High Court on special appeal reversed the decrees of the Courts below, and remanded the case for a new trial on the point whether the plaintiff as a mirasidar or by local usage in virtue of his long possession and uniformity of payment of rent or assessment or otherwise, previously to the Court sale to defendant, had acquired the right to hold the lands in perpetuity on payment of a fixed or other rent ascertainable by local usage. BABAJI *v.* NARAYAN **[I. L. R., 3 Bom., 340**

43 ——————— *Long possession, as evidence of title.—Pottah found to be forged.—Permanent tenure.—Service tenure.—Presumption of title.*—The plaintiff purchased a mirasi talook at a sale in execution of a decree obtained against the talookdar for arrears of rent of the talook, and then sued to recover possession of certain lands held by the defendants within the talook. The defence was that the lands in question were held by the defendants under a pottah which had been granted to their ancestor in 1733 by the then talookdars in respect of certain services to be performed by the grantees and their descendants. The Court of first instance found that the pottah was genuine, and dismissed the plaintiff's suit. On appeal, the Subordinate Judge found that the pottah was a forgery; and that although the lands had been granted to the defendants' ancestor in respect of services, yet the plaintiff was entitled to khas possession, as he did not require the services to be performed. He therefore decreed the plaintiff's claim. *Held* that the decree was right, for having found that the pottah on which the defendants chiefly relied was a forgery, the Subordinate Judge was not bound, as a matter of law, to presume that the tenure

POSSESSION—*continued.*

2. EVIDENCE OF TITLE—*continued.*

Title by possession—*continued.*

was a permanent one merely from the fact of long possession of the lands. NOBIN CHUNDER DUTT *v.* MODUN MOHUN PAL [I. L. R., 7 Calc., 677: 9 C. L. R., 233

44. ——— *Mâl and lakhiraj cases.—Suit for possession.*—In mâl cases of title the question of possession is dependent on the question of title; whereas in lakhiraj cases the title may fail, and yet if possession as lakhirajdars—that is to say, possession without paying rent—is proved it may be sufficient to give a lakhiraj title. RADHAGOBIND DASS *v.* PROKASH CHUNDER DASS [14 W. R., 108

45. ——— *Buildings on land occupied under zemindars without evidence of grant.—Evidence of reservation of interest.*—Where there was no evidence of any grant, and the owner of buildings had been for upwards of twelve years in possession of the plots of land on which the buildings were situated without in any way paying rent to or acknowledging the title of the zemindars, he was *primâ facie* entitled to the sites, and the mere fact that the sites were situated within the area of a permanently-settled mehal did not justify the presumption that the zemindars reserved to themselves reversionary right in the sites. GUR PARSHAD *v.* UMRAO SINGH [7 N. W., 218

3. NATURE OF POSSESSION.

46. ——— *Possession under deed afterwards set aside as fraudulent.—Effect of decree setting it aside.*—Where a person was in actual possession of property from the time when a deed conveyed it to him, a decision which declared that deed to be fraudulent did not have the effect of putting another claimant in posession; nor could possession be considered as having ceased in consequence of the decree, unless the holder were actually dispossessed under it; for the fact of the decree did not prevent the statute of limitation from running, and, in the particular case under consideration, the decree in question was still under appeal. MUKBOOL ALI *v.* WAJED HOSSEIN . . . 25 W. R., 249

47. ——— *Possession in execution of decree.—Possession otherwise than by Court.—Civil Procedure Code, 1859, ss. 230, 264.*—Act VIII of 1859, section 230, did not limit the applicant to any particular manner of obtaining possession; and section 264 contained nothing to prevent the purchaser at an execution sale from obtaining possession if he could without the assistance of the Court. OBHOYA CHURN DEY *v.* RAJENDRO COOMAR GHOSE [22 W. R., 406

48. ——— *Possession without executing decree for possession.*—So long as a plaintiff obtains possession after a decree establishing his right to it, it is immaterial for the purpose of limitation whether he obtained it by executing his decree, or whether possession was yielded to him. If

POSSESSION—*continued.*

3. NATURE OF POSSESSION—*continued.*

Title by possession—*continued.*

afterwards dispossessed, his cause of action does not date from the decree, but from his dispossession. SALIG RAM *v.* MEHBEN LALL . . 2 Agra, 235

49. ——— *Possession irregularly taken.*—Possession actually taken by a person having a right to it is not the less effective, as perfecting his title, by reason of an irregularity in taking it. Subsequent ouster will give rise to a new cause of action. LILLU *v.* ANNAJI PARASHRAM [I. L. R., 5 Bom., 387

50. ——— Possession in execution of decree.—*Proclamation of sale.—Suit for possession.—Limitation.*—In a suit for possession of certain lands purchased by plaintiff at a sale in execution of a decree of the Sudder Ameen's Court, the lower Court held that "possession by proclamation of sale, through the Sudder Ameen's Court, was possession through the Court," and that the suit being brought within twelve years of that proclamation was in time. *Held* on appeal that such imaginary possession was no possession at all, and that the suit was barred by limitation. JOWHER ALY *v.* RAM CHAND . 2 B. L. R., Ap., 29: 24 W. R., 419

51. ——— *Proclamation of sale.—Possession of auction-purchaser.*—The possession of an auction-purchaser at a sale in execution of a decree runs from the date of delivery, as provided by section 246, Act VIII of 1859,—*i.e.*, by publication of sale certificate and proclamation by beat of drum,—and not from the date of his possession. ASUDOOLAH *v.* AKBUR ALI . 7 W. R., 60

52. ——— *Civil Procedure Code, 1877, s. 264.—Certificate of sale.*—It was not incumbent on the Court, under the Civil Procedure Code (Act VIII of 1859), section 264, to put a purchaser into possession until he had his certificate of sale. *Quære,*—Whether a purchaser who, without a certificate of sale, has been put into possession, could be lawfully ejected because he has not such a certificate. TUKARAM *v.* SATVAJI KHANDUJI [I. L. R., 5 Bom., 206

See also BASAPPA *v.* MARYA [I. L. R., 3 Bom., 433

53. ——— *Civil Procedure Code, 1859, s. 224.*—In order to a legal possession being given under section 224, Act VIII of 1859, it was essential that all the requirements of that section be carried out. COURT OF WARDS *v.* BURRA LALL OPENDRONATH DEO . . . 15 W. R., 99

54. ——— *Civil Procedure Code, 1859, s. 224.*—Where compliance with the formalities prescribed by section 224, Act VIII of 1859, and a legal receipt for possession, were found as facts, they were held to give such a right under a Civil Court's decree as would prevail over one founded on mere actual receipt of rent. KHETTURNATH ROY *v.* DURBESH MOONSHEE . . . 9 W. R., 358

POSSESSION—*continued.*

3. NATURE OF POSSESSION—*continued.*

Possession in execution of decree—*continued.*

55. ——————— *Possession, Suit for.—Civil Procedure Code, 1859, s. 224.*—A suit for possession of immoveable property is not barred by the law of limitation if the suit be brought within twelve years of possession having been delivered to the plaintiff under section 224, Act VIII of 1859, or if possession by the plaintiff has been admitted within twelve years by the party through whom the defendant claims. BINDUBASHINI DASI *v.* RENNY (RAINEY). **7 B. L. R., Ap., 20: 15 W. R., 307**

56. ——————— *Decree for possession, Effect of.—Civil Procedure Code, 1859, s. 223.*—Where plaintiff sued defendant as a trespasser, the prayer in the plaint being for khas possession, and the defendant set up an adverse title, the decree given against the latter for possession was held to give the judgment-creditor the possession sued for, —*i.e.*, legal possession as provided by section 223, Act VIII of 1859. RAJ MUNGUL ROY *v.* ANUNDMOYEE . . . . . **11 W. R., 63**

57. ——————— *Ameen, Possession given by.—Partition proceedings.—Criminal Procedure Code, 1872, s. 530.*—The possession given by an Ameen in a butwarra proceeding is simply one of ownership and not of occupancy. Such possession cannot, therefore, in proceedings under section 530 of the Code of Criminal Procedure, be held to oust tenants occupying lands previous to such delivery of possession. IN THE MATTER OF THE PETITION OF MACKENZIE *v.* SHEEB BAHDOOR SAHI **[I. L. R., 4 Calc., 378**

58. ——————— *Civil Procedure Code, 1859, ss. 223, 224.*—A person who has obtained symbolical possession under section 224 of Act VIII of 1859, may subsequently ask for actual possession under section 223, if the terms of his decree warrant such possession being given. ROBSON *v.* MASEYK **[3 W. R., Mis., 2**

59. ——————— *Formal possession.—Fresh period of limitation.—Act VIII of 1859, s. 224.*—Delivery of possession by going through the process prescribed by section 224 of Act VIII of 1859 is the only way in which the decree of the Court awarding possession to the plaintiff can be enforced; and as, in contemplation of law, both parties must be considered as being present at the time when the delivery is made, such delivery must, as against the defendant, be deemed equivalent to actual possession. As against third parties such symbolical possession is of no avail, because they are not parties to the proceedings. But if the defendant subsequently dispossesses the plaintiff by receiving the rent and profits, the plaintiff will have twelve years from such dispossession to bring another suit. JUGGOBUNDHU MUKERJEE *v.* RAM CHUNDER BYSACK **[I. L. R., 5 Calc., 584 : 5 C. L. R., 548**

MOZUFFER WAHID *v.* ABDUS SAMAD **[6 C. L. R., 539**

POSSESSION—*continued.*

3. NATURE OF POSSESSION—*continued.*

Possession in execution of decree—*continued.*

60. ——————— *Formal possession.—Transfer of possession.—Civil Procedure Code (Act VIII of 1859), ss. 223, 224.*—In a suit for possession, it appeared that in 1863 the plaintiff had sued some of the present defendants for khas possession of the same land. In that suit the defendants pleaded that they were tenants of the plaintiff and entitled to hold under a pottah, which they failed to prove, and the plaintiff obtained a decree. Three years afterwards the plaintiff was put into formal possession by the Court under section 224 of Act VIII of 1859, instead of under section 223 *Held* that, as the plaintiff was put in possession under his decree by the officer of the Court, the form in which execution was given was immaterial. The formal possession given by a Civil Court under an execution operates, in point of law and fact, as between the parties, as a complete transfer of possession from the one party to the other. LOKESSUR KOER *v.* PURGUN ROY **[I. L. R., 7 Calc., 418**

See DHONDIBA KRISHNAJI PATIL *v.* RAMCHANDRA BHAGAT . . **I. L. R., 5 Bom., 554**

61. ——————— *Symbolical possession.—Obstruction or resistance to possession.*—Symbolical possession, such as may be given by the Nazir of a Court by sticking a bamboo into the ground or the like, of a dwelling-house, or of a share in a dwelling-house, of which actual possession might have been granted, is not such a *bonâ fide* possession as will save limitation. SHOTENATH MOOKERJEE *v.* OBHOY NUND ROY . **I. L. R., 5 Calc., 331**

62. ——————— *Symbolical possession.—Limitation.—Fresh cause of action.*—Symbolical possession given under a decree does not, as against third parties, entitle the person to whom such possession has been given to count a fresh period of limitation from the date of the possession. A person who prefers a claim to property attached under a decree, but whose claim is disallowed, is not a party to the decree; and the decree-holder, on obtaining symbolical possession, will not be entitled to count a fresh period of limitation as against him. DOYANIDHI PANDA *v.* KELAI PANDA . **11 C. L. R., 395**

63. ——————— *Symbolical possession, Effect of.*—Where in execution proceedings symbolical possession is given to a person, such possession amounts to an actual transfer of possession as between the parties to the suit; but such possession has no such operation against third presons who are not parties to the suit. *Juggobundhu Mukerjee* v. *Ram Chunder Bysack, I. L. R., 5 Calc., 584,* explained. RUNJIT SINGH *v.* BUNWARI LAL SAHU **[I. L. R., 10 Calc., 993**

64. ——————— *Formal possession.—Limitation.*—Where a plaintiff, who has obtained a decree for possession of immovable property, undergoes the mere ceremony of receiving formal possession on the spot by beat of drum and posting

POSSESSION—*continued.*

3. NATURE OF POSSESSION—*continued.*

Possession in execution of decree—*continued.*

of bamboos, and then allows twelve years to elapse without taking any steps to acquire and assert actual possession, he loses the title conferred by the decree. PEAREE MOHUN PODDAR *v.* JUGOBUNDHOO SEN [24 W. R., 418

65. ——— *Formal possession.—Cause of action.—Possession under decree barred by limitation.*—Where a decree declared that plaintiff was to get possession of a certain quantity of land on a butwarra being made, and the decree-holder, after allowing his right to be barred by lapse of time, applied to the Collector, had a butwarra effected, and obtained merely formal possession,—*Held* that such possession gave him no fresh cause of action. KISHORE SINGH *v.* GOBIND SINGH [24 W. R., 33

66. ——— *Formal possession.—Limitation.—Cause of action.—Actual possession.*—Formal possession given to a decree-holder by an officer of the Court in execution of his decree, is sufficient to give him a fresh cause of action, and notwithstanding that he may never have obtained actual possession, he or his assigns may sue to recover possession at any time within twelve years from the time when such formal possession was given. UMBICKA CHURN GOOPTA *v.* MADHUB GHOSAL [I. L. R., 4 Calc., 870 : 4 C. L. R., 55

67. ——— *Suit for possession after delivery of formal possession to defendant.—Semble,*—That the delivery of formal possession in execution of a decree for possession gives a cause of action, against a defendant who remains in occupation of the premises, which may be enforced in a regular suit. SHAMA CHARAN CHATTERJI *v.* MADHUB CHUNDRA MOOKERJI . I. L. R., 11 Calc., 93

68. ——— *Subsequent continuance in possession of judgment-debtor.—Right to fresh execution of decree.*—When a formal possession of immovable property has been delivered according to law to a person holding a decree for the delivery of the same, the subsequent continuance in actual possession of the judgment-debtor does not give the decree-holder a right to a fresh order for delivery of possession in execution of the decree, but gives him a right to institute a fresh suit for possession of such property. GOPAL DAS *v.* THAN SINGH [I. L. R., 4 All., 184

RAM NEWAZ SINGH *v.* KISHUN RAI. [6 N. W., 137

69. ——— *Formal and actual possession.—Limitation.—Sale in execution of decree.*—*A.* purchased the right, title, and interest of *B.*, a judgment-debtor, in certain lands, at an auction sale in execution of a decree in October 1863, was put in formal possession in January 1865, and died without ever having obtained actual possession After his decease, a suit was filed in September 1875 on behalf of his minor son, *C.*, against the defendants, who obstructed his taking actual possession. *Held* that if *B.* was in possession at the time of the sale—that is to say, within twelve years before the institution of the suit—*C.* was not barred by limitation. KOONJO MOHUN DASS *v.* NOBO COOMAR SHAHA [I. L. R., 4 Calc., 216

4. ADVERSE POSSESSION.

70. ——— **Effect of adverse possession.**—*Limitation.—Title.*—Adverse possession for more than twelve years not only bars remedy but extinguishes right, and confers title on the party holding such adverse possession. BARODAKANT ROY *v.* PRANKRISHNA PAROI [3 B. L. R., A. C., 343 : 12 W. R., 192

RAM SAHOY SINGH *v.* KOOLDEEP SINGH [15 W. R., 80

71. ——— *Title by length of possession.—Limitation.—Unexecuted decree.*—In 1859 *A.* obtained a decree for possession of land against *B.*, but no proceedings in execution were taken, and *B.* continued in possession. In 1869, *C*, having purchased the right and interest of *A.* in the decree, forcibly dispossessed *B.*, who had been twelve years in possession. *B.* now brought this suit against *C.* to recover possession. *Held*, the execution of the decree of 1859 being barred, and *B.* having been twelve years in possession, he was entitled to recover. Adverse possession which bars the remedy also transfers the right. AMIRUNNISSA BEGUM *v.* UMAR KHAN . 8 B. L. R., 540

AMIRUNNISSA BEGUM *v.* AMIR KHAN [17 W. R., 119

72. ——— **Presumption as to possession.**—*Proof as to nature of possession.*—Possession must be presumed to be of right and adverse, until that presumption is rebutted by evidence. BIRESSUR BANERJEE *v.* ONOODA CHURN BANERJEE [3 W. R., 12

73. ——— *Onus of proof.*—When parties are in possession of an estate, it is generally to be presumed that they are in possession as owners; and it lies on the party alleging that possession is of a different nature, such as that of an under-tenant, to prove the allegation. SHAHABOODEEN CHOWDHRY *v.* RAM GUTTY CHUCKERBUTTY [9 W. R., 556

74. ——— *Possession originally permissive.*—Where occupation was originally permissive, its conversion into an occupation of a wholly adverse nature is not to be presumed in the absence of evidence to establish this change. WAHEEOODDEEN *v.* JHUNGOREE . 2 N. W., 16

AMMUR SINGH *v.* MURDUN SINGH . 2 N. W., 31

OOPENDRONATH ROY *v.* KALEE CHURN ROY [8 W. R., 394

POSSESSION—*continued.*

4. ADVERSE POSSESSION—*continued.*

75. ——— **Limitation.**—*Suit for possession.*—To make out a complete legal bar, the occupation should be proved to be adverse during the whole of the twelve years before suit, and it should be ascertained with what persons the actual possession has been during that time. WAHEE-OOD-DEEN *v.* JHUNGOREE . . . . . **2 N. W., 16**

76. ——— *Possession obtained by fraud.—Suit for ejectment.*—The defendant in an action of ejectment cannot claim the benefit of the Statute of Limitations upon a possession obtained by fraud, actual or constructive, unless the plaintiff have been guilty of such laches as to disentitle him to the interference of the Court. HEERALOLL SHAHA *v.* JADUB CHUNDER CHENCHKEY . **Cor., 119**

77. ——— *Dishonesty in getting possession.*—Dishonesty in obtaining possession will not prevent the possessor from availing himself of the law of limitation, which, however, cannot relieve him from the charge of dishonesty. POREEH NARAIN ROY *v.* WATSON . **5 W. R., 283**

78. ——— **Title by long possession.**—*Purchaser under fraudulent sale.*—Where a person has been long in possession under a deed of conveyance which was subject to an undertaking to recovery on repayment within a period long elapsed, he is entitled to establish his right to possession against a hostile purchaser whose claims are based on a fraudulent sale. TOMMINISSA *v.* NUJEEMA BANOO **[8 W. R., 340**

79. ——— **Conversion of permissive into adverse possession.**—*Cause of action.*—Where a party in permissive possession of land sets up his own absolute title by suing the tenant for rent, he converts his permissive possession into an adverse one, which, as wrongful possession, is a cause of action. KHURUCKDHAREE SINGH *v.* REWAT LALL SINGH . . . . . **12 W. R., 167**

80. ——— **Temporary possession.**—*Possession under decree afterwards set aside.—Limitation.*—A brief possession for a few weeks, under a decree subsequently set aside or modified, so as not to have effect against the persons who were previously in possession, and to whom possession was restored, is not such possession as entitles the plaintiff to calculate limitation from that time. DEGUMBERY DOSSEE *v.* ANUNDNATH ROY . **W. R., 1864, 43**

81. ——— *Possession under erroneous order.—Limitation.*—Possession under an erroneous order of a Magistrate does not constitute such *bonâ fide* possession as will prevent the law of limitation from running. MOOKTAKASHY *v.* LUCKEE **[2 Ind. Jur., O. S., 4**

82. ——— *Possession under Magistrate's order.*—Possession under the order of a Magistrate, which is set aside by a decree of a Civil Court, is of no effect against a plea of limitation. FIRINGEE SAHOO *v.* SHAM MANJHEE **[8 W. R., 373**

POSSESSION—*continued.*

4. ADVERSE POSSESSION—*continued.*

83. ——— **Attachment of property.**—*Limitation.*—The attachment of a property is adverse possession causing limitation to run as against the party in possession of the property. BROJO RAJKISHOREE *v.* BISHONAUTH DUTT **[W. R., 1864, 305**

84. ——— **Possession of purchaser.**—*Mortgagor and mortgagee.*—The possession of a purchaser at a sale in execution of a decree without notice of a mortgage of the property is adverse to the mortgagee. ANAND MAYI DASI *v.* DHARENDRA CHANDRA MOOKERJEE **[8 B. L. R., 122: 14 Moore's I. A., 101: 16 W. R., P. C., 19**

Affirming same case in High Court, DHURUNDHO CHUNDER MOOKERJEE *v.* ANNUND MOYEE DOSSEE **[1 W. R., 103**

85. ——— *Foreclosure.—Purchaser from mortgagor.—Adverse possession.*—Where a party *bonâ fide* purchased from another, as his own property, land in fact mortgaged, and obtained possession and mutation of names, his title was held to be adverse to that of the mortgagee. BRAJANATH KUNDU CHOWDHRY *v.* KHILAT CHANDRA GHOSE . **8 B. L. R., 104: 14 Moore's I. A., [144: 16 W. R., P. C., 33**

86. ——— **Entry of names in Collector's records.**—*Absentee holders.*—Mere continued entry in the Collector's records of the names of absentees cannot of itself avail to alter the character of an otherwise adverse holding by persons really in possession. DOORJUN *v.* CHAINA . **2 N. W., 43**

87. ——— **Decree affirming proprietary title.**—*Limitation.—Declaration of title.—"Relief."*—In 1868 *B.* made, it was alleged, a gift of a zemindari estate to *K.* In 1869 *B.* died, and *K.'s* name was recorded in the revenue registers in the place of *B.'s* name in respect of the estate. In 1870 *K.* died, and her daughter *S.* applied to have her name recorded in the revenue registers in respect of the estate. *M.*, the illegitimate son of *B.*, objected, claiming to have his name recorded. His objection having been disallowed and *S.'s* name having been recorded, *M.*, in 1876, sued *S.* for a declaration of his proprietary right to the estate, and on the 29th June 1878 obtained such declaration. In January 1880 *M.* sold a moiety of the estate, and in December 1880 *S.* sold the entire estate. In February 1881 *M.'s* transferees sued *S.* and her transferee for possession of the moiety of the estate transferred to them by *M.* *Held* (STUART, *C. J.*, dissenting) that the possession of *S.* and her transferee could be considered adverse only from the date of the decree of the 29th June 1878, declaring *M.'s* proprietary title to the estate. *Radha Gobind Roy* v. *Inglis*, 7 *C. L. R.*, 364, referred to. SARSUTI *v.* KUNJ BEHARI LAL . . . . . **I. L. R., 5 All., 345**

88. ——— **Possession of beneficial owner.**—*Benami purchase at sale for arrears of revenue.*—Where property purchased benami at a

POSSESSION—*continued.*

4. ADVERSE POSSESSION—*continued.*

Possession of beneficial owner—*continued.*

sale for arrears of revenue remains for more than twelve years from the date of the sale in the adverse and undisturbed possession of the beneficial purchaser, such possession is not only sufficient to extinguish the title of the nominal purchaser, but it creates a title in the former capable of devolving upon his legal heirs and representatives. BOOA RUSSOOLEE *v.* NAWAB NAZIM OF BENGAL . . **11 W. R., 382**

89. ——— Possession settled with persons paying arrears of revenue.—*Limitation —Suit for possession.—Held* that the mere fact of property in dispute being settled with defendants, by reason of their paying up the arrears of revenue, does not constitute adverse possession from which limitation can be reckoned. BHEEMA *v.* PAHLAD **[2 Agra, 38**

90. ——— Settlement of land with mortgagee.—*Mortgagor and mortgagee.—Held* that as the settlement of rent-free land belonging to plaintiff's ancestor was made with the defendant in the character of mortgagee, his (defendant's) possession of the land was not adverse to the plaintiffs, the mortgagors. RAM DIAL *v.* SHAH BAZ KHAN **[1 Agra, 15**

91. ——— Chur land. — *Limitation.* — Limitation or adverse possession as to chur land may commence directly the land is in existence, and not from the time at which it becomes culturable. Any proof of ownership would be sufficient to show possession. LUCKHEE DEBIA CHOWDHRAIN *v.* COLLECTOR OF MYMENSINGH . . . **7 W. R., 231**

92. ——— Encroachment.—*Rent-free landholder.*—Where a rent-free holder has encroached on the adjoining land and has enjoyed it rent-free and adversely to zemindari right for more than twelve years,—*Held* that he cannot be dispossessed of it, nor assessed with rent in respect of it. BHAGOUTEE CHARUN *v.* SHIVA PERSHAD . **1 Agra, Rev., 38**

93. ——— Accreted lands.—*Possession under temporary settlement by Collector.*—Where one co-sharer managed the property, and, in the absence or during the minority of the other co-sharer, obtained from the Collector a temporary settlement in his own name of chur lands accreting to the parent estate,—*Held* that the latter was entitled to participate in the temporary settlement, and that the possession of the former under that settlement was not adverse to the latter. BISSESSUREE DOSSEE *v.* KALEE COOMAR ROY . . . **18 W. R., 198**

CALLY CHUNDER CHOWDHRY *v.* MONIKURNIKA CHOWDHRAIN . . **W. R., 1864, 149**

94. ——— Co-sharer.—*Evidence of title.—Possession by one co-sharer.*—Possession of ancestral property is good evidence of title against a co-sharer if shown to be exclusive, and to be inconsistent with the co-sharers having any right in the portion claimed. HURRO NARAIN SINGH *v.* BYKUNT NARAIN SINGH . . . . . **14 W. R., 51**

POSSESSION—*continued.*

4. ADVERSE POSSESSION—*continued.*

Co-sharer—*continued.*

95. ——— *Possession by one co-sharer.*—Possession of a plot of land does not constitute adverse possession in relation to a co-sharer unless the latter claims or asserts some right in the land which is denied by the sharer in possession. SHURFUNNISSA BIBEE CHOWDHRAIN *v.* KYLASH CHUNDER GUNGOPADHYA . . **25 W. R., 53**

96. ——— *Co-sharer obtaining by arrangement exclusive possession of a portion of property still remaining joint.*—Where two parties have from time to time, according to their respective means, broken up or otherwise obtained possession of lands invariably recorded as joint property, and have exclusively enjoyed the profits of them, such exclusive possession and enjoyment on either side cannot, under the circumstances, be deemed to be of an adverse nature, and destructive of the rights of the other party. YUSAF ALI KHAN *v.* CHUBBEE SINGH . . . . **5 N. W., 122**

97. ——— Manager of joint family.—*Possession of manager.*—The possession of the managing member of a joint Hindu family is not adverse possession against the other members. CHOWDHRY AJRAWAL SINGH *v.* CHOWDHRY BHUGWAN SINGH **[2 Hay, 311**

98. ——— Members of joint family.—*Female living with male relatives.—Presumption as to management and possession.*—Where a female lives with her male relatives, the ordinary presumption is that they manage her property for her, and do not hold it adversely. ASAD ALI MIRDHA *v.* TOYFAN BIBI . . . **13 C. L. R., 328**

99. ——— *Excluded member.*—The general rule that the possession of one member of a joint Hindu family is the possession of all other members, does not apply where the party claiming has been clearly excluded from the family. In such a case the possession is adverse, and under the general law of limitation time will run from such adverse possession. JOWALA BUKSH *v.* DHARUM SINGH **[10 Moore's I. A., 511**

100. ——— *Absence of one member.*—Where two brothers, members of the same family, succeeded to equal shares in the paternal estates, the mere fact of one brother being absent, and the home-staying brother being in possession, does not deprive the former of his rights of inheritance, unless it is clearly shown that the possession by the latter was adverse to the absent brother. WOOZEERUN *v.* NOORUL JAN . . **9 W. R., 98**

101. ——— *Separation in living and separation by partition.*—In a suit to recover a share in certain land, it was contended that there had been a separation between the plaintiff and the defendant, and that the suit was barred by limitation,—*Held* that the suit was not barred, as the separation, even if proved, was only a separation in living and not a separation by actual partition, and

POSSESSION—*continued.*

4. ADVERSE POSSESSION—*continued.*

Members of joint family—*continued.*

therefore the defendant's possession was not adverse to the plaintiff. NARAYAN BABAJI DABHOLKAR *v.* PANDURANG RAMCHANDRA DABHOLKAR [12 Bom., 148

SOOKH LALL BHOOJWALLA *v.* GOOLZAR BOOJWALLA . . . . 14 W. R., 228

102. ——— *Title set up by member of tarwad.*—When a member of a tarwad, in possession of lands acquired by former members of his taverai (branch), openly sets up an independent title to those lands, his possession becomes hostile to the tarwad, and limitation begins to run against the tarwad from that time. KANARA PANIKER *v.* RYRAPPA PANIKER . . I. L. R., 3 Mad., 212

103. ——— **Transfer of interest by widow.**—*Life-tenancy—Reversioner.*—A widow (a life-tenant of an ancestral estate), having executed an ikrar transferring a share to *N.*, her grand-daughter, afterwards sued to set it aside on the ground that *N.* had not conformed to its terms. While the suit was in the appeal stage the widow died, and her reversioner applied to be made and was admitted as her kaem mukam to carry on the appeal on her behalf. He afterwards sued to recover possession of the share as reversioner, alleging that the succession opened out to him on the death of the widow. *Held* that the life-tenancy having been made over to *N.* with the widow's consent to enure during the grantor's lifetime, *N.'s* possession was not adverse to the reversioner. DEORANEL KOOWAR *v.* INDURJEET KOOWAR . . . . . 12 W. R., 234

104. ——— **Landlord and tenant.**—*Possession of tenant.—Evidence of nature of holding.*—Possession by a tenant does not in itself lead to any inference as to the character of the tenancy: the fact of his having occupied the land and paid rent twelve or even twenty years being equally consistent with his being a tenant-at-will, a farmer, or a mokurraridar. SHEO DYAL POOREE *v.* MOHABEER PERSHAD . . . . . 10 W. R., 477

105. ——— *Possession of tenant.*—The possession of a tenant is in the eye of the law the possession of his landlord. GRISH CHUNDER ROY *v.* BHUGWAN CHUNDER ROY [13 W. R., 191

106. ——— *Settlement.*—The possession of a sub-lessee of the tenant cannot be adverse to the superior landlord. BUNGSRAJ BHOOKTA *v.* MEGH LALL POOREE GOSSAIN [20 W. R., 398

107. ——— *Person holding adversely to tenant.*—Possession adverse to a lessee is also adverse to the lessor. PROSUNOMOYI DASI *v.* KALI DAS ROY . . . 9 C. L. R., 347

See BRINDABUN CHUNDER SIRCAR *v.* BHOOPAL CHUNDER BISWAS . . 17 W. R., 377

And LEKRAJ ROY *v.* COURT OF WARDS [14 W. R., 395

POSSESSION—*continued.*

4. ADVERSE POSSESSION—*continued.*

Landlord and tenant—*continued.*

108. ——— *Adverse possession.—Possession of tenant paying rent to stranger.*—In December 1853 certain lands were let by the plaintiff to *B.* under a kabuliat, by the terms of which the lease expired in December 1863. In March 1875, less than twelve years from the expiration of such lease, the plaintiff brought a suit for possession against *B.* and the talookdars of the estate of which the lands in dispute formed part. The latter alleged that the lakhiraj title of the plaintiff was invalid; that although no proceedings, as required by the Rent Law, had been taken to invalidate the plaintiff's title, they, the talookdars, had resumed possession of the land by receiving the rents from *B.* from 1859; and that the suit was barred by reason of their possession since that date. *Held* that the suit was not barred, inasmuch as nothing had occurred to determine the tenancy which existed between the plaintiff and *B.*, and that the possession of the latter was in law the plaintiff's possession. PARBUTTI DASSI *v.* RAM CHAND BHUTTACHARJEE . . 3 C. L. R., 576

109. ——— *Assertion of adverse title.—Adverse possession.—Landlord and tenant.*—The assertion of an adverse title by a person claiming to be an owner under a permanent lease does not make his possession adverse so as to save limitation, unless made to the knowledge of the landlord. GANGABHAI *v.* KALAPA DARI MUKRYA [I. L. R., 9 Bom., 419

110. ——— *Possession of lessee, and proprietor under miras leases.*—In a suit for possession against a mirasdar, who pleaded limitation, the Judge was held to have been in error in adding to the time for which the defendant had been holding under the miras lease the period of possession by the lessor, because the one is not in continuation of the other; the holding of the proprietors being quite a different thing from the holding of the lessee. DHUN MONEE CHOWDHRAIN *v.* GOLAM KASOM [23 W. R., 331

111. ——— *Occupation of house by heirs of tenant-at-will.—Intention of parties.*—About twenty-five years before suit, *R.* being possessed of a house allowed *K.* to occupy it without paying rent, on condition that *K.* would keep it in repair and restore it to *R.* on demand. Nine years afterwards, and without any demand having been made by *R.*, *K.* died, and his heirs continued to occupy the house apparently on the same terms as *K.* had done. In a suit brought by *R* against the heirs of *K.* to recover possession of the house,—*Held* that *K.* occupied the house as tenant-at-will of *R.*; that such tenancy was, on the death of *K.*, as of course, converted into an adverse occupation by the heirs of *K.*, in the absence of proof of the intention of the parties to that effect, and in the absence of anything to show that *R.* did not assent to the heirs of *K.* continuing to hold on the same terms as *K* had done. RADHABHAI *v.* SHAMA . 4 Bom., A. C., 155

POSSESSION—*continued.*

4. ADVERSE POSSESSION—*continued.*

Landlord and tenant—*continued.*

112. ——————— *Abandonment by tenants.*—A landlord having obtained a decree declaring that certain homestead land was liable to assessment, the occupants, owing to certain criminal proceedings against them, abandoned the land, and the landlord leased it out to others, who held possession paying rent for upwards of twelve years, after which they were ousted by the original occupants, who claimed the land rent-free. *Held* in a suit by the lessees that they were entitled to recover possession. MONEERUDDEEN MOJOOMDAR *v.* PARBUTTY CHURN GHOSE . . . . . 15 W. R., 121

113. ——— Possession in two capacities.—*Possession as farmer and purchaser.—Decree declaring sale valid.*—*R.* obtained, on 7th January 1862, a decree declaring a deed of sale of an estate in his favour, dated 7th January 1854, to be a genuine, authentic, and valid instrument. In the meantime he had acquired possession of the estate under a farm from Government. *Held* that from the date of the decree *R.'s* possession became adverse possession as far as the vendors and their representatives were concerned, although he continued to hold possession of the estate as a farmer. DHUNDI *v.* RAM LALL . [7 N. W., 149

114. ——— Possession as patil.—*Separate branches of family.—Acquiescence.*—*J.* held the office of patil more than fifty years ago as representative of two branches descended from a common ancestor and then united in interest, there being two other branches descended from the same ancestor, but severed in interest from those represented by *J. J.* having died in 1824 was succeeded by his son *T.* without any opposition from the two other branches. *T.* was temporarily displaced from the office by *G.*, who represented the two other branches, but recovered it in 1850. *Held* that the presumption arising against *T* having been a nominee of all the branches of the family, not having been rebutted by any evidence of an assertion and admission of the rights of the other branches, *T.'s* occupation of the patilship was adverse to the plaintiff's right, and being adverse at its beginning, it was equally adverse when, after a temporary displacement by *G.* (whom the plaintiff now represents), *T.* recovered it in 1850. An interval of more than twelve years therefore having passed between 1850 and the institution of the present suit in 1873, the claim was barred, and the possession of the office obtained by *T.'s* representatives could not be disturbed. GIRIAPA *v.* JAKANA . . 12 Bom., 172

5. SUITS BASED ON ALLEGATION OF POSSESSION.

115. ——— Suit by party out of possession.—*Dismissal of suit.—Evidence.*—A suit based upon an allegation of possession must be at once dismissed if the plaintiff be shown to be out of possession. SUKEAM *v.* KALA KAHAR [3 B. L. R., A. C., 105

POSSESSION—*continued.*

5. SUITS BASED ON ALLEGATION OF POSSESSION—*continued.*

Suit by party out of possession—*continued.*

116. ——————— *Confirmation of possession.—Possession of part of land sued for.*—A suit for confirmation of possession must be dismissed if the allegation of possession is found to be wholly unfounded, but not if the plaintiff is found to be in possession of a part of the land in dispute. ROOPA KOONWAR *v.* JUGGOOLALL OOPADHYA [11 W. R., 257

BUSHEERUDDEEN *v.* DAL CHUND [3 Agra, 236

RAM CHURN PATTUCK *v.* KHOOR PANDEY [10 W. R., 176

117. ——— Suit for confirmation of possession.—*Evidence.*—A plaintiff suing for confirmation of possession must prove that he was actually in possession. LUTEEFOONISSA BIBEE *v.* RAJAOOR RUHMAN . . . 8 W. R., 84

GOBINDNATH SEIN *v.* GOBIND CHUNDER SEIN [10 W. R., 393

RASH BEHAREE ROY *v.* EZUD BUKSH [11 W. R., 276

SHEO SURUN LALL *v.* CHUMUN LALL [24 W. R., 220

RASH DHAREE SINGH *v.* NUTHOONEE SINGH [24 W. R., 301

SANSAR ROY *v* INDRASUN ROY . 25 W. R., 6

118. ——————— *Failure to prove possession.*—*Held* (MOOKERJEE, *J.*, *dissentiente*) that the rule that in suits for confirmation of possession by adjudication of title the plaintiff is bound to prove that he was in possession at the time he preferred the suit, is not so inflexible a rule that it cannot be departed from; as, for example, where plaintiff sues for confirmation of possession and proves that he was in possession for many years, and until within a few months of the institution of the suit, he should not be required to bring a fresh suit, merely changing the prayer for confirmation of possession into one for recovery of possession. ABDOOLLAH *v.* SHAHA MUJEESOODEEN . . . 15 W. R., 286

On this point confirmed on appeal . 16 W. R., 27

KASHEE NATH MOOKERJI *v.* MOHESH CHUNDER GOOPTO . . . . 25 W. R., 168

119. ——————— *Proof of legal possession under decree.*—The legal principle which holds that no suit for confirmation of possession will lie if possession at the time of the institution of the suit is not shown, refers to cases where no possession of any kind is shown within a reasonable time before suit, and not (as in this case) where legal possession under a decree has been found. BEEGOO ROY *v.* BAL MOKUND MISSER . . . 17 W. R., 421

120. ——————— *Failure to show possession.*—In a suit in which the plaintiff claimed confirmation of possession, it appeared on the face of

POSSESSION—*continued.*

5. SUITS BASED ON ALLEGATION OF POSSESSION—*continued.*

Suit for confirmation of possession—*continued.*

the plaint that although the suit was in form a suit for confirmation of possession, it was in substance a suit for recovery of possession. It was found that the plaintiff, while he had proved his title, was not in possession. *Held* that, under the circumstances, the suit ought not to have been dismissed. AMIR HOSSEIN *v.* IMAMBANDI BEGUM . **11 C. L. R., 443**

121. ——————— *Plaintiff found to be out of possession.*—In a suit, in form, for confirmation of possession, it was alleged that the Collector had refused to register the plaintiff's name in respect of the property claimed, but had registered the defendant's name. The plaintiff having been found to be out of possession, the lower Court dismissed the suit. The plaint bore a stamp sufficient to cover a suit for recovery of possession. *Held* that, inasmuch as the effect of the refusal of the Collector to register the plaintiff's name under section 78 of the Land Registration Act (Bengal Act VII of 1876) was to prevent the plaintiff recovering the rent of the estate, and that such refusal was alleged in the plaint, the suit might be taken to be, in substance, a suit for recovery of possession, and ought not to have been dismissed *Amir Hossein* v. *Imambandi Begum, 11 C. L. R., 443,* followed. CHAMPU DAI *v.* UMA DAI **[11 C. L. R., 451**

6. SUITS FOR POSSESSION.

(*a*) PROOF OF PARTICULAR TITLE.

122. ——— **Failure to prove particular title.**—*Evidence.*—Unless a plaintiff can prove the particular title set up by him, he is not entitled to a decree for possession. RAMDHAN CHUCKERBUTTY *v.* KOMALTARA **[3 B. L. R., A. C., 99, note : 11 W. R., 301**

ABDOOLLAH *v.* SHAHA MUJEESOODEEN **[16 W. R., 27**

JANOOBEE CHOWDHRAIN *v.* GENDOO TURRUFDAR **[12 W. R., 203**

RUNG LALL MISSER *v.* ROGHOOBUR SINGH **[9 W. R., 169**

HURO SOONDUREE DEBIA *v.* UNNOPOORNA DEBIA **[11 W. R., 550**

123. ——————— *Suit for possession under mirasi lease.*—Where a plaintiff sued to recover possession of certain lands under a mirasi pottah which had been lost, and proved ten years' possession, *Held* that such possession alone would not entitle him to recover possession of the land, but that he must prove the specific title set up by him BHOLAI MANDAL *v.* JARIF GAZI **[3 B. L. R., Ap., 93**

RAM COOMAR SHOME *v.* GUNGA PERSHAD SEIN **[14 W. R., 109, note**

124. ——————— *Suit for declaration of title.*—*Adverse possession.*—Where a person

POSSESSION—*continued.*

6. SUITS FOR POSSESSION—*continued.*

(*a*) PROOF OF PARTICULAR TITLE—*continued.*

Failure to prove particular title—*continued.*

claims possession of property under a specific title, coupled with an allegation that he has been in possession of that property for more than twelve years under that title, he is entitled to a decree on the strength of his twelve years' possession, even though he fail to make out his specific title. *Aliter,*—Where a declaratory decree by virtue of some particular title is sought for. GOLUCK CHUNDER MASANTA *v.* NUNDOCOOMAR ROY **[I. L. R., 4 Calc., 699 : 3 C. L. R., 450**

125. ——————— *Claim under deed of sale in lieu of dower.*—The plaintiff having alleged a distinct title under a deed of sale in lieu of dower, was held in a suit for possession bound to prove her title, and not entitled to claim the benefit of a decision to which she was not a party, nor of an admission by her husband as binding on the defendants. SOBRATUN *v.* TOOVA . **7 W. R., 273**

126. ——————— *Suit on sanad.*—*Evidence.*—In a suit for recovery of possession of certain land which the plaintiff claimed under and by virtue of a sanad (grant) from the zemindar, and from which he had been dispossessed by the defendants, the lower Appellate Court held that the execution of the sanad was not satisfactorily proved, but that it was not a forgery, and that there was the corroborative evidence (such as the dakhilas produced before it) to prove the case of the plaintiff. *Held* that, when a claim is based upon a sanad, and the plaintiff fails to prove the execution of the sanad itself, he may prove his claim by other means. In a suit for mere possession it is unnecessary to state or prove a particular title. RASH BEHARI LAL SING *v* NABAYI PODDAR **[3 B. L. R., A. C., 99 : 11 W. R., 465**

127. ——————— *Suit for confirmation of possession, and to recover possession.*—When a suit is brought for confirmation of possession upon a certain title, the plaintiff is bound by the title which he sets up in his plaint, except when he sues to recover immoveable property from which he has been ousted. UMBICA CHURN BANERJEE *v.* DIGUMBUREE DABEE . . . . **12 W. R., 429**

128. ——————— *Alternative claim.*—*Adverse possession.*—Suits for possession distinguished from suits for declaration of a particular title. Where a plaintiff seeks to recover possession of property of which he has been dispossessed, and bases his claim on the ground of purchase, and also upon the ground of a twelve years' possessory title, he is entitled to succeed if he proves his possession, even if he fails to prove his purchase. GOSSAIN DASS CHUNDER *v.* ISSUR CHUNDER NATH **[I. L. R., 3 Calc., 224**

129. ——————— *Lakhiraj title.*—*Suit for possession on forcible dispossession.*—In a suit to recover possession on the allegation that the plaintiff, having been in possession, was suddenly and

POSSESSION—*continued.*

6. SUITS FOR POSSESSION—*continued.*

(*a*) PROOF OF PARTICULAR TITLE—*continued.*

Failure to prove particular title—*continued.*

recently ejected, the sole question for decision is the right to possession, apart from any question of the validity or otherwise of the lakhiraj title under which the plaintiff claims. BOODHA MIRDHA *v.* KHYRUT ALI . . . . . **5 W. R., 269**

130. ——————— *Suit for declaration of right.—Right to possession.—Right of person with good title ousted by person who had none.*—Plaintiff sued to establish his right to a dharmakartaship and to the hereditary office of pooja stanika in a pagoda. He alleged that he held the office of pooja stanika hereditarily, and that the dharmakartaship was assigned to him by the original dharmakartas by deed (No. I), but that he was afterwards forcibly dispossessed by defendants. Defendants denied plaintiff's hereditary right to the office of pooja stanika, and declared that he was removed from the dharmakartaship for neglecting his duties, and that they were appointed instead (by document No. IV). The District Judge gave judgment in favour of plaintiff. The defendants appealed. An issue was sent to the lower Court whether, assuming exhibit I to be revocable, did the persons who executed exhibit IV constitute the collective body entitled to revoke it. The lower Court found this issue in the negative. *Held* (by the High Court) that this was not properly a suit for a declaration. The object of the suit and the effect of the declaration would have been to put the plaintiff in possession of that from which he had been ousted; that as to the claim to the dharmakartaship, document I showed that the plaintiff was a mere appointee as agent, and that, as the authority given by it was not revoked by IV, the case was that of one ousted from a possession which he held upon a good title by those who had shown none; that on the principle of such cases as *Asher* v. *Whitlock, L. R., 1 Q. B., 1,* the plaintiff had a right to the restoration of that possession. NARAYANASAMI MUDALI *v.* KUMARASAMI GURUKKAL . . . . . **7 Mad., 267**

131. ——————— *Proof of joint possession.*—In a suit to recover possession it was proved that plaintiffs had purchased shares in a joint property and had held possession. The lower Appellate Court, thinking they had done so separately, without being at the time aware of their ijmali rights, held that it could not decree to them the joint possession sought for. *Held* that it matters not what position plaintiffs considered themselves to have occupied originally whilst in possession. If they can establish their right, they are entitled to recover possession, whether that possession were originally joint or separate. RAJBULLUB SHAMMEE *v.* WARIS MAHOMED . . . **8 W. R., 450**

(*b*) OTHER SUITS FOR POSSESSION.

132. ——— **Onus probandi.**—*Necessity to prove title against party in possession.*—In a suit

POSSESSION—*continued.*

6. SUITS FOR POSSESSION—*continued.*

(*b*) OTHER SUITS FOR POSSESSION—*continued.*

Onus probandi—*continued.*

in which the plaintiff claimed alluvial land in the possession of the Government as being his by right of accretion to his own estate, though the churs had re-formed on the original sites of lands belonging to other persons,—*Held* that the case could not be decided on the principle that, inasmuch as those other parties were not before the Court, the plaintiff had the better title as between himself and Government. The land was in the possession of Government, and the plaintiff could only succeed by establishing a better title. COLLECTOR OF DACCA *v.* KALEE CHURN PODDAR . . **21 W. R., 446**

133. ——————— *Necessity to prove title.—Wife suing by permission of husband.*—In a suit to recover property in the enjoyment and possession of defendant, a female plaintiff can only succeed on the strength of her own right: not merely because it is the property of her husband, who does not object to her recovering it. There is no necessary presumption that property in the possession of a respectable female's husband, brother, and son, respectively, is possession on her behalf, and not on theirs. KAFARTOOLLAH *v.* ARIZA BIBEE **[23 W. R., 264**

134. ——————— *Suit under Act X of 1859.—Proof of title.*—If a person evicted without legal process from land in his occupation sued for possession under Act X of 1859, he was bound to prove his title. MADUR KHAN *v.* WOOMA MOYEE DABEE . . **Marsh., 389: 2 Hay, 434**

SHUSTEE DHUR MOZOOMDAR *v.* NUTEEJA BIBEE **[7 W. R., 36**

135. ——————— *Suit under Act X of 1859.*—In an ordinary civil suit not brought under clause 6, section 23, Act X of 1859, or under section 15, Act XIV of 1859, a plaintiff could not recover possession as against the undisputed owner merely by proving his previous possession and dispossession. But he might claim damages for the value of crops taken away which had been raised by him on the land whereof he was at the time in lawful possession. RAM MOHUN DOSS *v.* JHUPPROO DASS **[14 W. R., 41**

136. ——— **Presumption of title.**—*Right of suit.*—In a suit for possession of land claimed as part of a mouzah which plaintiff held under a mokurrari lease and a bill of sale, and which he alleged had been taken possession of by defendant under colour of an order of the Criminal Court under section 318, Code of Criminal Procedure, relating to a different land, defendant objected that plaintiff was not the real owner of the mouzah, and therefore not entitled to bring the suit *Held* that the *primâ facie* title which the plaintiff had under the lease and bill of sale was sufficient to enable him to bring the suit, and the defendant was not at liberty in a suit of this description to raise the question whether

POSSESSION—*continued.*

6. SUITS FOR POSSESSION—*continued.*

(*b*) OTHER SUITS FOR POSSESSION—*continued.*

Presumption of title—*continued.*

plaintiff was only the nominal owner. RAM BHUBROSSEE SINGH *v.* BISSESSUR NARAIN MAHATA [18 W. R., 454

JOGMAYA CHOWDHRAIN *v.* HURRE MOHUN ROY [24 W. R., 99

137. ——— **Possession after resumption.**—*Right of zemindar to sue taloukdar for possession.*—A zemindar cannot sue a dependent taloukdar (the possessor of resumed lakhiraj lands) for confirmation of possession, and for an injunction to prevent him from committing waste. The only possession that a zemindar can obtain after a decree for resumption is a constructive one derived from the receipt of rent from the tenant. MUGNEE RAM CHOWDRY *v.* GONESH DUTT SINGH [W. R., 1864, 275

138. ——— **Suit for possession by under-tenure-holder against zemindar.**—*Unregistered tenant.*—No suit for possession will lie against a zemindar, or any one holding a title under the zemindar, until the plaintiff has been recognised by the zemindar as tenant, or has been registered as such in the zemindar's sherista. MOOKTAKESHEE DOSSEE *v.* PEAREE CHOWDHRAIN . 7 W. R., 158

139. ——— **Suit by prior mortgagee against subsequent mortgagee in possession.**—*Sale in execution of decree under second of two mortgage-bonds.—Right to possession.*—An estate having been sold by auction on two occasions in satisfaction of two distinct bonds, and the person who had proceeded on the later-dated of the two bonds, but who represented the earlier auction-purchaser, having actually taken possession of the estate, —*Held* that though, in a properly brought suit between the two parties to declare the property liable for the amount of the first mortgage, the party in possession would have to pay to secure his possession, yet he could not be ousted by the opposite party. AJOODHYA PERSHAD *v.* MORACHA KOOER [25 W. R., 254

140. ——— **Suit by mortgagee for possession.**—*Covenant for possession.—Suit for possession after expiration of term of mortgage.*—A mortgagor covenanted to give the mortgagee possession of the mortgaged property, but did not do so, and the mortgagee consequently sued him for possession, but not until the term of the mortgage had expired. The mortgagor set up as a defence to such suit that it was not maintainable after the expiration of the mortgage term. This defence was rejected on the ground that the mortgagor had, by his breach of the mortgage contract, put himself out of Court. HAR SAHAI *v.* CHUNI KUAR . I. L. R., 4 All., 14

141. ——— *Dispossession of second mortgagee by prior mortgagee without right of possession by means of illegal order of Court in execution of a money-decree against mortgagor.*—

POSSESSION—*continued.*

6. SUITS FOR POSSESSION—*continued.*

(*b*) OTHER SUITS FOR POSSESSION—*continued.*

Suit by mortgagee for possession—*continued.*

S. mortgaged land to *R.* in 1861. *R.* pledged the mortgage-deed to *H.* to secure repayment of a loan of R500. *P.* being entitled on partition with *H.* to half of the debt due by *R.*, got a decree against *R.* in the Small Cause Court for his moiety in 1870. *R.* sued *S.* on the mortgage-deed (obtained from *P.* and *H.* for that purpose), got a decree to enforce the mortgage, and in July 1872 bought the land in execution of the decree. In December 1872 *R.* mortgaged the land to *V.* and put him into possession. *V.* had no notice of the prior pledge to *P.* In 1876 *P.*, in execution of his Small Cause Court decree, attached and sold the right, title, and interest of *R.* in the land, became the purchaser at the Court sale, and was put into possession by an order of the Court executing the decree. *V.'s* claim under section 269 of Act VIII of 1859 was rejected. *Held*, in a suit by *V.* against *P.*, that *V.* was entitled to recover the lands in dispute. *Per* TURNER, *C. J.*—*Quære*,—Whether the decision in *Ramu Naikan* v. *Subbaraya Mudali*, 7 *Mad.*, 229, is sound. VENCATACHELLA KANDIAN *v.* PANJANADIEN [I. L. R., 4 Mad., 213

142. ——— **Suit between purchasers under mortgage-decrees.**—*Priority of mortgage.—Rival mortgage decree-holders.—Priority of possession.*—In a suit for possession between two purchasers, who had bought the same property at two several auction sales under decrees obtained on two several mortgage-bonds,—*Held* that no question could arise as to which mortgage was prior in point of time, but that the real question to be decided was which of the parties could prove a prior title to possession. NANACK CHAND *v.* TELUCKDYE KOER [I. L. R., 5 Calc., 265 : 4 C. L. R., 358

143. ——— *Several mortgages of the same property.—Decrees on the mortgage-bonds.—Priority of purchase.—Priority of possession.*—*A.*, on the 11th March 1868, took a mortgage-bond of certain property, and obtained a money-decree on the bond on the 23rd January 1869. Under this decree the mortgagor's interest was put up for sale and purchased by *A.* on the 29th April 1870 *B.*, on the 3rd November 1868, took a mortgage-bond on the same property, and obtained a decree thereon on the 31st May 1869. Under this decree the mortgagor's interest was sold, and purchased by *B.* on the 22nd April 1870. *B.* took possession of the property on the 18th May 1872. In a suit by *A.* for recovery of possession,—*Held* that *B.* was entitled to retain possession as against *A.*, although his own interest might be merely that of a trustee for the mortgagor, and might be subject to *A.'s* mortgage lien, if he took proper proceedings to enforce it. DIRGOPAL LALL *v.* BOLAKEE . . . I. L. R., 5 Calc., 269

144. ——— **Title, Proof of.**—*Suit to set aside order of Magistrate under Criminal Procedure Code, 1861, s. 318.*—To set aside the effect of an order made by a Magistrate under section 318 of the Cri-

POSSESSION—*continued.*

6. SUITS FOR POSSESSION—*continued.*

(*b*) OTHER SUITS FOR POSSESSION—*continued.*

Title, Proof of—*continued.*

minal Procedure Code, 1861, the plaintiff cannot sue for restoration of possession only on the sole ground of previous possession, without proof of title. RAJESSUREE DABIA *v.* BRINDABUTTY DEBIA [7 W. R., 212

ACHUMANDE AGATH KUNHI PATHUMAH *v.* MAKACHINDE AGATH MAKACHI . 4 Mad., 478

145. ——— *Act IV of 1840*—*Julkur.*—*A.* originally owned two zemindaris between which lay a bil, or marsh, of which he also owned the fisheries. One of the zemindaris was sold and purchased by *B.*, but the bil fisheries still continued with the remaining zemindari held by *A.* After the sale, certain lands reclaimed from the bil were for some years held by *B.* as part of his purchased zemindari. *A.* instituted a summary suit under Act IV of 1840, and was by an order of the Magistrate put in possession of these lands. *B.* brought a regular suit against *A.* to recover the lands and set aside his order. *Held* (reversing the decisions of the Courts below) that it was necessary for *B.* to show a better title to the land than *A.* could produce. It was not enough for him to prove possession anterior to the Magistrate's order under Act IV of 1840. The presumption was that the land of the bil belonged to *A.*, who had admittedly owned both estates before, and had retained the fisheries of the bil after, the auction sale. *B.* ought to have shown when and how, if at all, the right to the fisheries and the right to the soil were severed. BAHADA KANT ROY *v.* CHUNDRA KUMAR ROY [2 B. L. R., P. C., 1 : 11 W. R., P. C., 1 12 Moore's I. A., 145

POSSESSION, ORDER OF CRIMINAL COURT AS TO—

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1. CASES WHICH MAGISTRATE CAN DECIDE AS TO POSSESSION	4483
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See CASES UNDER LIMITATION ACT, 1877, ART. 47 (1871, ART. 46).

1. CASES WHICH MAGISTRATE CAN DECIDE AS TO POSSESSION.

1. ——— Dispute as to possession.—*Criminal Procedure Code, 1861, s. 320.*—A Magistrate has no ground for proceeding, under Chapter XXII of the Criminal Procedure Code, 1861, where there is no dispute as to the fact of actual possession of either the land or crop. ANONYMOUS [4 Mad., Ap., 12

2. ——— Dispute as to right to collect rents.—*Order of Criminal Court as to.*—*Report of police officer.*—Where a dispute between parties was not concerning land or its boundaries, or concerning houses, water, fisheries, or produce of land, but simply as to what collections one of the parties had made and what rents he was entitled to collect under a decree of Court, the case was held not to come under the provisions of Act X of 1872, section 530, but under the ruling in *Ramunginee Dossee* v. *Gooroodass Roy, 18 W. R., Cr., 36.* PUDDOMONEE DASSEE *v.* JUGGODUMBA DASSEE [25 W. R., Cr., 2

3. ——— *Criminal Procedure Code (Act X of 1882), s. 145.*—*Tangible immoveable property.*—*Act X of 1872, s. 530.*—A dispute as to the right to collect rents is a dispute concerning tangible immoveable property within the meaning of section 145 of the Code of Criminal Procedure, 1882. PRAMATHA BHUSANA DEB ROY *v.* DOORGA CHURN BHATTACHARJI [I. L. R., 11 Calc., 413

4. ——— Dispute regarding right of fishery.—*Criminal Procedure Code, 1882, s. 145.*—"*Tangible immoveable property.*"—A dispute concerning the right to fish in a julkur is not a dispute concerning any "tangible immoveable property" within the meaning of section 145 of the Code of Criminal Procedure. Inquiries under section 145 should be directed to the question as to which party is in possession of the subject of dispute before any proceedings in the Court have been taken in the matter. KRISHNA DHONE DUTT *v.* TROILOKIA NATH BISWAS [I. L. R., 12 Calc., 537

5. ——— *Criminal Procedure Code, 1882, s. 145.*—*Julkur right.*—*Tangible immoveable property.*—A dispute concerning a julkur right is not a dispute concerning "tangible immoveable property" within the meaning of section 145 of the Code of Criminal Procedure, and cannot be inquired into by a Magistrate under the provisions of that section. ANUND MOYI DABIA *v.* SHURNOMOYI [I. L. R., 13 Calc., 179

6. ——— Dispute as to alluvial land.—*Land left by drying up of river.*—A Magistrate had jurisdiction, under section 318, Code of Criminal Procedure, 1861, to prevent breaches of the peace in places where the rivers have dried up. The jurisdiction that was once there, under section 30, was not taken away by reason of the land having appeared and the water disappeared. EMAMBANDEE BEGUM *v.* TEK BAHADOOR . 17 W. R., Cr., 53

POSSESSION, ORDER OF CRIMINAL COURT AS TO—*continued.*

1. CASES WHICH MAGISTRATE CAN DECIDE AS TO POSSESSION—*continued.*

7. ——— Dispute as to right in burial ground.—*Possession of manager—Criminal Procedure Code, 1872, s. 530.*—A case in which several persons dispute about the proprietary right in a burial ground should be tried in a Civil Court, and does not properly come under section 530 or section 532 of the Code of Criminal Procedure; and an order of the Magistrate that he found the manager in possession on behalf of one of the proprietors was set aside. KASSIM HASSIM SOORTY *v.* ABRAHIM SOLEMAN **[25 W. R., Cr., 24**

8. ——— Dispute as to a number of plots of land governed by same circumstances.—*Action of Magistrate only as regards some plots.—Criminal Procedure Code, 1872, s. 530.*—A dispute having arisen as to the possession of 109 plots of land to which a claim to possession was made by the ryots of village A. on the one hand, and by the ryots of village B. on the other, the Magistrate instituted a proceeding under section 530 of the Criminal Procedure Code in respect of all the 109 plots, but, having taken evidence, dealt in his order with twelve only, directing that the ryots of village B. should be kept in possession. *Held* that, it appearing that all the 109 plots were covered by the same state of circumstances, the Magistrate had exercised a sound discretion in acting as he did. AZIM MOLLA *v.* SATOO PORAMANICK . . **10 C. L. R., 523**

9. ——— Dispute as to property of which each of two persons claimed the whole without allegation of joint possession.—*Criminal Procedure Code, 1872, s. 530.*—Where each of two parties claimed the same share of certain property as a whole estate, neither alleging that the other was joint with him in any way, and the Magistrate, without reference to the right of possession, went into the question of who was in possession, and maintained the possession of the party found in possession, the High Court held that the case fell under Act X of 1872, section 530, and saw no necessity to interfere with the decision. BYJNATH SAHOO *v.* RUGHOONATH PERSHAD **[25 W. R., Cr., 16**

10. ——— Dispute regarding joint property.—*Criminal Procedure Code, 1861, s. 318.*—The decision of the Deputy Magistrate was quashed, because the property in dispute being ijmali he had no jurisdiction to try the dispute under section 318, Code of Criminal Procedure, but ought to have proceeded in the manner laid down in Circular Order No. 10, dated 16th April 1863. GOLUCK CHUNDER ROY *v.* RAJ MOHUN BOSE . **17 W. R., Cr., 33**

See RAMRUNGINEE DOSSEE *v.* GOOROO DASS ROY **[17 W. R., Cr., 9**

11. ——— *Criminal Procedure Code, 1882, ss. 145, 147.—Dispute as to immoveable property.—Collection of rent.*—A dispute existing between one of the co-sharers of an undivided estate and the lessee of another co-sharer, as to the right of the latter to collect rent, such right being denied on the ground that the lessor was not in possession of her share, an inquiry was made under Chapter XII of the Criminal Procedure Code, and the lessor was declared to be in possession of her share. *Held* that the provisions of that chapter were not applicable to the dispute in question. BENI NARAIN *v.* ACHRAJ NATH . . . . **I. L. R., 5 All., 607**

12. ——— *Land held by co-sharers.—Dispute on erection of edifice by one without consent of other.—Criminal Procedure Code (Act X of 1872), s. 530.*—*A.*, a joint owner of a parcel of land, erected on it an edifice without the consent and against the will of *B.*, another joint owner. A dispute having arisen in consequence, the Magistrate held an inquiry, and made an order under section 530 of the Criminal Procedure Code, awarding to *A.* exclusive possession of the part of the land on which the edifice had been erected. *Held per* JACKSON, *J.*, that such order was erroneous, as the matter was not one to which section 530 could apply. EMPRESS *v.* RAJCOOMAR SINGH **[I.L. R., 3 Calc., 573: 1 C. L. R., 352 2 C. L. R., 62**

13. ——— Dispute as to building site.—*Persons not parties to proceedings.—Criminal Procedure Code, 1882, ss. 145, 147.*—In a suit to recover a building site, an injunction was issued by the Court restraining the defendants from building on the land pending the decision of the suit. On appeal the injunction was dissolved, on the ground that the defendant was in possession. Subsequent to this order the District Magistrate, on the complaint of the plaintiff against the defendant, passed an order under section 145 of the Code of Criminal Procedure, declaring that *K.* and *V.* were in possession, and forbidding all disturbance of their possession until the decision of a Civil Court. *Held* that *K.* and *V.* not being parties to the proceedings, the order was illegal. *Held*, also, that if a breach of the peace appeared likely to occur, the proper course was for the Magistrate to take security from the party from whom a breach of the peace was apprehended, but that it was not illegal for the Magistrate to proceed under section 145 or section 147 of the Code of Criminal Procedure. SUBBA *v.* TRINCAL **[I. L. R., 7 Mad., 460**

2. LIKELIHOOD OF BREACH OF THE PEACE.

14. ——— Inquiry.—*Criminal Procedure Code, 1861, s. 318.*—No inquiry should be made, nor order passed giving possession to one side or the other, under section 318 of the Code of Criminal Procedure, save on the supposition that the dispute is likely to cause a breach of the peace. QUEEN v. SONAOOLLAH **[2 W. R. Cr., 44**

POSSESSION, ORDER OF CRIMINAL COURT AS TO—*continued.*

2. LIKELIHOOD OF BREACH OF THE PEACE —*continued.*

Inquiry—*continued.*

15. ——————— *Order not made after judicial inquiry.—Criminal Procedure Code, 1872, s. 530.*—An order of a Magistrate retaining parties in possession of land can only be passed after due judicial inquiry, as required by the Code of Criminal Procedure, section 530. SHOINDOO NOSHYO *v.* RUNG LALL JHAH . . . **25 W. R., Cr., 21**

16. ——————— *Criminal Procedure Code 1861, Chap. XXII*—The inquiry contemplated by Chapter XXII of the Code of Criminal Procedure was a personal inquiry by the Magistrate who makes the order. ANONYMOUS **[4 Mad., Ap., 20**

ANUNDEE KOOER *v.* SOONAET KOOER **[9 W. R., Cr., 64**

17. ——— **Power of Magistrate.**—*Criminal Procedure Code, 1872, s. 530.*—The power given to a Magistrate to make a binding declaration as to the possession of any property, is an exceptional one, and section 530 of the Criminal Procedure Code limits the exercise of that power to cases in which the Magistrate is satisfied that a dispute, likely to induce a breach of the peace, exists; it is this likelihood, with the consequent necessity for immediate action, which alone warrants action by the Magistrate. IN THE MATTER OF THE PETITION OF KUNUND NARAIN BHOOP **[I. L. R., 4 Calc., 650 : 3 C. L. R., 551**

ANONYMOUS CASE . . **4 Mad., Ap., 49**

18. ——— **Ground for action of Magistrate.**—*Criminal Procedure Code (Act X of 1872), s. 530.*—In order to justify a Magistrate in interfering under section 530 of the Criminal Procedure Code, it is necessary that he should be satisfied that there exists a dispute concerning land which is likely to induce a breach of the peace,—*i e.*, there must be a reasonable apprehension that a disturbance of the peace is likely to occur, rendering it necessary for him to take immediate steps to prevent it, and not merely that it is *probable* a breach of the peace *may* occur if proceedings under section 530 be not taken. DAMODUR BIDDYADHUR MOHAPATRO *v.* SYAMANUND DEY **[I. L. R., 7 Calc., 385 : 8 C. L. R., 514**

19. ——————— *Dispute likely to cause breach of the peace.—Duty of Magistrate.—Criminal Procedure Code (Act X of 1882), s. 145.*—It is the duty of a Magistrate, before taking proceedings under section 145 of the Criminal Procedure Code, to satisfy himself whether there is any dispute likely to cause a breach of the peace, and that the suggested apprehension of a breach of the peace is not merely colourable, and made to induce him to deal with matters properly cognisable by the Civil Court. IN THE MATTER OF OBHOY CHANDRA MOOKERJEE. OBHOY CHANDRA MOOKERJEE *v.* MOHAMED SABIR **[I. L. R., 10 Calc., 78 : 13 C. L. R., 410**

POSSESSION, ORDER OF CRIMINAL COURT AS TO—*continued.*

2. LIKELIHOOD OF BREACH OF THE PEACE —*continued.*

Ground for action of Magistrate—*continued.*

20. ——————— *Future breach of peace.*—There being no present danger of a breach of the peace, the fact that such a breach is likely to take place at a future time will not justify a Magistrate in making an order under section 530 of the Criminal Procedure Code, 1872. UMA CHURN SANTRA *v.* BENI MADHUB ROY . **7 C. L. R., 352**

Contra, QUEEN *v.* MOHESH CHUNDER ROY **[24 W. R., Cr., 67**

21. ——————— *Criminal Procedure Code, 1872, s. 530.—Order made on insufficient material.—Order without jurisdiction.*—Where the proceeding recorded by a Magistrate, under section 530 of the Criminal Procedure Code, is based on materials which do not disclose sufficient ground for considering that a breach of the peace is imminent, an order calling upon the parties concerned in the dispute to attend in Court, and give in a written statement of their respective claims, in respect of the fact of actual possession of the subject of dispute, may be set aside as made without jurisdiction. CHUNDER MADHUB GHOSE *v.* JUGGUT CHUNDER SEN **[4 C. L. R., 483**

22. ——————— *Criminal Procedure Code, 1861, s. 318.—Grounds for belief in likelihood of breach of peace.*—Under the provisions of section 318 of the Code of Criminal Procedure, the Magistrate should specify the nature of the information received by him, and state the principal facts which by the exercise of a judicial discretion he derives therefrom and which in his judgment constitute grounds for believing that a dispute concerning certain land exists which is likely to induce a breach of the peace; and the roobokari which section 318 prescribes should plainly set out, without reference to any other documents at all, the actual facts which constituted the ground for such belief on the part of the Magistrate. *In the matter of the petition of Sutherland, 9 B. L. R, 229 : 18 W. R, Cr, 11,* explained. IN THE MATTER OF THE PETITION OF KISHOREE MOHUN ROY . **19 W. R. Cr., 10**

23. ——————— *Requisite evidence.*—There is nothing which defines on what grounds the Magistrate shall be satisfied, or limits him to being satisfied by evidence given before him. IN THE MATTER OF THE PETITION OF SUTHERLAND **[9 B. L. R., 229**

S. C. SUTHERLAND *v.* CROWDY **[18 W. R., Cr., 11**

Under the Code of 1861 the Magistrate had "to be satisfied that a breach of the peace was likely," and it was formerly held he must be satisfied by evidence. ANONYMOUS CASE . **4 Mad., Ap., 49**

TARAFDI MUNDUL *v.* CHUNDER BHOOSUN BANERJEE . . . . **16 W. R., Cr., 74**

POSSESSION, ORDER OF CRIMINAL COURT AS TO—*continued.*

2. LIKELIHOOD OF BREACH OF THE PEACE —*continued.*

Ground for action of Magistrate—*continued.*

IN THE MATTER OF THE PETITION OF SUTHERLAND . . . . 9 B. L. R., 229

A police report was held, both under that Code and under the Code of 1872, not to be sufficient evidence. IN THE MATTER OF THE PETITION OF BHADRESWARI CHOWDHRAIN . . . . 7 B. L. R., 329

S. C. BHUDRESSORY CHOWDHRAIN *v.* GOBERDHUN MAJHEE . . . 16 W. R., Cr., 17

ELAHEE NEWOZ KHAN *v.* SUBURUNNISSA [5 W. R., Cr., 14

IN THE MATTER OF THE PETITION OF SHAMASANKAR MAZUMDAR . 9 B. L. R., Ap., 45

S. C. SHAMASUNKUR MOZOOMDAR *v.* ANUNDOMOYEE DOSSEE . . 18 W. R., Cr., 64

ABHAYA CHARAN CHOWDRY *v.* BRAE [6 B. L. R., Ap., 148 S. C. 15 W. R., Cr., 42

QUEEN *v.* BHYRO DAYAL SING [3 B. L. R., A. Cr., 4 S. C. 11 W. R., Cr., 46

See also PUDDOMONEE DASSEE *v.* JUGGODUMBA DASSEE . . . . 25 W. R., Cr., 2

And under the Code of 1872 the report of an Ameen was held not to be sufficient to base an order upon. QUEEN *v.* SOUMBER AHIR [20 W. R., Cr., 57

Under the Code of 1872 an explanation was added that the Magistrate might be satisfied as to the likelihood of a breach of the peace on a report or other information, but as to the fact of possession on evidence. The following, however, was a later holding under the Code of 1872 with regard to a police report.

24. ——————— *Criminal Procedure Code, 1872, s. 530.—Record of grounds.—Police report, Incorporation of.—Evidence of possession.—Evidence of title.*—In proceedings under section 530 of the Criminal Procedure Code, the Magistrate recorded the following words: "whereas from the police report a breach of the peace is probable," and found that certain persons were in possession. *Held* that, although the record of grounds was unsatisfactory, as the initial proceeding did not contain within itself all which the law requires to be recorded,—*viz.*, in the first place, that the Magistrate is satisfied that a dispute likely to induce a breach of the peace exists; and in the second place, the ground upon which he is so satisfied,—yet that, as the police report from which the grounds for apprehending a breach of the peace appeared was incorporated by reference, the final order was not defective. IN THE MATTER OF THE PETITION OF KALI KRISTO THAKUR *v.* GOLAM ALI CHOWDHRY I. L. R., 7 Calc., 46: 8 C. L. R., 245

And under the Code of 1882 the Magistrate is now

POSSESSION, ORDER OF CRIMINAL COURT AS TO—*continued.*

2. LIKELIHOOD OF BREACH OF THE PEACE —*continued.*

Ground for action of Magistrate—*continued.*

to be "satisfied on a police report or other information."

25. ——————— *Police report setting out probability of breach of peace.—Semble,*—That a reference by a Magistrate to a police report which clearly sets out the probability of a breach of the peace is a sufficient statement of the reasons for the Magistrate's being satisfied of the existence of a dispute likely to cause a breach of the peace, within the meaning of section 145 of the Code of Criminal Procedure, 1882. GOLUCK CHUNDER PAL *v.* KALI CHARAN DE . . . I. L. R., 13 Calc., 175

26. ——————— *Examination of parties.—Criminal Procedure Code, 1861, s. 318.—Land dispute.*—When both the disputing parties are examined, and state that men were collected by their opponents for the purpose of committing a breach of the peace, a Magistrate is justified, without inquiring who was the aggressor or the aggrieved party, to proceed under section 318 of the Code of Criminal Procedure, and to take whatever steps are in his opinion necessary to prevent a breach of the peace. GUNGA NARAIN MITTER *v.* GOUR SOONDER CHOWDRY . . . . . 15 W. R., Cr., 85

In cases under the Codes of 1861 and 1872 it was generally ruled that a proceeding stating the grounds for his belief in the likelihood of a breach of the peace must be recorded by the Magistrate. ANONYMOUS CASE . . . . . 4 Mad., Ap., 49

TARAPDI MUNDUL *v.* CHUNDER BHOOSUN BANERJEE . . . . 16 W. R., Cr., 74

IN THE MATTER OF THE PETITION OF KUNUND NARAIN BHOOP . I. L. R., 4 Calc., 650 [3 C. L. R., 551

GRIJAMONEE U. ISHUR CHUNDER [W. R., 1864, Cr., 2

IN RE SABHEE SING . . 6 W. R., Cr., 50

GOVERNMENT *v.* GHOLAM MAHOMED [1 Agra, Cr., 33

IN THE MATTER OF KASHEE KISHORE ROY *v.* TARINI KANT LAHORI [3 B. L. R., A. Cr., 76 15 W. R., Cr., 42, note

QUEEN *v.* RUNJEET MOLLA . 2 W. R., Cr., 31

MUKHODA DOSSEE *v.* QUEEN . 18 W. R., Cr., 4

IN THE MATTER OF OKHIL CHUNDER BISWAS [1 C. L. R., 48

REG. *v.* OMIRTO NAUTH JHA [1 Ind. Jur., N. S., 399 S. C. 6 W. R., Cr., 61

and that the omission to do so was fatal to the Magistrate's proceedings. EMAMBANDHE BEGUM *v.* TEK BAHADOOR . . . 17 W. R., Cr., 53

POSSESSION, ORDER OF CRIMINAL COURT AS TO—*continued.*

2. LIKELIHOOD OF BREACH OF THE PEACE—*continued.*

Ground for action of Magistrate—*continued.*

HARVEY *v.* BRICE . . 4 W. R., Cr., 26

MUNGLO *v.* DURGA NARAIN NAG [25 W. R., Cr., 74

In certain cases it was ruled that the recording of a proceeding was unnecessary. DURIAO SINGH *v.* UMA PROSHAD . . . 24 W. R., Cr., 16

GOUR MOHUN MAJEE *v.* DOOLLUBH MAJEE [22 W. R., Cr., 81

and in one it was doubted whether it was necessary or not. DAMODUR BIDDYADHUR MOHAPATRO *v.* SYAMANUND DEY . . I. L. R., 7 Calc., 385 [8 C. L. R., 514

No form of proceeding was necessary. JOYRAM SINGH *v.* JUGNARAIN DOOBEY . 10 W. R., Cr., 16

27. ——— The provisions of section 318 of the Code of Criminal Procedure were held to be substantially complied with when the Magistrate stated that he was satisfied that the disputes between the parties were likely to induce a breach of the peace, and recorded his opinion that the only way of bringing those disputes to a satisfactory settlement was by proceeding under the section quoted. IN THE MATTER OF THE PETITION OF BISSESHUR NARAIN MAHTAH . 8 W. R., Cr., 83

Under the present Code it is not necessary to record any proceeding, but the order for the attendance of the parties must show the grounds which satisfied the Magistrate.

3. NOTICE TO PARTIES.

28. ——— **Right to notice.**—*Parties to proceedings.—Service of notice.—Co-sharers.*—In a proceeding under section 318, Act XXV of 1861, there is nothing in the law which makes it necessary for the Magistrate to serve notice on all the co-sharers in an estate which may form the subject of the dispute. IN THE MATTER OF THE PETITION OF GABINDA CHANDRA GHOSE . . 9 B. L. R., Ap., 39

S. C GOBIND CHUNDER GHOSE *v.* ANUNDO CHUNDER SIRCAR . . 18 W. R., Cr., 54

29. ——— **Service of notice.**—*Criminal Procedure Code, 1861, s. 318.—Service of notice to attend.*—The mere service of a notice upon a mofussil naib who takes no steps whatever to consult his employer or act under his directions, is not such a notice as is contemplated by section 318, Code of Criminal Procedure, in a case of dispute regarding possession of land. RAMRUNGINEE DOSSEE *v.* GOOROO DOSS ROY . . . 17 W. R., Cr., 9

30. ——— *Order under s. 530, Criminal Procedure Code, 1872, to whom addressed.—Quære,*—Whether an order under section 530, Civil Procedure Code, 1872, can be directed to others than the unsuccessful party to the proceedings under the section; or whether such an order could properly be directed to the public at large. IN THE MATTER OF NOBO KISHORE CHUCKERBUTTY [7 C. L. R., 291

POSSESSION, ORDER OF CRIMINAL COURT AS TO—*continued.*

3. NOTICE TO PARTIES—*continued.*

Service of notice—*continued.*

31. ——— *Nature and form of notice.—Intervenor.*—Although no particular mode of giving notice, calling upon parties to attend under this section before the Magistrate, has been provided, yet the language of the section indicates that the notice shall be addressed to known individuals, and not be in the form of a public proclamation or citation. There is no provision in the Criminal Procedure Code for allowing an intervenor to come in, in the middle of proceedings held by a Magistrate under section 530 of the Criminal Procedure Code, 1872. IN THE MATTER OF THE PETITION OF KUNUND NARAIN BHOOP [I. L. R., 4 Calc., 650: 3 C. L. R., 551

4. EVIDENCE, MODE OF TAKING, &c.

32. ——— **Oral evidence.**—*Determination of question of possession.*—Oral evidence is the principal matter upon which Magistrates can proceed in determining a question of possession under the Code of Criminal Procedure. GOBIND NAUTH RAI *v.* ANUND NAUTH RAI . 5 W. R., Cr., 79

33. ——— **Witnesses.**—*Criminal Procedure Code, 1861, s. 318.—Examination of witnesses.*—A Magistrate, proceeding under section 318 of the Code of Criminal Procedure, is bound to examine any witnesses tendered in support of the respective claims to actual possession of the land in dispute before passing an order. ANONYMOUS . 6 Mad., Ap., 4

ANUNDER KOOER *v.* SONAET KOOER [9 W. R., Cr., 64

34. ——— *Criminal Procedure Code, 1882, s. 145.—Procedure under that section.—Attendance of witnesses.—Process to enforce attendance.*—Proceedings under section 145 of the Criminal Procedure Code should on all points of procedure be regarded as summons cases; and although it is discretionary with a Magistrate to issue a summons on a witness in such a case, yet, when any one of the parties applies at a proper time for process to secure the attendance of his witnesses, the Magistrate should not arbitrarily refuse his assistance; and where such refusal is made, it is incumbent on the Magistrate to record his reasons for such refusal. IN THE MATTER OF THE PETITION OF HURENDRO NARAIN SINGH CHOWDHRY . . I. L. R. 11 Calc., 762

35. ——— *Evidence on oath.—Actual possession.*—In a proceeding under section 318 of the Criminal Procedure Code, 1861, to determine the right of actual possession, it is necessary that the evidence should be taken upon oath. QUEEN *v.* KALI CHANDRA SHAH [7 B. L. R., 322: 16 W. R., Cr., 13

POSSESSION, ORDER OF CRIMINAL COURT AS TO—*continued.*

4. EVIDENCE, MODE OF TAKING, &c.

Witnesses—*continued.*

But it appears not to be absolutely necessary to examine witnesses at all. *Semble*,- If examined, the evidence should be on oath. QUEEN *v.* BALLABH KANT BHATTACHARJEE

[7 B. L. R., 324, note: 11 W. R., Cr., 36

36. ——— **Recording evidence.**—*Omission to record evidence.—Inquiry,*—Taking the statements of both parties without recording evidence in proof of either is not an "inquiry." QUEEN *v.* SONAOOLLAH . . . 2 W. R., Cr., 44

37. ——— *Mode of recording evidence.—Dispute likely to cause breach of the peace.*—In an inquiry under section 530, Act X of 1872, as a preliminary to an order relative to land about which there is a dispute likely to cause a breach of the peace, the evidence should be recorded by the Magistrate in the manner provided by section 334. KHETTERMONEE DOSSEE *v.* SREENATH SIRCAR

[11 B. L. R., Ap., 5

38. ——— **Neglect to obey order to put in statements.**—*Criminal Procedure Code, 1861, s. 318.*—When, in a case under section 318, Code of Criminal Procedure, a Magistrate had taken any evidence, he was held to be not justified in refusing to proceed with the case because the parties neglected to file written statements on the day fixed for filing the statements. IN THE MATTER OF GOLUCK CHUNDER MYTEE . . 11 W. R., Cr., 9

39. ——— **Irregularity in taking evidence.**—*Taking evidence in two cases together.—Right to separate inquiry.*—Two investigations, under section 318, Code of Criminal Procedure, 1861, were before a Magistrate, who, after deciding one of the cases, remarked on the other, that because the lands adjoined he had taken the evidence in the two cases together, and found it unnecessary to continue the inquiry further. *Held*, under section 404, that the parties kept out of possession were entitled to a full inquiry. WATSON & CO. *v.* SURNOMOYEE

[8 W. R., Cr., 63

5. DECISION OF MAGISTRATE AS TO POSSESSION.

40. ——— **Objection to decide question of possession.**—*Procedure by Magistrate.*—In a case of disputed possession likely to lead to a breach of the peace, the Magistrate, instead of merely binding down the parties to keep the peace, and declining to interfere further, is bound to dispose of the question of possession under section 318, Criminal Procedure Code, 1861 IN THE MATTER OF THE PETITION OF ANUNDNATH ROY . . 4 W. R., Cr., 12

41. ——— **Power to decide question of possession.**—*Recognisance to keep peace.*—If a Magistrate is satified that the circumstances require it, he may make an order under section 318 of the Code of 1861, notwithstanding that he has taken recognisances under section 282. IN THE MATTER OF THE PETITION OF SUTHERLAND

[9 B. L. R., 229: 18 W. R., Cr., 11

POSSESSION, ORDER OF CRIMINAL COURT AS TO—*continued.*

5. DECISION OF MAGISTRATE AS TO POSSESSION—*continued.*

Power to decide question of possession—*continued.*

42. ——— **Question for decision.**—*Possession.—Title.*—In a case of disputed possession of land, the Magistrate should look to possession, not to right,—*i.e.*, maintaining in possession the party in possession, and forbidding disturbance of possession GRIJAMONEE *v.* ISHUR CHUNDER

[W. R., 1864, Cr., 2

IN RE SABHEE SING . . 6 W. R., Cr., 50

GOVERNMENT *v.* GHOLAM MAHOMED

[1 Agra, Cr., 33

REG. *v.* OMIRTONAUTH JHA

[1 Ind. Jur., N. S., 399
S. C. 6 W. R., Cr., 61

43. ——— *Criminal Procedure Code, 1861, s. 318.—Duty of Magistrate.*—A Magistrate, under section 318 of the Criminal Procedure Code, is to inquire into the question who is in actual possession of the property in dispute, without considering how that possession had been obtained. DUSTUR HUSANG JAMASJI *v.* FELL

[6 Bom., Cr., 30

BAPUJI JAGJIVAY *v.* MAGISTRATE OF KHEDA

[4 Bom., A. C., 153

44. ——— **Duty of Magistrate to maintain possession even when contrary to former order of another Magistrate.**—Where a Magistrate found that an order of his predecessor made two years previously with regard to possession of certain land had not been complied with, he enforced the order and changed the possession in accordance with that order. *Held* that the Magistrate ought to have maintained the possession which he found, even if it was inconsistent with his predecessor's order, and that he ought not to have taken any steps in the matter, unless some one actually in possession, and guaranteed possession by that order, came to complain to him that his possession was threatened, or that he had just been forcibly turned out, and asked in pursuance of that order to be maintained in possession. QUEEN *v.* PROTAB CHANDRA BAROOAH.

[21 W. R., Cr., 2

45. ——— **Nature of order.**—*Illegal dispossession.*—A Magistrate has no authority to restore to possession a person who has been illegally dispossessed He must declare the party in actual possession entitled to retain possession until ousted by due course of law, and forbid all disturbance of such possession in the meantime. RAMJEEBUN DOOBEY *v.* LUCHMONEE DABEA . . W. R., 1864, Cr., 5

DOORJUN SINGH *v.* SHIBBA . 3 N. W., 171

QUEEN *v.* IMAMBANDEE . 7 W. R., Cr., 26

POSSESSION, ORDER OF CRIMINAL COURT AS TO—*continued.*

5. DECISION OF MAGISTRATE AS TO POSSESSION—*continued.*

46. ——— **Procedure.**—*Criminal Procedure Code, 1872, s. 530.—Death of one of the parties before termination of proceedings.*—On the death of one of the persons concerned in a matter under section 530, Code of Criminal Procedure, just before those proceedings terminated in favour of that person and another, though it would be more regular for the Magistrate to postpone the proceedings and make his representative a party in his place, the proceedings are not necessarily bad, since the death has prejudiced no one. IN THE MATTER OF ANNONDOMOYEE DEBEE *v.* LUCHMUN PERSHAD GOGO . **2 C. L. R., 264**

47. ——— **Dispossession.**—*Criminal Procedure Code, 1872, s. 530.—Illegal dispossession.—Ouster without authority of Civil Court.*—Ouster by one person of another lawfully in possession of property confers no rights on the former which can be recognised in proceedings taken under section 530 of the Code of Criminal Procedure. The Court should refer back to a time previous to the quarrel when such possession was peacefully enjoyed by one or other of the disputants. IN THE MATTER OF THE PETITION OF MOHESH CHUNDER KHAN **[I. L. R., 4 Calc., 417**

48. ——— **Onus probandi.**—*Criminal Procedure Code, 1872, s. 530, Effect of order under.*—The effect of an order under section 530 of the Criminal Procedure Code, Act X of 1872, is to declare the person in whose favour it is made to be in possession at the time of the proceedings had under the section, and to cast the burden of proof upon his adversary in an ejectment suit; but such an order can decide nothing as to how that possession was obtained or as to antecedent possession. *Boolee Singh v. Hurobuns Narain Singh, 7 W. R., 212,* commented upon. NOBO COOMAR DASS *v.* GOBIND CHUNDER ROY . . . . . **9 C. L. R., 305**

49. ——— **Keeping person in possession to reap crop.**—*Criminal Procedure Code, 1872, s. 530.*—A Magistrate cannot, under section 530, Code of Criminal Procedure, order that a person be kept in possession until he has reaped the crop standing on the ground, and then that he shall give way to another. When there have been long-pending disputes in the Courts, he should determine who was in peaceable possession when they commenced. IN THE MATTER OF BUNWARI LAL MISSER *v.* RADHA PERSHAD SING . . . . **1 C. L. R., 136**

50. ——— **Nature of required possession.**—*Criminal Procedure Code, 1872, s. 530.—Possession at time of dispute.*—The possession regarding which parties are required to give proof in a case under section 530, Act X of 1872, relating to a dispute for land in respect of which a breach of the peace is apprehended, is possession at the time the proceedings are instituted by the Magistrate, and not possession at the time the Magistrate comes to his decision. IN THE MATTER OF THE PETITION OF PIRTHIRAM CHOWDHRY . . **20 W. R., Cr., 51**

POSSESSION, ORDER OF CRIMINAL COURT AS TO—*continued*

5. DECISION OF MAGISTRATE AS TO POSSESSION—*continued.*

Nature of required possession—*continued.*

51. ——— *Actual possession.—Criminal Procedure Code (Act X of 1882), s. 145.*—Under section 145 of the Criminal Procedure Code the Magistrate has to find which of the parties is in possession of the subject-matter of the dispute at the time when he is inquiring into the matter, which in the contemplation of the law is identical with the time of the institution of the proceedings, and not at any time previous thereto; and he has no concern as to how the party then in actual possession obtained possession, but has only to pass an order retaining him in his possession AMBLER *v.* PUSHONG . . **I. L. R., 11 Calc., 365**

CHUNDER COOMAR PODDAR *v.* CHUNDER KANTA GHOSE . . . **I. L. R., 12 Calc., 521**

52. ——— *Criminal Procedure Code, 1872, s. 530.—Parties in possession through ryots.*—The Criminal Court has jurisdiction, under Act X of 1872, section 530, to determine questions of contested possession between parties who are not in immediate possession of the subject-matter of dispute, but claim rent from tenants who actually occupy it NOBIN CHUNDER KOONDOO *v.* JOGENDRONATH BHUTTACHARJEE . **25 W. R., Cr., 18**

53. ——— *Criminal Procedure Code (Act X of 1872), s. 530.—Intermediate holders.—Constructive possession.*—In a case of disputed possession between two rival zemindars, constructive possession through intermediate holders (ticcadars), to whom the ryots pay rents, is not such possession as is contemplated by section 530 of the Code of Criminal Procedure. EMPRESS *v.* THACOOR DYAL SING . . . **I. L. R., 3 Calc., 320**

54. ——— *Criminal Procedure Code, 1872, s. 530.—Possession by ryots.*—In a case of dispute regarding land of a considerable area in which both parties contended that they held possession of the area through the means of ryots, it was held that the Magistrate, instead of making an order under section 530 of the Criminal Procedure Code that the land should remain in the possession of one of the parties until the decision of a competent Civil Court, should have proceeded to consider the question which party was in possession of the constituent portions of the land, piece by piece, in the hands of his ryots. MUDHOOSUDUN SHAHA *v.* BEJOY GOBIND CHOWDHRY . **21 W. R., Cr., 55**

55. ——— *Criminal Procedure Code, 1872, s. 530.—Disputes between owners of land.—Constructive possession.*—Section 530 of the Code of Criminal Procedure contemplates disputes between owners as well as occupiers. *Per* JACKSON, *J.*—Where a zemindar has let his lands in farm, he, his farmers, and the occupying ryots, are all in their degree concerned in any dispute as to possession which may arise, and they ought to be maintained in possession of the interests which they severally enjoy.

POSSESSION, ORDER OF CRIMINAL COURT AS TO—*continued.*

5. DECISION OF MAGISTRATE AS TO POSSESSION—*continued.*

Nature of required possession—*continued.*

Sutherland v. *Crowdy, 18 W. R., 11,* cited. *Emprêss* v. *Thacoor Dyal Sing, I. L. R., 3 Calc., 320,* commented upon as having gone too far. HARAK NARAIN SINGH *v.* LUCHMI BUX ROY [5 C. L. R., 287

56. ——————— *Occupation of trespasser.—Possession.*—The actual possession intended by Chapter XXII of the Code of Criminal Procedure, 1861, does not include the occupancy of a mere trespasser. ANONYMOUS . 6 Mad., Ap., 13

57. ——————— *Breach of the peace.—Actual possession.—Recognisance to keep peace.*—The possession of a master by his servant,—of a landlord by his immediate tenant, the person who pays rent to him,—of the person who has the property in the land by the usufructuary,—come within the meaning of the words "actual possession" in section 318 of the Code of Criminal Procedure, 1861. Their meaning is not limited to bodily possession. But a person is not in "actual possession" where the rents are paid by the actual occupier, not to him, but to an intermediate holder. IN THE MATTER OF THE PETITION OF SUTHERLAND . 9 B. L. R., 229

S. C. SUTHERLAND *v.* CROWDY. [18 W. R. C., 11

58. ——————— *Claim to possession by one acting as servant of owners.—Parties.*—Where there is a dispute likely to lead to a breach of the peace concerning land, and proceedings are recorded and had under section 530 of the Criminal Procedure Code, 1872, no order should be made against one who is acting as the servant of another person who claims to have possession of the land, unless that other person is made a party to the proceedings. IN THE MATTER OF JITBAHAN *v.* BANSRUP DHOBI [6 C. L. R., 193

59. ——————— *Symbolical possession.—Held* (KEMP, *J.*, dissenting) that although symbolical possession is not entitled to weight as against a party proved to be in possession, yet, in the absence of evidence, it is in itself deserving to be taken into consideration. MUNGLO *v.* DURGA NARAIN NAG . . . . 25 W. R., Cr., 74

60 ——————— *Criminal Procedure Code, 1872, s. 530.—Symbolical possession under decree of Court.*—A certain mouzah having been sold in execution of a decree obtained upon a mortgage, the purchaser claimed a right under the sale to a hât appurtenant to the mouzah, and was put by the Nazir of the Civil Court into symbolical possession of the hât as well as of the mouzah. The judgment-debtor refused to give up actual possession of the hât, maintaining that it was debutter property of which he was the shebait. A breach of the peace being imminent in consequence of the rival claims, proceedings were taken under section 530 of the Criminal Procedure Code; and the Magistrate, finding that the judgment-debtor was in actual possession of the hât, made an order maintaining him in such possession until ousted by a Civil Court. *Held* (setting aside that order) that the Magistrate had no power, under section 530 of the Criminal Procedure Code, to direct the judgment-debtor to be retained in possession until ousted by a Civil Court, but was bound to see that the possession, as given by the Nazir, was maintained, leaving it to the debtor to substantiate his claim as shebait in a Civil Court. The Court accordingly directed that the purchaser be restored to possession, and that the Magistrate do see that he is kept in possession until ousted by due course of law. IN THE MATTER OF CHUTRAPUT SINGH . . . . . 5 C. L. R., 200

61. ——————— *Criminal Procedure Code, 1872, s. 530.—Actual possession.—Possession of wife or agent.*—In an inquiry under section 530 of the Code of Criminal Procedure, the only thing to be determined is the fact of actual possession. In a dispute between the wife of a lunatic and the manager of his estate with regard to the possession of certain property, the Magistrate attached the property under section 531 of the Code of Criminal Procedure, on the ground that he was unable to satisfy himself as to who was in possession. It had been proved before him that the wife was in actual possession, but there was a doubt as to whether she was not in possession merely as the agent of her husband. *Held* that section 530 has only to do with actual possession, and that the Magistrate should have decided that the wife was in possession. IN THE MATTER OF JUGGODESHARY CHOWDHRAIN . . 3 C. L. R., 94

62. ——————— *Criminal Procedure Code, 1872, s. 530.—Real right to possession.*—The possession in regard to which the Magistrate's jurisdiction under section 530 of the Code of Criminal Procedure should be exercised must be of a real and tangible character. When a party claims under a document or agreement, the right of doing certain things over a large extent of territory, the performance of acts under such alleged right in one portion of the ground over which the right extends, although it may be good and sufficient for the purpose of keeping alive that right so as to be an answer to the plea of limitation raised in a civil suit, is not of itself a sufficient possession on which the Magistrate's order under section 530 may be based for the purpose of forbidding in a distant locality acts not necessarily in conflict with such possession, though at variance with the right. BEJOY NATH CHATTERJEE *v.* BENGAL COAL COMPANY . 23 W. R., Cr., 45

63. ——————— *Criminal Procedure Code, 1872, s. 530.—Manager in joint possession.—Question for Civil Court.*—A mooktear holding and managing a burial ground for several joint proprietors cannot make himself out to be in possession

POSSESSION, ORDER OF CRIMINAL COURT AS TO—*continued.*

5. DECISION OF MAGISTRATE AS TO POSSESSION—*continued.*

Nature of required possession—*continued.*

for one more than for another. KASSIM HASSIM SOORTY *v.* ABRAHIM SOLEMAN [25 W. R., Cr., 24

64. ——— *Criminal Procedure Code (Act XXV of 1861), s. 318—Act X of 1872, s. 530.—Certificate of administration.—Act XXVII of 1860.*—*A.* and *B.* had a dispute about possession of a certain muth. *A.* was declared by the Magistrate, under section 318 of the Criminal Procedure Code, to be in possession. Subsequently, *B.* got a certificate under Act XXVII of 1860, and applied to the Magistrate for possession, which was given to him. *Held* that the Magistrate's order giving possession to *B.* was irregular, and must be set aside. DHUNRAJ GIRI GOSWAMI *v.* SRIPATI GIRI GOSWAMI . . 2 B. L. R., A. Cr., 27

S. C. QUEEN *v.* SREEPUTT GIRI GOSSAIN [11 W. R., Cr., 24

See ANURAGEE KOOWAR *v.* RAMRUCHYA DASS [25 W. R., Cr., 16

65. ——— **Decision based on evidence of title.**—*Right to possession.*—No sufficient evidence of possession was produced before the Magistrate, but evidence as to the title of the person in whose favour the Magistrate found was given, and the Magistrate based his decision upon the latter evidence, and determined the case with reference to the merits of the claims of the parties to the *right* of possession. *Held* that, although the Magistrate would have been justified in looking to the evidence of title in corroboration of the evidence of possession, he was wrong in basing his decision on the evidence of title, and his order was set aside. IN THE MATTER OF THE PETITION OF KALI KRISTO THAKUR *v.* GOLAM ALI CHOWDHRY [I. L. R., 7 Calc., 46 : 8 C. L. R., 245

6. NATURE AND EFFECT OF DECISION.

66. ——— **Finding as to possession.**—*Criminal Procedure Code, 1872, s. 530.*—A Magistrate's finding under section 530 of the Criminal Procedure Code, 1872, is conclusive as to the question of actual possession. A Mamlatdar's finding on such a point is not conclusive. LILLU *v.* ANNAJI PARASHRAM . . . . I. L. R., 5 Bom., 387

67. ——— **Fouzdari Court, Jurisdiction of.**—*Possession.—Question of title.*—The jurisdiction of the Fouzdari Court was confined to cases of possession, and it was beyond its province to inquire into and ascertain titles to landed property. MOHESHUR SINGH *v.* GOVERNMENT OF INDIA [3 W. R., P. C., 45 7 Moore's I. A., 283

68 ——— **Effect of order as to possession.**—*Right and title of party under order.*—The effect of the order of the Criminal Court giving possession of real estate is merely to prevent the occupation being disturbed by violence, and confers no right or title on the party put in possession. KADIR BUKSH KHAN *v.* FUSSEEH-OON-NISSA [5 Moore's I. A., 413

POSSESSION, ORDER OF CRIMINAL COURT AS TO—*continued.*

6. NATURE AND EFFECT OF DECISION—*continued.*

Effect of order as to possession—*continued.*

69. ——— *Prevention of breach of peace.—Adjudication of title.—Criminal Procedure Code, 1861, Ch. XXII, ss. 318-321.*—The object of Chapter XXII of the Criminal Procedure Code, 1861 (sections 318-321) is to prevent breaches of the peace likely to be occasioned, and not the adjudication of title. IN THE MATTER OF THE PETITION OF RAM DUTT MISR . 1 Agra, Cr., 29

GOVERNMENT *v.* GHOLAM MAHOMED [1 Agra, Cr., 33

70. ——— *Question of title.*—In a simple question of possession, all that a Criminal Court can dispose of is the necessary right, not the proprietary title. KASHEE NATH KOOER *v.* DEB KRISTO RAMANOOJ DOSS . 16 W. R., 240

GRIJAMONEE *v.* ISHUR CHUNDER [W. R., 1864, Cr., 2

IN RE SABHEE SING . . 6 W. R., Cr., 50

GOVERNMENT *v.* GHOLAM MAHOMED [1 Agra, Cr., 33

PORESH NARAIN ROY *v.* WATSON [17 W. R., Cr., 3

GOVERNMENT *v.* SREEPUTTEE ROY [17 W. R., Cr., 59

REG. *v.* OMRITO NAUTH JHA [1 Ind. Jur., N. S., 399 : 6 W. R., Cr., 61

BAPUJI JAGJIVAY *v.* MAGISTRATE OF KHEDA [4 Bom., A. C., 153

DOORJUN SINGH *v.* SHIBBA . 3 N. W., 171

QUEEN *v.* IMAM BANDEE . 7 W. R., Cr., 29

71. ——— *Third parties.—Disobedience of order.*—Where an order under section 318 of the Criminal Procedure Code, 1861, was made between *A.* on the one side and *B* and the three tenants of *B.* on the other, declaring that *A* was in possession of the property in dispute,—*Held* that this order was only binding on the actual parties to the case before the Magistrate, and that subsequent tenants of *B.* could not be criminally punished for disobeying the order in question. IN THE MATTER OF GOPAL BURNAWAR . 3 B. L. R., A. Cr., 13

72. ——— **Nature of Magistrate's order.**—*Criminal Procedure Code, 1861, s. 318.—Execution of decree by Civil Court.*—A Magistrate is not competent to interfere, under section 318 of the Code of Criminal Procedure, with the execution of a decree of the Civil Court. When a Civil Court decree has been passed regarding the whole or any

POSSESSION, ORDER OF CRIMINAL COURT AS TO—*continued.*

6 NATURE AND EFFECT OF DECISION —*continued*

Nature of Magistrate's order—*continued.*

portion of disputed land, it is the Magistrate's duty to maintain that decree, and he cannot again institute, under section 318, proceedings regarding the land covered by it. RAI MOHUN ROY *v.* WISE [16 W. R., Cr., 24

73. ——— *Decree of Civil Court for possession.*—A Magistrate ought not to interfere, under section 318, Code of Criminal Procedure, 1861, with the execution of a decree of the Civil Court. If called on to interfere at all, because he is apprehensive of a breach of the peace, he should, under section 319, maintain in possession the person who has been actually put in possession by a decree of the Civil Court SHAMA SOONDERY DEBIA *v.* JARDINE, SKINNER, & Co. . . . 6 W. R., Cr., 10

74. ——— *Resistance to execution of decree.*—A Criminal Court ought not to interfere in cases where a purchaser under a decree is resisted in getting actual possession of the property which he has bought, the procedure to be adopted in such cases being that provided in Chapter XIX of the Civil Procedure Code, 1861. PRAYAG SINGH *v* FUZOOL HOSSEIN . . . 6 C. L. R., 206

75. ——— *Criminal Procedure Code, 1872, s. 530.*—The object of Act X of 1872, section 530, is to prevent a breach of the peace by retaining in possession the party already there, until such time as the Civil Court can pronounce on the two conflicting claims. When a Civil Court decree is once passed, the right as between the litigants is decided, and there is no more place for a summary order which proceeds, not upon title, but on mere possession. RANEEGUNGE COAL ASSOCIATION *v* HEM LALL . . . . . 24 W. R., Cr., 17

76. ——— *Criminal Procedure Code, 1872, s. 530.—Duty of Magistrate as to enforcing decree of Civil Court.*—Where a decree has been passed by a Civil Court determining the rights of the parties to a suit to disputed land, it is a Magistrate's duty to uphold that decree, and he cannot, as between such parties, proceed under section 530 of the Code of Criminal Procedure to decide afresh upon the question of possession. *Rai Mohun Roy* v. *Wise, 16 W. R. Cr., 24;* and *Raneegunge Coal Association* v. *Hem Lall, 24 W. R. Cr, 17,* followed. IN THE MATTER OF BHOLA NATH GHOSE *v.* MOTHOOR MUNDLE . . . 7 C. L. R., 516

77. ——— **Power of Magistrate.**—*Delivery of possession in execution of decree of Civil Court.*—The act of a process peon, delivering over possession of the disputed land to the purchaser as part of a tenure sold in execution, does not take away the power of a Magistrate to inquire into the question of possession between the parties under section 530, Criminal Procedure Code, 1872. NOBIN CHUNDER KOONDOO *v.* JOGENDRONATH BHUTTACHARJEE [25 W. R., Cr., 18

POSSESSION, ORDER OF CRIMINAL COURT AS TO—*continued.*

6. NATURE AND EFFECT OF DECISION —*continued*

Power of Magistrate—*continued.*

78. ——— *Civil Court, Decree of.—Criminal Procedure Code, 1872, s. 530.*—A Magistrate acting under section 530 cannot interpret the meaning of a decree of a Civil Court. He can determine only the fact of actual possession. IN THE MATTER OF LEELA NUND SINGH . 1 C. L. R., 273

79. ——— **Suit in Civil Court for possession.**—*Proof of title.—Criminal Procedure Code, 1861, s. 318.*—Section 318 of the Code of Criminal Procedure does not mean that any party who can show in the Civil Court a possession prior to the Magistrate's award shall be entitled to have the award set aside and to be put in possession, but only that the party out of possession must prove title. SHIB PERSAD ROY *v.* RUGHOONATH SINGH [W. R., 1864, 295

80. ——— *Tenant dispossessed by order of Magistrate under s. 318, Criminal Procedure Code, 1861.—Obligation to sue for reversal of order.*—A tenant dispossessed by order of a Magistrate under section 318 of the Code of Criminal Procedure is not bound to sue for the reversal of that order in order to recover possession. LUCKHEE DEBEA CHOWDHRAIN *v.* GOOROO DOSS SEIN [W. R., 1864, Act X, 54

81. ——— *Award of possession under s. 318, Criminal Procedure Code, 1861.—Effect of, on subsequent suit for possession.*—An award under section 318 of the Criminal Procedure Code, 1861, is no bar to a possessory action under Act XIV of 1859, section 15. IN THE MATTER OF CHYTUN CHUNDER ROY. CHYTUN CHUNDER ROY *v.* BROJO KANT ROY . . . 20 W. R., 12

82. ——— *Order under Act IV of 1840 as to possession, Omission to set aside.*—*Held* that the plaintiff having failed to set aside an award as to possession made by the Criminal Court under Act IV of 1840 within the limitation period, his claim in opposition to that award was not maintainable. GOPAL NATH *v.* ABDOOL GHANEE [1 Agra, 120

83. ——— *Suit for declaration of title.*—A plaintiff in a civil suit brought for confirmation of his possession by a declaration of his title to certain land, obtained, pending his suit, an order from the Magistrate under section 318 of the Criminal Procedure Code, 1861, that he should be maintained in possession until ousted by due course of law. The suit was dismissed, the plaintiff failing to prove his title; and the defendants then applied to the High Court under section 404 of the Criminal Procedure Code, to set aside the Magistrate's order, and put them in possession. *Held* that their proper course was by a suit in the Civil Court for possession, and the application under the Criminal Procedure Code was rejected JUGGESH PRAKASH GANGULI *v.* NILKAMAL MOOKERJEE . 3 B. L. R., A. C., 57

POSSESSION, ORDER OF CRIMINAL COURT AS TO—*continued*

6. NATURE AND EFFECT OF DECISION —*continued.*

Suit in Civil Court for possession—*continued.*

S. C. IN RE JOGESH PROKASH GANGOLEE [11 W. R., Cr., 43

84. ——— *Obstructing road.*—*Suit for exclusive possession.*—The Magistrate had, on the complaint of the defendant, passed an order, under section 320 of the Criminal Procedure Code, 1861, forbidding the plaintiff to retain possession of a piece of land to the exclusion of the public until he had obtained the decision of a competent Court adjudging him to be entitled to such exclusive possession. The plaintiff accordingly brought his suit in the Munsif's Court to recover possession of the land. The Munsif gave him a decree for exclusive possession of the land. On appeal, the Judge held that the Munsif had no jurisdiction to try the question whether the public had a right of way over the land. The Judge's decision was reversed on special appeal, and the case remanded to the Judge to try the issue whether the plaintiff was entitled to the exclusive use of the land. MAHES CHANDRA MOOKERJEE *v.* RAMUTAM PALIT . 5 B. L. R., Ap., 68

S. C. MOHESH CHUNDER MOOKERJEE *v.* RAMOOTTUM PALIT . . . 14 W. R., 163

7. ATTACHMENT OF PROPERTY.

85. ——— **Preliminaries to order for attachment.**—*Criminal Procedure Code, 1872, s. 531.*—It is only when, after recording a proceeding under section 530, Code of Criminal Procedure, and taking evidence, a Magistrate decides that neither party is in possession, or is unable to satisfy himself as to which party is in possession, that he can, under section 531, attach land in dispute. He is not competent summarily to order attachment without such preliminary proceedings. IN THE MATTER OF RAM SOONDAREE DABEE . . . 1 C. L. R., 86

86 ——— *Criminal Procedure Code, 1872, s. 53.*—*Proceedings before attachment.*—The doubt upon which a Magistrate can act under section 531, Code of Criminal Procedure must arise from his inability to decide on evidence offered by the contending parties as to their possession, and not on a doubt entertained without such inquiry. IN THE MATTER OF LEELANUND SINGH [1 C. L. R., 273

87. ——— **Power to attach land.**—*Criminal Procedure Code, 1861, s. 318.*—*Zemindari in possession by ryots.*—The power of attaching land regarding which there is a dispute, conferred on a Magistrate by section 318 of the Code of Criminal Procedure, extends to disputes as to possession of land of which rival zemindars are in possession by their ryots. IN THE MATTER OF MASSEYK [15 W. R., Cr., 1

POSSESSION, ORDER OF CRIMINAL COURT AS TO—*continued.*

7. ATTACHMENT OF PROPERTY—*continued.*

88. ——— **Ground for order of attachment.**—*Criminal Procedure Code, 1872, s 531* — Sufficiency of evidence to justify proceedings under section 531 of the Criminal Procedure Code, Act X of 1872, considered. DEO SARUN SINGH *v.* TULSI KANT . . . . . 12 C. L. R., 221

89. ——— *Criminal Procedure Code, 1872, s 531.*—*Ijmali property.*—Where an Assistant Magistrate, acting under Act X of 1872, section 531, found one of the proprietors of an ijmali talook in actual possession of a 12-anna share which was all that he claimed, and it was in evidence that the rents had till the commencement of the dispute been collected in distinct and separate shares, he was held to have committed an error in law in attaching the whole estate as involved in the dispute. The words "institution of proceedings" in section 531 mean the commencement of the action which results in the application to the Magistrate's Court; and the possession to be determined is possession at the time the dispute arose,—*i.e.*, at the time the police reported that a breach of the peace was likely to take place. RAKHAL DASS SINGH *v.* SHEO PERSHAD SINGH [24 W. R., Cr., 73

90. ——— **Second attachment, Power to issue.**—*Criminal Procedure Code, 1872, s. 531.*—*Attachment of land in dispute and release.*—*Re-attachment.*—Where a Magistrate, being in doubt as to which of two persons was rightful owner of some disputed property, attached it in order to prevent a breach of the peace, and released it on their coming to an agreement, but subsequently re-attached it on the appearance of a third claimant, from whose attempt to obtain possession a breach of the peace was apprehended. *Held* that the Magistrate was only competent to order a fresh attachment after taking the preliminary steps under section 530, if, on completion of the inquiry, he found himself in the position described in section 531; and that, if there was any new dispute, he ought to have proceeded *de novo*; but that the best course to pursue would be to exert his powers under Chapter XXXVII. QUEEN *v.* KALY KISHORE ROY . . 25 W. R., Cr., 68

91. ——— **Dispute between rival ryots.**—*Attachment of estate.*—*Criminal Procedure Code, 1861, s. 319.*—Where there was a dispute as to the actual possession of land, not between two co-proprietors, but between rival ryots,—*Held* that, instead of attaching the whole estate under section 319 of the Code of Criminal Procedure, 1861, the Magistrate ought to have settled the dispute as between the ryots. RAMDYAL *v.* CHINTA MOONFE [W. R., 1864, Cr., 28

92. ——— **Dispute as to boundaries.**—*Contiguous estates.*—When the dispute is as to a common boundary between two contiguous estates, the Magistrate, instead of attaching the boundary land, should find for one party or the other, with reference to the point of possession. HARVEY *v.* BRICE [4 W. R., Cr., 26

POSSESSION, ORDER OF CRIMINAL COURT AS TO—*continued.*

7. ATTACHMENT OF PROPERTY—*continued.*

Dispute as to boundaries—*continued.*

AMRITHNATH JHA *v.* AHMED REZA [6 W. R., Cr., 61

93. ——— **Power to deal with land under attachment.**—*Power to lease.—Criminal Procedure Code, 1861, s. 319.*—A Magistrate may lease land attached under section 319 of the Criminal Procedure Code, 1861. IN THE MATTER OF GREESH CHUNDER DOSS . . . 17 W. R., Cr., 38

94. ——— **Withdrawal of order for attachment.**—*Criminal Procedure Code, 1872, s. 531.*—A Deputy Magistrate, after notice issued under the Code of Criminal Procedure, section 530, to two parties, finding himself unable to determine who was in possession, attached the property in dispute. Upon this, a third party represented that he, as landlord, had taken possession of the land on the death of the person to whom it had been leased. But the Deputy Magistrate refused to remove the attachment, holding that the landlord's possession was without colour of law. *Held* that the duty of the Deputy Magistrate, under the circumstances, was to withdraw his order. IN THE MATTER OF THE PETITION OF JOY KISSEN MOOKERJEE. IN THE MATTER OF THE PETITION OF PEARY MOHUN MOOKERJEE . . 24 W. R., Cr., 40

8. DISPUTES AS TO RIGHT OF WAY, WATER, &c.

95. ——— **Jurisdiction of Magistrate.**—*Criminal Procedure Code, 1861, s. 320 and s. 62.*—Section 320 of the Criminal Procedure Code gives special jurisdiction to Magistrates with full powers; and in the cases provided for by it, the general power given to any Magistrate by section 62 is barred. ANONYMOUS . . . . 3 Mad., Ap., 23

96. ——— *Criminal Procedure Code, 1872, s. 532.*—In order to found the jurisdiction of a Magistrate to take action under section 532 of the Criminal Procedure Code, it is necessary that a dispute exist between two persons concerning the right to the use of any land or water, or any right of way; the jurisdiction is intended for the purpose of preserving the public peace. ROSIK LAL NUNDI *v.* KAHLIK SHAUT . 22 W. R., Cr., 48

97. ——— **Procedure.**—*Dispute as to right of water.*—In deciding a dispute as to a right of water, the Magistrate must follow strictly the course pointed out by Chapter XXII of the Code of Criminal Procedure, 1861. QUEEN *v.* RAMNATH [7 W. R., Cr., 45

QUEEN *v.* MADHOO CHURN . 13 W. R., Cr., 51

98. ——— **Right of way, Dispute as to.**—*Criminal Procedure Code, 1861, s. 320—Obligation of Magistrate in case of right of way*—A Magistrate is bound under section 320 of the Code of Criminal Procedure to investigate a case in which the complainant alleged that his right of way had been interfered with, and ought not to refer the complainant to the Civil Court. IN THE MATTER OF THE PETITION OF BHOIRO MUNDUL [14 W. R., Cr., 28

POSSESSION, ORDER OF CRIMINAL COURT AS TO—*continued.*

8. DISPUTES AS TO RIGHT OF WAY, WATER, &c.—*continued.*

Right of way, Dispute as to—*continued.*

99. ——— *Obstructing a road.*—Where *A.* complained merely to the Magistrate that "a certain road had been obstructed by *B.* and others,"—*Held* that the Magistrate was not bound to inquire into the matter under section 320 of Act XXV of 1861. QUEEN *v.* RASSUL NUSHY [2 B. L. R., Ap., 9

S. C. IN RE RUSSOOL NUSHYO . 11 W. R., Cr., 3

100. ——— *Criminal Procedure Code, 1861, s. 320.*—In a case of dispute concerning a right of way, the Magistrate, instead of deciding against the complainant, on the ground that he has another way of approach to his house, ought to inquire whether or not the disputed road has been in the use and occupation of the complainant, and for how long; and if he holds him to be in possession, to retain him in it, leaving the owner of the land to determine the question of right to the easement in the Civil Court. Section 320 of the Code of Criminal Procedure does not require that there should be an apprehended breach of the peace before the authorities can interfere to decide a right of way. QUEEN *v.* TOYLUCKONATH SIRCAR . . 2 W. R., Cr., 64

101. ——— **Question of right of user.**—*Criminal Procedure Code, 1861, s. 320.*—The jurisdiction given by section 320 of the Code of Criminal Procedure to decide for a time the right to enjoyment of property should not be exercised except on clear and satisfactory proof. Where the only evidence is that of user, it should be such as to show satisfactorily acts of enjoyment exercised as a matter of right and permitted uninterruptedly for some considerable length of time. ANONYMOUS [4 Mad., Ap., 24

102. ——— **Dispute as to use of land.**—*Order to fill up ditch.—Criminal Procedure Code, 1861, s. 320.*—A Deputy Magistrate has no jurisdiction under section 320 of the Code of Criminal Procedure to order a ditch which was once a pathway, but afterwards filled up, to be opened out, and a wall to be pulled down, which had been built upon it before any complaint was made about filling up the ditch. Even if he had jurisdiction, no such order should be passed without legal proof that the ditch and pathway had been opened to the use of the public and of the prosecutor. SREEMUNTO DULOUI *v.* RAMCHAND ADUCK . . 5 W. R., Cr., 57

103. ——— **Dispute as to use of road.**—*Criminal Procedure Code, 1872, s. 532.—Declaratory order.*—Gates having been placed at one end of a private road by a person claiming to be its sole

POSSESSION, ORDER OF CRIMINAL COURT AS TO—*continued.*

8. DISPUTES AS TO RIGHT OF WAY, WATER, &c.—*continued.*

Dispute as to use of road—*continued.*

proprietor, with the intention of preventing the use of such private road by the public between the hours of sunset and sunrise, and the Deputy Commissioner of Darjeeling, acting for the public, having obtained from the Magistrate an order under section 532 of the Criminal Procedure Code "that possession of the private road be not taken by the person claiming to be proprietor to the exclusion of the public . . . until he shall have obtained the decision of a competent Civil Court adjudging him to be entitled to exclusive possession,"—*Held* that there being no evidence of any one having exercised or claimed to exercise the right of passing over the road between sunset and sunrise, there was no dispute under section 532 of the Criminal Procedure Code; and that the order of the Magistrate was made without authority, and must be set aside. Section 532 does not enable a Magistrate to make a purely declaratory order. It only enables him to prevent arbitrary interruptions by any person of rights actually enjoyed, which have been exercised by the public or a person or class of persons. IN THE MATTER OF THE MAHARAJA OF BURDWAN *v.* CHAIRMAN OF THE DARJEELING MUNICIPALITY

[I. L. R., 5 Calc., 194: 4 C. L. R., 324

104. ——— *Right of way, Obstruction to.—Criminal Procedure Code, 1872, s. 532.*—Where a complaint was made to a Magistrate that an obstruction had been raised and existed on land reserved by Government and dedicated as a public road,—*Held* that an *ex parte* order, purporting to be made under section 532 of the Code of Criminal Procedure, directing the party in possession not to retain possession of the land until he should obtain the decision of a competent Civil Court adjudging him to be entitled to exclusive possession, with a further direction to remove the obstruction, was bad in law. IN RE LINDSAY

[I. L. R., 4 Mad., 121

105. ——— *Criminal Procedure Code, 1872, s. 532.—Public street.—Funerals.*—A dispute having arisen between the Mahomedan and Hindu inhabitants of a town as to the right of the latter to carry corpses along a certain public street to the burning-ground, the Magistrate passed an order, purporting to be under section 532 of the Code of Criminal Procedure, 1872, directing that the Hindus should carry corpses by the nearest route to the burning-ground and not by the street, to the use of which for such purposes the Muhammadans objected,—*Held* that the order of the Magistrate was illegal. IN RE NARAYANA

[I. L. R., 7 Mad., 49

106. ——— Dispute as to right to use water.—*Criminal Procedure Code, 1872, s. 532.—Right to use of water.*—A Deputy Magistrate was held to have been authorised by Act X of 1872, section 532, in inquiring into the matter of a dispute between

POSSESSION, ORDER OF CRIMINAL COURT AS TO—*continued.*

8. DISPUTES AS TO RIGHT OF WAY, WATER, &c.—*continued.*

Dispute as to right to use water—*continued.*

two parties concerning the use of the water of a certain pyne, and, when he found that the water was open under certain restrictions to the use of one of the parties, he was justified in restraining the other from a course of action which had the effect of keeping that water exclusively in his own possession, provided the right of use had been exercised within three months if capable of being exercised throughout the year; or during the last season, if it existed at particular seasons CHOWDHREE ZUHOORUL HUQ *v.* KURUM CHAND SINGH . **24 W. R., Cr., 15**

107. ——— Right to restrain exercise of easement.—*Burden of proof.—Criminal Procedure Code, 1882, s. 147.*—The right to restrain another from exercising ordinary proprietary rights over his own land is of the nature of an easement different from the ordinary rights of owners of land; the burden of proof would, therefore, lie upon the party alleging such rights. HARI MOHUN THAKUR *v.* KISSEN SUNDARI . **I. L. R., 11 Calc., 52**

9. LOCAL INQUIRY.

108. ——— Nature and object of inquiry.—*Criminal Procedure Code, 1872, ss. 530, 553.*—In a proceeding under section 530 of the Code of Criminal Procedure, the Magistrate must decide the fact of possession on evidence taken by himself, and not according to the result of a local inquiry made under section 533, unless the parties have consented to be bound thereby. *Per* PRINSEP, *J.*—The local inquiry referred to in section 533 should be restricted solely to some question relating to the features of the property about which the dispute has arisen, and should not be directed to any matter which can be proved before the Magistrate by oral evidence. IN THE MATTER OF BAIKUNT KUMAR

[3 C. L. R., 134

109. ——— Person to make local inquiry.—*Criminal Procedure Code, 1872, s. 533.*—The duty of making an inquiry under section 533 of the Criminal Procedure Code should be deputed to a Magistrate, not a canungoe. IN THE MATTER OF UMA CHURN SANTRA *v.* BENI MADHUB ROY

[7 C. L. R., 352

110. ——— Effect of inquiry as evidence.—*Right to rebut evidence.—Criminal Procedure Code, 1872, s 533.*—When a local inquiry under section 533 of the Criminal Procedure Code is instituted, it becomes part of the proceedings in the case, and the party affected by it is entitled to be acquainted with the results of it, and to have an opportunity of rebutting the deputed Magistrate's report if he thinks necessary so to do. DHUNOO *v* BROWN

21 W. R., Cr., 25

111. ——— Discretion of Magistrate as to local inquiry.—*Criminal Procedure Code, 1872,*

POSSESSION, ORDER OF CRIMINAL COURT AS TO—*continued.*

9. LOCAL INQUIRY—*continued.*

Discretion of Magistrate as to local inquiry—*continued.*

s. 533.—Security to keep peace.—The holding of an inquiry, under Chapter XL of the Code of Criminal Procedure, is a matter entirely within the discretion of the Magistrate of the district or of a division of a district, and the High Court has no authority to require him to proceed under that chapter. The taking of security for keeping the peace is also a matter within the discretion of the Magistrate, provided that he has materials upon which to proceed. IN THE MATTER OF THE PETITION OF KALI PROSUNNO ROY [23 W. R., Cr., 58

10. DISPOSSESSION BY CRIMINAL FORCE.

112. ——— Order as to person dispossessed from immoveable property by criminal force.—*Criminal Procedure Code, 1872, s. 534.*—An order under section 534, Criminal Procedure Code, must be founded on a finding that the person in whose favour it was made was dispossessed of specific immoveable property by the use of criminal force, which formed a material ingredient in the matter of a criminal conviction, and it must in terms restore such person to the property from which he had been dispossessed. LUCHMI DASS *v.* PALLAT LALL [23 W. R., Cr., 54

POST-NUPTIAL CONTRACT.

See CONTRACT ACT, s 25. [15 B. L. R., Ap., 5

POST OFFICE ACT, 1854.

——— **s. 49.**—*Liability of Government for loss in conveyance.*—Under section 49 of the Post Office Act, 1854, the Indian Government, like the Post Master General, is not responsible for loss or damage occurring to anything entrusted to the Post Office for conveyance. WINTER *v.* WAY . 1 Mad., 200

——— **s. 50.**

See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—POST OFFICE ACT. [3 Bom., Cr., 8

——— *Conviction for fraudulently secreting letter.—Subsequent charge of fraudulently making away with letter.*—Where a prisoner was convicted and sentenced, under section 50 of Act XVII of 1854, upon the charge of fraudulently secreting a post letter, and on appeal such conviction and sentence were confirmed,—*Held* that he could not subsequently be convicted under the same section of having fraudulently made away with the same letter upon the same occasion, both acts being connected and substantially a part of one criminal transaction. QUEEN *v.* DALAPATI RAU . . . . . 1 Mad., 83

POST OFFICE ACT, XIV OF 1866.

See ABETMENT . 7 W. R., Cr., 54
See CARRIERS . . 3 N. W., 195

POST OFFICE ACT, XIV OF 1866, ss. 47, 48.

See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—POST OFFICE ACT [3 Bom., Cr., 8
5 Bom., Cr., 36

——— *Opening newspaper and replacing it in envelope—Offence.*—Per KEMP, *J.* (GLOVER, *J.*, doubting) that the opening of a newspaper by a person employed in the Post Office, and replacing it in its envelope does not constitute an offence under section 48, Act XIV of 1866, as it could not be said that the accused stole, fraudulently appropriated, wilfully secreted, destroyed or threw away any letter or other article sent by post. Per KEMP and GLOVER, *J.J.*—There must be a fraudulent intention in the act of the accused before he can be convicted under section 48. QUEEN *v.* PANNA LALL MOOKERJEE [19 W. R., Cr., 4

POSTPONE PETITION.

See CIVIL PROCEDURE CODE, 1882, ss. 257, 258 (1859, s. 206). [I. L. R., 1 Mad., 387

POTTA, CONSTRUCTION OF—

See CASES UNDER LEASE—CONSTRUCTION.

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[I. L. R., 3 Mad., 127

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See SHERIFF . 4 Bom., O. C., 139
[6 Bom., O. C., 22
I. L. R., 2 Calc., 385

POWER OF APPOINTMENT.

See WILL—CONSTRUCTION. [I. L. R., 4 Calc., 514

POWER OF ATTORNEY.

See STAMP ACT, 1879, SCH. I, ART. 50. [I. L. R., 9 Mad., 358

1. ——— **Construction of power.**—*Power to sell or mortgage ship.*—In construing powers of attorney, the special purpose for which the power is given is first to be regarded, and the most general words following the declaration of that special purpose will be construed to be merely all such

POWER OF ATTORNEY.—Construction of power—*continued.*

powers as are needed for its effectuation. Where the owner of a ship by power of attorney constituted the master his agent, and authorised him to raise or borrow upon the ship's papers such sums of money as he should deem necessary for the repair of the ship, "and to act in the premises as fully and effectually to all intents and purposes as I might or could do if personally present." In a suit for the amount of a mortgage-bond upon the ship executed by the master,—*Held* that the master had no authority to sell or mortgage the ship. JUDAH *v.* ADDI RAJA QUEEN BIBI . . . . . **2 Mad., 177**

2. ——————— *Power to refer to arbitration.*—*T.* having frequent occasion to prosecute and defend suits in different Courts, and being unable to give his personal attention to them, executed a power of attorney in *S.'s* favour, whereby he authorised *S.* to watch the cases on his behalf, to appoint any pleader or mooktear, to receive, after giving a receipt for the same, any money deposited for, and due to, him from the Courts, to act on his behalf in cases of dakhil-khariij, and obtain the entry of his name after getting the names of other persons expunged, to purchase villages with the money due under decrees, to file on his behalf receipts, acquittances, razi-namahs, and other documents, and to get back deeds and decrees and give receipts and acquittances. *Held* that the terms of the power of attorney did not authorise *S.* to refer questions to arbitration. THAKOOR PERSHAD *v.* KALKA PERSHAD . . . . . **6 N. W., 210**

3. ——————— *Power to sue given to an agent, Extent of.—Vakil, Reasonable remuneration to, under such power.*—A mere power to sue does not authorise an agent to do more than employ a vakil on the terms of paying him a reasonable remuneration. KESHAV BAPUJI *v* NARAYAN SHAMRAV **[I. L. R., 10 Bom., 18**

4. ——————— *Authority to enter into special agreement with vakil.—Agreement to remunerate according to proportion recovered.*—The defendant, on behalf of her minor son, gave to *S. M.* a power of attorney by which she authorised *S. M.*, "for her and in her name and on her behalf to appear in or sue or defend . . . any suit, appeal, or special appeal, . . . and to act in all such proceedings in any way in which she might, if present, be permitted or called on to act." *Held* that the above power did not authorise *S M.* to enter into a special agreement with a vakil, under which the vakil (in an appeal which he was employed to conduct for the defendant on behalf of her minor son) was to receive for his services a minimum reward of R4,000, and, in cases of success, a reward proportional to the amount awarded by the Appellate Court. RAV SAHEB V. N. MANDLIK *v.* KAMALJABAI SAHEB NIMBALKAR . . . . **10 Bom., 26**

5. ——————— *Power to execute bond.*—Under a power of attorney executed by twenty proprietors of a joint estate, empowering their general manager to raise loans for the purposes of the estate upon bonds, and to sign their names or his name on their behalf, and to pledge the whole or any part of the estate by such bonds, the attorney executed a bond on behalf of three of the proprietors. *Held* that under the power of attorney the manager was not authorised to execute a bond on behalf of any one or more of the proprietors making him or them responsible for the whole money borrowed to the exclusion of the rest. *Held*, further, that in a suit upon a bond so executed, the plaintiffs were not entitled to rely upon the general power which the manager might have, as the manager's authority must be considered as strictly confined to the terms of the power of attorney. BUDH SINGH DUDHURIA *v.* DENENDRA NATH SANCUL . . . . **11 C. L. R., 323**

6. ——————— *Mooktearnamah.—Execution of bond to secure barred debt.—Contract Act, s. 25.*—A mooktearnamah empowering the mooktear to execute bonds in lieu of former debts does not authorise the mooktear to execute a bond to secure a debt already barred by limitation. Where, however, a suit is brought upon a bond executed to secure a former debt, it must be shown by the person alleging it that such debt was barred. HUBLAL SUKUL *v.* RAM GOTI DEY ROY . . **11 C. L. R., 581**

7. ——————— *Mooktearnamah — Authority of agent.—Power to make gift.*—A mooktearnamah merely gave the mooktear power to grant ticca ijara leases and, when advisable, to sell, mortgage, and make gift of the whole or portion of the property of the principal. *Held* that the mooktear had no power to create a permanent tenure. The power of making a gift given by the mooktearnamah authorised the mooktear formally to execute a deed of gift only when the disposing power had been exercised by the principal. TYEBUNNESSA *v.* KANIZ FATIMA . . . . . **13 C. L. R., 247**

8. ——————— *Power to "sell, endorse, and assign" negotiable securities.*—The payee of promissory notes of the East India Company, by a power-of-attorney, authorised his agents at Calcutta to "sell, endorse, and assign" the notes. These notes were transferable by endorsement payable to bearer. The agents, in their character of private bankers, borrowed money of the Bank of Bengal, offering, as security, these promissory notes. The Bank made the advance, and the agents endorsed the notes, such endorsement purporting to be as attorney for their principal, and deposited them with the Bank, by way of collateral security for their personal liability, at the same time authorising the Bank, in default of payment, to sell the notes in reimbursement of the advances. The agents afterwards became insolvent, and default having been made in payment, the Bank sold the notes and realised the amount of their loan. *Held* that the endorsement of the notes by the agents of the payee to the Bank was within the scope of the authority given to them by the power of attorney, and that the payee could not recover in detinue against the Bank. The rule laid down in the case of *Gill* v *Cubitt*, 3 *B. & C.*, 466; and *Down* v. *Halling*, 4 *B. & C.*, 330,

POWER OF ATTORNEY.—Construction of power—*continued.*

that the negligence of a party taking a negotiable instrument fixes him with the defective title of the party passing it, observed upon, and those cases declared to be no longer law. BANK OF BENGAL *v.* MACLEOD . . . . **5 Moore's I. A., 1**

BANK OF BENGAL *v.* FAGAN . **5 Moore's I. A., 27**

9. ——————————— *Power to sell or mortgage.*—Under a power-of-attorney containing a clause empowering *A.* to sell or mortgage the donor's property for the payment of his debts, *A.* executed a simple money-bond to one of the donor's creditors, for payment of the sum due and interest. *Held* that the act was *extra vires*, and did not bind the donor. POORNA CHUNDER SEN *v.* PROSUNNO COOMAR DASS

[I. L. R., 7 Calc., 253: 8 C. L. R., 443

10. ——————————— *Principal and agent.*—"*Purchase, sell, endorse, and transfer.*"—*Meaning of "Power to sell."*—*N. & Co.* having a joint and several power-of-attorney from the plaintiff, authorising them "to purchase, sell, endorse, and transfer for the plaintiff, and in the plaintiff's name and on the plaintiff's behalf," all shares standing in his name in the books of any public company or society, entered into a contract embodied in bought and sold notes, agreeing to sell by order and on account of *N. & Co.*, to the defendant, twenty-five Muir Mill Cotton shares, and agreeing to buy, by order and for account of *N. & Co.*, from the defendant, twenty-five Muir Mill Cotton shares in three months' time at an advanced rate; the bought and sold notes bearing the same date and being one transaction. The transfer deeds were signed by a partner in the firm of *N. & Co.* as attorney for the plaintiff, and *N. & Co.* received the purchase-money of the shares. Previous to the time fixed for the sale of twenty-five Muir Mill Cotton shares by the defendant to *N. & Co.*, the latter became insolvent. The plaintiff then brought a suit to recover the shares from the defendant. *Held* by GARTH, *C. J.*, that the transaction between *N. & Co.* and the defendant was not justified by the power-of-attorney, the contract not having been entered into "for and on behalf and in the name of the plaintiff" within the meaning of the power; and that the transaction was either an actual loan, or a transaction in the nature of a loan, for the purpose of raising money. *Per* WILSON, *J.*, that the defendant took no title to the shares for two reasons, *viz.*: (i) because a power to sell is only a power to sell in the ordinary course of business,—*i.e.*, for a money price; (ii) because it was the duty of the defendant, seeing that the shares were sold to him under a power, to see that he paid the price to the plaintiff or his attorney. JUMNA DOSS *v.* ECKFORD . . . **I. L. R., 9 Calc., 1**

11. ——————————— *Meaning of the word "negotiate" with reference to Government securities.*—*W.* gave to *A.* and *B.* a power-of-attorney authorising them jointly and severally to "negotiate, make sale, dispose of, assign and transfer," amongst other things, certain Government securities standing

POWER OF ATTORNEY.—Construction of power—*continued.*

in his name. *B.* pledged the securities for an advance of R19,000, and at the same time executed a promissory note for the amount of the loan, the promissory note being signed "*B.*, as attorney for *W.*" In a suit by *W.* to recover the Government securities,—*Held*, in the Court below, that the power-of-attorney was sufficiently wide to cover the transaction; that the transaction was a fraud on the part of *B.*, but that the transferee (the defendant) had no notice of the fraud, and therefore the plaintiff was not entitled to succeed. *Held*, on appeal, *per* WHITE, *J.*—(i) That the words of the power were to be read disjunctively, and the powers conveyed by the words were to be treated as joint and several; (ii) that even supposing the word "negotiate" to be applicable to transactions with Government securities (which was doubtful), and that such Government securities stood in the same position as ordinary commercial notes, the word "negotiate" did not authorise *B.* to do more than put the Government securities in the market, or to put them in circulation in the ordinary way in which such a transaction takes place in the market, and if necessary to endorse them in the name of *W.*; (iii) that the loan, which was the principal transaction, being irrecoverable from *W.*, because unathorised, the defendant could not retain the Government securities, which were deposited as security for the loan, he not having taken the precaution to ascertain whether *B.* had authority to enter into the transaction. *Per* GARTH, *C. J.*—That although, on the authority of *The Bank of Bengal* v. *Fagan, 5 Moore's I. A., 27*, a power to negotiate Government securities would authorise the negotiation of Government securities by way of pledge, yet *W.* was entitled to a decree, on the ground that *A.* and *B.* had no power, under the power-of-attorney, to borrow money in the name of *W.*; and that, therefore, the defendant was not entitled to retain the security given for the advance (*viz.*, the Government promissory note). WATSON *v.* JONMENJOY COONDOO . **I. L. R., 8 Calc., 934**

On appeal to the Privy Council,—*Held* that, with regard to the general objects of the power, *B.* had under it no authority to pledge, and that the lender of the money acquired no title to the note as against *W.* The power-of-attorney was not in the same form as that in the *Bank of Bengal* v. *Macleod, 5 Moore's I. A., 1*, and *Bank of Bengal* v. *Fagan, 5 Moore's I. A., 27*, not containing, in express words, power to indorse. Had it done so, the question would have been whether there was anything to prevent it from being a power, in the discretion of the donee of it, to indorse the note, and convert it into one payable to bearer, whenever he thought fit to do so, for any purpose. It was not laid down in the judgment in those cases that the words used in a power-of-attorney, to express its objects, are always to be construed disjunctively, though they may be so construed; and there is no reason why a rule of construction, intended to aid in arriving at the meaning of the parties, should not be applied in construing a power-of-attorney as much as any other document. JONMENJOY COONDOO *v.* WATSON

[I. L. R., 10 Calc., 901

POWER OF ATTORNEY.—Construction of power—*continued.*

12. ——————— *Principal and agent.—Bank manager acting as private agent.—Transaction for benefit of bank.—A.* being in uncontrolled management of the National Bank in Calcutta and purporting to act under a power-of-attorney intended to be given to him in his private capacity but addressed to him as "acting manager of the National Bank" by *B.*, a constituent of the Bank, without drawing any cheque on *B.'s* account and simply by means of transferring in the books of the Bank R15,000 from *B.'s* deposit account with the Bank to the account of one *C.* who was indebted to the National Bank, purported to make an advance of R15,000 from *B.* to *C.*, whereas, in fact, the real transaction amounted only to transferring the liability of *C.* to that extent from the Bank to *B.* *Held* that, so far as this transaction was concerned, *A.* could not divest himself of his character of Bank manager, and that acting as the agent of both parties he acted to the prejudice of *B.* and to the advantage of the Bank, and that there was in fact a breach of his duty to *B.* to which the Bank was a party. *Held*, also, that *A.* was not able under the power-of-attorney to bind *B.* by consenting to any dealings by the Bank or *C.* with goods in the Bank's godowns which would prejudice *B.* BEER *v.* NATIONAL BANK OF INDIA [19 W. R., 67

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See RIGHT TO BEGIN . 9 B. L. R., 417
[13 B. L R., 142
1 Ind. Jur., N. S., 383

See SERVICE OF SUMMONS.
[I. L. R., 2 Bom., 449

See SMALL CAUSE COURT, PRESIDENCY TOWNS—RECOVERY OF IMMOVEABLE PROPERTY . I. L. R., 2 Bom., 91

See SUCCESSION ACT, S. 258.
[I. L. R., 1 Calc., 149

See CROSSSUDER SUMMONS.

See TAXATION OF BILL OF COSTS.
[7 B. L. R. Ap., 50

See TRANSFER OF CIVIL CASE—GROUND FOR TRANSFER . I. L. R., 9 Calc., 980

See WRITTEN STATEMENT . Cor., 8, 39
[1 Ind. Jur., N. S., 39, 40
3 B. L. R., Ap., 11
2 Hyde, 89

——— **in criminal cases.**

See JOINDER OF CHARGES.
[I. L. R., 3 Calc., 540

1. CIVIL CASES.

1. ——— **Adjournment.**—*Failure to procure sufficient evidence.—Costs.*—A plaintiff failed in an *ex parte* suit to bring forward sufficient evidence to entitle him to a decree, and asked for an adjournment in order to obtain further evidence; the Court granted an adjournment on the terms that the plaintiff should bear the whole costs of the hearing. SHANKS *v.* SAVAGE . I. L. R., 7 Calc., 177

2. ——— **Affidavits.**—*Entitling affidavits.*—In showing cause against a *rule nisi* for a *mandamus* in proceedings under the Calcutta Municipal Act to obtain compensation from the Justices, the affi-

PRACTICE—*continued.*

1. CIVIL CASES—*continued.*

Affidavits—*continued.*

davits should be simply entitled "In the High Court." The affidavits, though wrongly entitled, were admitted. JUSTICES OF THE PEACE FOR CALCUTTA *v.* ORIENTAL GAS COMPANY
[8 B. L. R., 438 : 17 W. R., 364

3. ——— *Affidavit on application to take documents out of Court.*—An affidavit in support of an application for taking documents out of the custody of the Court for the purposes of another suit should state in what way they are material to that suit. MOLLWO, MARCH, & Co., *v* PERTAB CHUNDER SINGH
[1 Ind. Jur., N. S., 283

3. ——— *Affidavit on showing cause against motion or petition.*—An affidavit intended to be used to oppose or show cause against a motion or petition, is filed in time, if filed, on or before the sitting of the Court, on the day that cause is in fact shown, although not filed before the sitting of the Court on the day for which notice was given. IN RE HURRUCK CHUND GOLICHA
[I. L. R., 5 Calc., 605 : 6 C. L. R., 382

5. ——— *Affidavits on motion.—Affidavits filed after adjournment for convenience of counsel.*—The Court refused, without the consent of the other side, to allow an affidavit in support of a motion to be read, which had been filed after an adjournment granted for convenience of counsel. COURJON *v.* COURJON
[9 B. L. R., Ap., 10

NEERUNJUN MOOKERJEE *v.* OOPENDRO NARAIN DEB . . . . 10 B. L. R., 57

6. ——— *Act XVIII of 1863.—Verification of affidavit.*—When an individual, who is unable to read and write, presents himself to affirm solemnly or make oath to the truth of an affidavit, it will be sufficient, in order to meet the requirements of section 9, Act XVIII of 1863, in obtaining his verification, to allow him to affix his "mark" in lieu of his "signature," and, in affirming or swearing him, to vary the usual words by saying "mark instead of signature," in lieu of "signature." ANONYMOUS . 9 W. R., 357

7. ——— *Use of affidavits in motions.—Rule to show cause.*—The practice is in motions to stay execution, and others, to put in a verified petition or affidavit, the cost of which is allowed in taxation; but where a rule to show cause had been obtained on the facts set out in the plaint, WHITE, *J.*, declined to refuse the hearing of the rule simply because no verified petition or affidavit had been filed. KRISTO MOHINEY DOSSEE *v.* KALLY PROSONNO GHOSE
[I. L. R., 6 Calc., 485 : 8 C. L. R., 43

8. ——— *Non-production of affidavit.—Withdrawal of suit.*—The plaintiff's attorney being under the misapprehension that one of the plaintiffs, who was a material witness, was in

PRACTICE—*continued.*

1. CIVIL CASES—*continued.*

Affidavits—*continued.*

Bombay, when in fact he was in England, and an application to consent to a commission had been made to the defendant's attorney, and refused on the eve of the hearing, an application was made to the Judge in Chambers on the morning of the day fixed for the hearing, and supported by an affidavit, for the issuing of a commission and for an adjournment of the suit; and the Judge declining to make an order in Chambers, the application was renewed in Court, when the Judge refused to take notice of what occurred before himself in Chambers, and made note that the application for a Commission was made upon no affidavit; and as the affidavit (presented in Chambers) having been sent to the office of the plaintiff's attorneys for a copy to be made and served upon the defendant, was not then in Court, the application for a Commission and to adjourn the hearing was refused, and plaintiff's counsel not being instructed to proceed with the hearing, and leave to withdraw the suit having been also refused, the suit was dismissed. *Held* that the Judge was wrong in refusing to postpone the case for the production of the affidavit in Court, and that there was no legal ground whatever for the refusal to withdraw the suit, which was accordingly restored to its place in the list, and remanded in order to be tried. DADABHAI NAOROJI & Co. *v* SORABJI COWASJI . . **3 Bom., O. C., 55**

9. ——————— *Application for decree on terms of agreement to compromise suit.—Civil Procedure Code, 1882, s. 375.*—After the hearing of the suit had begun, the plaintiffs and defendants came to an agreement by which they settled all the matters in dispute between them in the suit. The agreement was in writing, and dealt in one clause with the dispute, the subject-matter of the suit, and in a second clause, with another dispute of long standing between the parties, with which the suit had nothing to do. The plaintiffs subsequently objecting to consent to a decree being taken in terms of the first clause of the agreement, the defendants took out a *rule nisi*, calling on the plaintiffs to show cause why the agreement should not be recorded in Court, and why the Court should not pass a decree in accordance therewith, under the provisions of section 375 of the Civil Procedure Code (Act XIV of 1882). The rule was argued on affidavits on either side, the plaintiffs objecting that, in any case, the matter could not be decided on affidavits, but evidence must be gone into. *Held* that in the circumstances of the case, no definite procedure having been enjoined by the Code, the matter might properly be decided on affidavits. RUTTONSEY LALJI *v.* POORIBAI . . . **I. L. R., 7 Bom., 304**

10. ——— **Appeal.**—*Appeal against a co-plaintiff.—Consent of parties.*—By consent of parties the High Court allowed an appeal by one plaintiff against another plaintiff, and adjudicated upon their rights. BHAGIRTHIBAI *v.* BAYA **[I. L. R., 5 Bom., 264**

11. ——————— *Respondent not appearing in lower Court.—Right of appeal.*—An appellant who was respondent in a lower Court of Appeal is not precluded, by reason of his non-appearance in such Court, from preferring an appeal to the High Court. KALIKISHORE ROY *v.* DHUNUNJOY ROY . . . . **I. L. R., 3 Calc., 228**

12. ——————— *Right of respondent, who has filed cross-objections, to appeal, where appellant withdraws his appeal.*—No leave to appeal should be granted to a respondent who has filed cross-objections, unless the Court is thoroughly satisfied upon affidavit that he was ready to appeal, and would have appealed within the proper time if the other side had not done so. GOUR HARI SANYAL *v.* PREM NATH SANYAL **[I. L. R., 9 Calc., 738 : 12 C. L. R., 395**

13. ——————— *Decision showing grounds of judgment appealed from.*—The copy of a decision to which reference is made by the lower Appellate Court for the grounds on which an appeal is disposed of is not necessary at the time of filing a special appeal. ANONYMOUS **[1 Ind. Jur., O. S., 50**

14. ——————— *Pleaders.—Certifying grounds of appeal.*—Pleaders should see that the grounds of appeal they certify to are full and need no addition. RAM KRISTO DEB *v.* RAJ CHUNDER SURMAH . . . **11 W. R., 246**

15. ——————— *Certificate of grounds of appeal—Vakil a party to suit.*—Where a party appealing to the High Court is himself a vakil of the Court, he is not at liberty to certify his own grounds of appeal. THAKOOR DOSS MOOKERJEE *v.* AMEER MUNDUL . . . **14 W. R., 168**

16. ——————— *Certifying that ground of appeal taken was omitted from his notice by Judge.—Affidavit.*—In order to satisfy the High Court that a point which the Judge omitted to notice was actually taken in the oral pleadings, a party may put in either an affidavit of some person who heard the point raised, or a copy of the petition to the Judge drawing attention to the omission, with his order thereon. YUSOOF ALI CHOWDRY *v* FYZOONISSA KHATOON CHOWDRY . . **15 W. R., 296**

17. ——————— *Grounds of appeal argued not in memorandum of appeal.*—Although, as a rule, the Court will not permit grounds of appeal to be taken in argument which have not been taken in the memorandum of appeal, yet where a decree comes before it, which is upon its very face illegal, the Court is bound to take up the point itself and rectify the mistake. POHAN SOOKH CHUNDER *v.* PARBUTTY DOSSEE **[I. L. R., 3 Calc., 612 : 1 C. L. R., 404**

18. ——— **Application after refusal.**—*Making application to another Judge, after refusal by one Judge to make it.*—It is irregular, when an application has been made to one Judge of the High

PRACTICE—*continued.*

1. CIVIL CASES—*continued.*

Application after refusal—*continued.*

Court and refused, that the same application should be made to another Judge without stating the facts of the former refusal. VYTHELINGA MUDELLY *v.* CUNDASAWMY MUDELLY . . **8 Mad., 21**

19. ——— Cause list.—*Transfer of case from undefended to defended board.—Costs.*—A case entered on the undefended board can only be transferred to the defended board on payment of the costs of the adjournment, if any, thereby occasioned. BINDOOMADHUB MITTER *v.* WOOMES CHUNDER PAUL . . . . . **2 Hyde, 86**

BHOYRUB CHUNDER DOSS *v.* CHUNDI CHURN MITTER . . . **Bourke, O. C., 238**

20. ——— ——— *Setting down case in general cause list.—Entering appearance.*—The Court has power to order a case to be set down at once in the general cause list, if the defendant enters appearance by his attorney before the time for appearance fixed in the summons has expired. When a defendant so appears the Registrar ought so to set down the case as a matter of course, or at least ask the Judge in Chambers whether he should do so or not. CUMMING *v.* GREEN . **4 B. L. R., Ap., 75**

21. ——— Certificate of sale.—*Unregistered certificate of sale.—Fresh certificate of sale.*—On 10th July 1883 the applicant bought at a Court-sale a portion of a house for R385, and on confirmation of the sale on the 10th October 1883 obtained the sale certificate, which, however, he did not register. On attempting to obtain possession, the applicant was obstructed. He applied for removal of the obstruction to the Subordinate Judge, and submitted with his application the unregistered certificate. The Subordinate Judge rejected the application, on the ground that the certificate was not registered. The applicant then applied for a fresh certificate, which was refused. On application to the High Court,—*Held* that a fresh certificate dated the day on which it might be granted, reciting the fact of the sale and the date thereof, should be given to the applicant, the original certificate being returned. IN THE MATTER OF THE APPLICATION OF LAKSHMAN . . . **I. L. R., 9 Bom., 472**

22. ——— ——— *Grant of fresh certificate of sale to auction-purchaser while one already granted is in existence.—Insufficient stamp.*—A Court having once granted a certificate of sale to an auction-purchaser is under no obligation to give him another, in order that he may escape the penalty which he has incurred by reason of the certificate being insufficiently stamped. NANDRAM MOTIRAM *v.* KACHA BHAU. . . **I. L. R., 9 Bom., 526**

23. ——— Commissioner for taking accounts.—*Certificate of, Power to grant.—Mode of taking accounts.*—The general nature of a certificate or report—whether general or separate—by the Commissioner for taking accounts, is that it should, in the case of a general certificate, comprise the result of all the proceedings under the decree or order of reference, or, in the case of a separate certificate or report, that it should comprise the result of some or one of such proceedings, and the Court is not bound to consider a certificate granted by the Commissioner unless he has certified what may be regarded as the *result* either of the whole enquiry referred to him or of some branch or part of it. The power of the Commissioner to grant certificates, and of the Court to deal with motions made with reference thereto, considered. *Quære,*—Whether, where a suit has been referred to the Commissioner for the purpose of having accounts taken, such accounts in the absence of any direction in the decree or order of reference that stated or settled accounts are not to be disturbed, should not be taken without regard to any previous accounts stated or settled between the parties. RUSTOMJI BURJORJI *v.* KESSOWJI NAIK **[I. L. R., 3 Bom., 161**

24. ——— ——— *Report of Commissioner.—Motion to discharge or vary.—Affidavits, Filing of.—Memorandum of objections.*—In moving to discharge or vary the report of the Commissioner for taking accounts, the right practice is to move on a memorandum of objections filed in the Prothonotary's office, and upon the evidence taken by, and the proceedings before, the Commissioner, and not on affidavits made for the purpose of the motion. In such a motion affidavits should only be filed (*a*) when ordered by the Court, if it desire fresh evidence; or (*b*) by special leave of the Court for the purpose of advancing a fact which does not appear on the face of the proceedings before the Commissioner. SUMAR AHMED *v.* ISMAIL HAJI HABIB **[I. L. R., 1 Bom., 158**

25. ——— ——— *Notice to vary final report.—Limitation.—Rule of Court, ch. 6, cl. 6 (ed. 1867).—Held* that, under the rule, which requires that a notice to vary the report of the Commissioner for taking accounts (Rule of Court, Chapter 6, rule 6 (ed. 1867) is to be made within twenty days after the filing of the report, the Court has a discretion to extend the time for making such motion. HORMASJI CURSETJI ASHBURNER *v.* BOMANJI CURSETJI ASHBURNER . **I. L. R., 9 Bom., 250**

26. ——— ——— *Disobedience of order made by Commissioner for taking accounts.—Attachment, Issue of.*—An attachment will issue to compel a party to a suit to obey an order made by the Commissioner for taking accounts upon the certificate of the Commissioner that such order has been made and disobeyed, without, in the first instance, making such order a rule of Court. DHURANDHARDAS SAKHARAM *v.* BHAU GOVIND . **10 Bom., 4**

27. ——— Consent decree.—*Civil Procedure Code, 1877, s. 375.*—According to the practice of the High Court, a consent decree upon a compro-

PRACTICE—*continued.*

1. CIVIL CASES—*continued.*

Consent decree—*continued.*

mise will not be granted, unless the suit be entered in the cause list of the Court. PELL *v.* VALETTA [5 C. L. R., 464

28. ——— *Mode of consent*—The practice of the High Court at Calcutta on its original side in the case of decrees by consent. is to require the defendant in person, or some one instructed by him, to appear in Court to consent. SAUNDERS *v.* ROMANATH PAUL [1 Ind. Jur., N. S., 395

29. ——— **Counsel's fees.**—*Costs.—Attorney and client —Taxation —Refreshers to counsel.—Rules of Court, 707, 708.*—Refreshers are not, as a general rule, to be allowed on motion heard by affidavit; but the Court hearing the motion can, in its discretion, and if applied to for the purpose, give special directions allowing costs as on the hearing of a case. In the absence of such special directions, refreshers should not be allowed. GARDEN REACH SPINNING AND MANUFACTURING COMPANY *v.* EMPRESS OF INDIA COTTON MILLS COMPANY [I. L. R., 12 Calc., 551

30. ——— **Courts of Justice.**—*Object of Courts of Justice.—Shortening litigation.*—The object of Courts of Justice, under the Code of Civil Procedure, is, if possible, to decide at one and the same time all questions which can justly be so decided and not to assist in unnecessarily prolonging litigation. FIDAYE SHIKDAR *v.* OZEEOODDEEN . 7 W. R., 87

31. ——— **Damages, Assessment of.**—*High Court, Original Side.*—Practice of Original Side as to assessing the amount of damages discussed. MANIRAM *v.* BIBI MASHIHAN [4 B. L. R., Ap., 66

32. ——— **Execution of decree, Application for.**—*Civil Procedure Code, 1859, s. 212.*—An application for execution of a decree need not be accompanied with either the original decree or a copy. GUNGA GOBIND GOOPTOO *v.* MAKHUN LALL HATTER [9 W. R., 362

KHETTUR MOHUN CHUTTOPADHYA *v.* ISHUR CHUNDER SURMA . . 11 W. R., 271

MODHOO DOSSIA *v.* NOBIN CHUNDER ROY [16 W. R., 25

33. ——— *Copy of judgment.*—A Court in executing a decree in a case which has been appealed to the Privy Council, should not receive a mere copy of the printed judgment of the Privy Council as if it were a decree. JOY NARAIN GIREE *v.* GOLUCK CHUNDER MYTEE [20 W. R., 444

34. ——— **Execution of deed.**—*Motion to compel execution by infant of conveyance of land.*—Motion to compel the execution, by an infant, of a conveyance of land, refused on the ground that such an order on such motion was virtually a decree for specific performance. MONOMATHONAUTH DAY *v.* AUSHOOTOSH DAY . . . . Cor., 8

PRACTICE—*continued.*

1. CIVIL CASES—*continued.*

Execution of deed—*continued.*

35. ——— **Extraordinary Jurisdiction of High Court, Application in.**—*Copies of orders of lower courts.*—All applications to the High Court, in the exercise of its extraordinary civil jurisdiction, should be accompanied by a copy of the orders of the lower Courts made in respect of the matter of such application, and should be presented within the time allowed for the presentation of special appeals. IN THE MATTER OF THE PETITION OF NAGAPPA BIN HULGAPPA . 5 Bom., A. C., 215

36. ——— **Inspection and production of documents.**—*Civil Procedure Code (Act XIV of 1882), s. 136.—Non-compliance with order for production of documents.—Defence struck out.*—Where a defendant neglects to comply with an order for production and inspection, the Court will, although in the last resort, order his defence to be struck out. ASSENOOLLA JOO *v.* ABDOOL AZIZ [I. L. R., 9 Calc., 923

37. ——— *Failure to answer within the time limited.—Dismissal of suit.—Civil Procedure Code, Act XIV of 1882, Ch. X, ss. 121, 126, and 136.*—The question as to whether the Courts below have exercised a proper discretion in dismissing a suit under section 136 of the Civil Procedure Code is one into which the High Court will not enter on special appeal. When interrogatories are delivered with the leave of the Court under section 121 of the Civil Procedure Code, and the Court orders such interrogatories to be answered within ten days under section 126, there is virtually an order passed under the provision of Chapter X of the Code; and consequently upon the party interrogated failing to comply with such order the Court has the power to pass an order under section 136. LALLA DABEE PERSHAD *v.* SANTO PERSHAD . . I. L. R., 10 Calc., 505

38. ——— *Filing list of documents.—Suit for land.—Title-deeds.—Affidavit.*—In a suit for possession of land, the order that the party in possession do set forth a list of documents, is to be confined to documents other than title-deeds. Where the title-deeds are required by the plaintiff on special grounds, as, for instance, where it is alleged that the defendant is a trustee for the plaintiff, those special grounds on which they are required should be set forth by affidavit. HEERALOLL SAHA *v.* JADUB CHUNDER CHENCHKEY . . . . Cor., 66

39. ——— **Interrogatories.**—*Civil Procedure Code, 1877, s. 121.—Ex parte order for interrogatories.*—Section 121 of the Code of Civil Procedure contemplates (1) leave to interrogate and (2) the service of the interrogatories through the Court. It is the duty of the Court under that section to determine whether the applicant should be allowed to interrogate the other side, but not to determine at that stage what questions the party interrogated

PRACTICE—*continued.*

1. CIVIL CASES—*continued.*

Interrogatories—*continued.*

should be compelled to answer. Where an *ex parte* order is made in chambers giving leave to interrogate, the party ordered to answer has a right to come into Court to have the order set aside if the case is one in which interrogatories should not have been allowed. When an order for the administration of interrogatories is properly made, a party objecting to the interrogatories administered may, at his peril, omit to answer the interrogatories to which he objects; but the more prudent course is to file his affidavit in answer, stating in it his objections to answer such questions as he objects to. Where interrogatories are scandalous, or in any way an abuse of the process of the Court, the Court may interfere at any stage. The powers given to the Court by section 136 should not be exercised except in extreme cases. SHAM KISHORE MUNDLE *v.* SHOSHIBHOOSUN BISWAS

[I. L. R., 5 Calc., 707 : 5 C. L. R., 509

40. ——————— *Discovery.—Guardian ad litem.—Party for purposes of discovery.*—Where a guardian *ad litem* of a lunatic defendant was made a party defendant for purposes of discovery,—*Held*, that the discovery was not intended to include the right to administer interrogatories to him. WAGHJI THACKERSEY *v.* KHATAO ROWJI

[I. L. R., 10 Bom., 167

41. ——————— *Cross-interrogatories.*—Where interrogatories have been administered for the examination of a witness by one party, and the other party delivers cross-interrogatories, the latter must, if he objects to any of the other party's questions, make his objections on the face of his cross-interrogatories, and such objections shall be argued at the hearing. GOBIND CHUNDER ROY *v.* SIR NATH SHAW . . . 5 C. L. R., 171

42. ——————— *Evidence.*—A party at whose instance interrogatories have been administered must put in the answers as part of his evidence if he wishes to use them at the hearing. GOSTO BEHARY PAL *v.* JOHUR LALL PAL

[I. L. R., 4 Calc., 836 : 4 C. L. R., 164

43. ——— **Leave to sue or defend.**—*Leave to sue.—Civil Procedure Code, 1877, s. 19.—Immoveable property situate in different districts.—Letters Patent, cl. 12.—Plaint, Admission of.*—Under section 19 of the Civil Procedure Code, it is not necessary to obtain the leave of the Court to sue in respect of immoveable property situate partly within and partly without the ordinary original civil jurisdiction of the High Court. NARAIN SINGH *v.* RAM LALL MOOKERJEE . . . I. L. R., 3 Calc., 370

44. ——————— *Leave to sue.—Civil Procedure Code, 1877, s. 30.—Suit by one creditor on behalf of others.*—A suit by one or more creditors on behalf of other creditors cannot be entertained without the leave of the Court being obtained for its institution. Such leave cannot be granted at

PRACTICE—*continued*

1. CIVIL CASES—*continued.*

Leave to sue or defend—*continued.*

the hearing ORIENTAL BANK CORPORATION *v.* GOBIND LALL SEAL

[I. L. R., 9 Calc., 604 : 13 C., L. R., 142

45. ——————— *Suit brought without leave.—Costs.*—Where a suit was brought by one legatee on behalf of himself and others without leave of the Court, and the plaintiff was a minor suing by his next friend, the next friend was made to pay the costs of the suit. GEERBEBALLA DABEE *v.* CHUNDER KANT MOOKERJEE . . I. L. R., 11 Calc., 213

46. ——————— *Leave to defend.—Promissory note, Summary procedure on.—Civil Procedure Code, 1877, s 533.—Power to extend time to defendant to come in and defend.*—The High Court has power to extend the time within which a defendant, in a suit brought under Chapter XXXIX (summary procedure on negotiable instruments) of the Civil Procedure Code, can come in and obtain leave to defend; therefore, in a suit in which it appeared that the defendant resided at Peshawar, the time for the defendant to obtain leave from the Court to appear and defend was extended to twenty-eight days. GROOM *v.* WILSON . I. L. R., 3 Calc., 539

47. ——— **Letters of administration.**—*Withdrawal of letters of administration—False representation.*—When letters of administration have been granted to the Administrator General, and subsequently withdrawn on a false representation, the Court will grant a rule calling on the executors to show cause why the rule should not be extended to the Registry of the Court. IN THE GOODS OF SREEMUNTO BENAICH RAO IMBIT

[1 Ind. Jur., N. S., 10

48. ——— **Motions.**—*Hearing two counsel.*—It is not the practice to hear more than one counsel or vakil in support of original motions or applications against which no cause is shown in the first instance. IN THE MATTER OF THE PETITION OF BARODA SOONDRIE DASSEE

[B. L. R., Sup. Vol., 609 : 6 W. R., Mis., 114

49. ——————— *Taking further evidence on hearing of motions.—Oral evidence.—Adjournment.*—There is nothing in the practice of the Court on the original side to prevent a Judge taking further evidence on the hearing of a motion either by affidavit, or *viva voce*, and the Court may adjourn the hearing for that purpose. BAMASUNDARI DASI *v.* RAMNARAYAN MITTER . 8 B. L. R., Ap., 65

50. ——— **Notice, Re-issue of.**—*Notice on respondents.*—Before a notice on a respondent can be re-issued an application must be made to the Court detailing the grounds on which it is preferred RAM LOCHUN SIRCAR *v.* PRITHEE RAM CHOWDHRY

[2 W. R., Mis., 37

51. ——— **Orders.**—*Order "to file with the record."*—The practice of making the order that an application "be filed with the record" condemned as

PRACTICE—*continued.*

1. CIVIL CASES—*continued.*

Orders—*continued.*

meaningless. NILMONEE BANERJEE *v.* SHURBO MUNGALA DEBEE . . . . 7 W. R., 193

LUCHMEE NARAIN SAHEE *v.* KOSHUREE DUTT JHA . . . . . 8 W. R., 107

52. ——————— *Practice of Courts of co-ordinate jurisdiction as to considering orders binding.*—A District Judge has no authority, when hearing an appeal from a Munsif's decision, to, vary or ignore the directions made by an Appellate Court of co-ordinate jurisdiction, such as that of the Subordinate Judge. In such cases he should be guided by the practice in the High Court where, when one Division Bench sees fit to give certain directions, any other Bench before which the case may afterwards come on has to keep itself within those directions. BROJO SOONDUR GOSSAMEE *v.* JUGGUT CHUNDER DEY . . . . . 21 W. R., 199

See VYTHELINGA MUDELLY *v.* CUNDASAWMY MUDELLY . . . . 8 Mad., 21

53. ——— **Paper-books.**—*Preparation of paper-books.—Appeals to High Court.*—In appeals to the High Court, where the subject-matter is more than R10,000, the appellant is bound to put the whole case (and not merely his own particular case) fully before the Court in his paper-book so far as the documents and depositions are concerned. And if he fails to do so without very good reason, he ought not to be allowed to read at the hearing anything which is not in the paper-book. KULIAN DOSS *v.* GOBIND KOOER . . . . . 24 W. R., 143

54. ——————— *Untranslated accounts not in paper-books.—Special leave.*—Under the rules of the High Court account books which are not translated and are not therefore a part of the paper-book cannot be referred to in a trial without special leave. MADHUB PERSHAD *v.* FOOL COOMAREE BIBEE . . . . . 19 W. R., 121

55. ——————— *Costs of translation of papers not included in list for paper-book.*—The petitioner in a regular appeal to the High Court should not be called upon to deposit the costs of translating, &c., any papers of which he has not furnished a list with a view to their inclusion in the paper-book. What papers a party requires or ought to print is a matter which he or his vakil must, in the first instance, determine; the Deputy Registrar preparing his estimate and demanding payment according to the requirements made on him. LALLA BHOOP NARAIN *v.* ABASSEE BEGUM . 23 W. R., 458

56. ——————— *Omission to furnish list of papers—Notice of estimate of cost of printing.*—If the petitioner in a regular appeal to the High Court does not furnish the Deputy Registrar with a list of papers which he desires to have prepared and placed in the paper-book, that officer ought not to serve him with an estimate of the cost of printing. BHOGOBUTTY KOONWAR *v.* ANURAGEE KOONWAR [23 W. R., 459

PRACTICE—*continued.*

1. CIVIL CASES—*continued.*

Paper-books—*continued.*

57. ——————— *Appeal.—Delivery of paper-book.—Costs.—Rule 49 of Original Side.*—Where the respondent has not delivered paper-books, as he is allowed to do by Rule 49 of the rules of the High Court, Original Jurisdiction, on default of the appellant to deliver them, and the appellant does not appear at the hearing, the appeal will be dismissed without costs. HURROSOONDERY DOSSEE *v.* CALLYPUDO DUTT [14 B. L. R., Ap., 11 : 23 W. R., 136

58. ——— **Parties.**—*Error in title of appeal.—Party on record by mistake.—Objection to his appearance by party who caused error.*—A suit was brought by a minor, who appeared by her next friend, and a decree was given in her favour. The defendant appealed, making the next friend alone respondent, and had the decree of the Court of first instance modified in his favour. The next friend appealed to the High Court, where the respondent objected to the next friend being heard, on the ground that she was no party to the suit. *Held* that the Court would not entertain the objection at the instance of the party through whose fault the error occurred, but that the judgment of the Court below should be set aside, and that of the Court of first instance restored. BHOBOTARINI DEBI *v.* SREE RAM PAUL [I. L. R., 9 Calc., 629

59. ——————— *Adding party as co-appellant.—Notice.*—A party should not be added as co-appellant without notice to the appellant. JANKIBAI *v.* ATMARAM BABARAV [8 Bom., A. C., 241

60. ——— **Payment out of money deposited in Court.**—*Petition without suit.—Payment out of Court of moneys on petition without suit.*—Case in which an order was made on a petition without suit directing the payment out of certain moneys paid into Court under an order entitled, "In the matter of Florence Emily Brownlow, and Lilian Kate Brownlow, infants" IN THE MATTER OF THE PETITION OF BROWNLOW . I. L. R., 11 Calc., 219

61. ——————— *Execution of decree.—Receipt and paying over of money in satisfaction of decree.*—If money is brought into Court under process of execution, and the party entitled to it or his vakil is present to receive it, the Court shall cause it to be paid over immediately. MUTTUVELU PILLAY *v.* SAMU PILLAY . . 5 Mad., Ap., 2

62. ——— **Record, Documents forming.**—*Documents not proved.*—Documents which have not been proved, but simply filed in accordance with a usage in the mofussil, should not be put up with the record. It is the duty of a Judge to pass over such documents as unproved, but it is also the duty of the pleader of the party, against whom they are intended to be used, to insist that they should not remain on the record at all. KALLIDA PERSHAD DUTT *v.* RAM HARI CHUCKERBUTTY [I. L. R., 5 Calc., 317

PRACTICE—*continued.*

1. CIVIL CASES—*continued.*

Record, Documents forming—*continued.*

63. ——— *Remission of case by Privy Council for enquiries.—Record to be forwarded with decree.*—When the Privy Council remits a case with directions that the Zillah Court may arrive at certain results by certain inquiries, the objects and reasons of those inquiries, as set forth in the judgment of the Privy Council, are part of the judicial record, and should be forwarded to the Zillah Court with the decree of the Privy Council. GOLUCK CHUNDER DUTT *v.* MOHUN LOLL SOOKUL [5 W. R., 271

64. ——— **Review.**—*Certifying review without good grounds.*—Junior pleaders of the High Court should be cautious how they certify for a review, when they find that the case has been in the hands of members of the bar, and of pleaders more experienced than they, who, they ought to consider, have declined to certify to the review. ROUSSEAU *v.* PINTO . . . . . 10 W. R., 54

TOOG OUNG *v.* BRITISH INDIA STEAM NAVIGATION COMPANY . . 24 W. R., 430

65. ——— **Revival of suit.**—*Civil Procedure Code (Act X of 1877), s. 372.—Plaint taken as petition to revive.*—A suit was instituted by the trustee appointed under a will, against the executrix, for the purpose of having the trusts of the will carried into execution. A decree was made, and certain directions were given for the purpose of having a scheme settled, by which the trusts were to be carried out; but before the scheme was finally settled and approved, and while the proceedings were pending, the case was struck out of the board for want of prosecution. Subsequently, both the plaintiff and defendant died. The heirs of the plaintiff then instituted a suit against the Administrator General as representing the estate of the defendant for carrying the trusts into execution, and prayed that their suit might be considered as supplemental to the original one. *Held* that the original suit, though no longer upon the board, was capable of revival, and that if no person were living whose consent might be obtained, or to whom notice might be given, the Court might give leave without any such consent or notice, and that the proper course to pursue was to allow the plaintiffs to amend their plaint by putting it in the form of a petition under section 372 of the Civil Procedure Code, the defendant being at liberty to put in any answer which he might have done if the proceeding had been by petition in the first instance. *Per* PONTIFEX, *J.*—The words "pending the suit," in section 372, relate to a suit in which no final order has been made. GOCOOL CHUNDER GOSSAMEE *v.* ADMINISTRATOR GENERAL OF BENGAL [I. L. R., 5 Calc., 726 : 5 C. L. R., 569

66. ——— **Rule to show cause.**—*Rule nisi to show cause why a person should not be made a party defendant.—No grounds stated in or served with the rule.—Rule granted during hearing of suit.—Civil Procedure Code (Act XIV of 1882), s. 32.*—During the hearing of a suit for recovery of immoveable property it appeared from the evidence and certain documents put in, that the plaintiff had mortgaged his right, title, and interest to a third person, by whom the suit was practically being carried on. On an application by the defendant for the mortgagee to be added as a party defendant, under the provisions of section 32 of the Civil Procedure Code, the Court directed a rule to issue calling on him to show cause why he should not be added as a party defendant or give security for costs. The rule was not applied for on petition or affidavit, and set out no grounds for the application at all. On an objection taken by the mortgagee at the hearing of the rule, —*Held* that the grounds should have been stated on affidavit or have appeared on the face of the rule, and that the mortgagee was entitled to know what he had to answer, and consequently, the rule being informal, it was discharged with costs. RAMNARAIN KALLIA *v.* MONEE BIBEE. RAMNARAIN KALLIA *v.* GOPAL DOSS SING . . . I. L. R., 9 Calc., 735

67. ——— **Security for costs.**—*Bond to secure costs of appeal.—Rule nisi against obligor. —Sureties.*—The proper mode of proceeding to put a bond to secure the costs of an appeal in suit, is to move upon affidavits, showing a breach of the condition of the bond, for a *rule nisi*, calling upon the obligor and sureties to show cause why the Court should not order that the bond be assigned to some person named in the rule. POYNOR BIBEE *v.* NUJJOO KHAN . I. L. R., 5 Calc., 437 : 5 C. L. R., 524

68. ——— *Appeal.—Poverty.*—Mere poverty is no ground for requiring an appellant to give security for the costs of the appeal. MANECKJI *v.* GOOLBAI . I. L. R., 3 Bom., 241

See SESHAYYANGAR *v.* JAINULAVADIN [I. L. R., 3 Mad., 66

69. ——— *Filing copy of Judge's notes.—Certificate of payment of security for costs.*—A certified copy of the Judge's notes not having been filed, and there being no certificate from the Prothonotary that security had been given for costs, the appeal was dismissed for non-compliance with the rules of the Court. BHIMJI GRIDHAR *v.* MORGAN . . . . 3 Bom., O. C., 63

70. ——— *Time for objecting to appeal for non-compliance with rules of Court* —Appeal dismissed, as the appellants had not given security for costs, and as the appeal had not been filed within the time required by the rules of the Court. It is sufficient for the respondent to object at the hearing of the appeal in the case of non-compliance with the rules of Court, and he need not apply specially to have the appeal rejected, when the memorandum of appeal is preferred. MUHAMMADBHAI DHARAMSI *v.* BHANJI TOPAN . . 3 Bom., O. C., 64

71. ——— **Setting down case for hearing.**—*Civil Procedure Code, 1877, s. 135.—Trial of particular issue.*—It should be a rule of practice that

PRACTICE—*continued.*

1. CIVIL CASES—*continued.*

Setting down case for hearing—*continued.*

when an order is made under section 135 of the Civil Procedure Code (Act X of 1877) by the Judge in chambers, the suit should be set down for the trial of the particular issue as well as of the cause itself when it comes to a hearing before the same Judge. AHMEDBHOY HUBIBHOY *v.* VULLEEBHOY CASSUMBHOY [I. L. R., 6 Bom., 572

72. ——— **Stay of suit.**—*Suit between same parties and for same property before Privy Council.—Stay of suit.*—A suit should not be allowed to go on while an appeal relating to the same property and between the same parties is pending before the Privy Council. SHEOPROSUN MISSER *v.* RAJENDER KISHORE SINGH . . W. R., 1864, 100

73. ——— *Procedure.—Staying suit until costs of a previous suit in a foreign Court have been paid.*—The Courts in India have no power to stay proceedings in a suit instituted therein because the costs of a previous suit between the same parties brought in the High Court of Justice in England have not been paid. BOWLES *v.* BOWLES [I. L. R., 8 Bom., 571

74. ——— **Testamentary matters.**—*Testamentary and probate matters.—Probate Act (V of 1881).*—The practice in India in testamentary matters previously to Act V of 1881 was the same as that of the Ecclesiastical Court in England, except so far as that practice might be inconsistent with the Civil Procedure Code. IN THE MATTER OF PITAMBER GIRDHAR . . . I. L. R., 5 Bom., 638

75. ——— **Translation of papers.**—*Application for translations.*—Translations of papers, if required, should be applied for before the case is posted. KONDAYYA GAUNDAN *v.* RAMASVAMI GAUNDAN . . . . . 1 Mad., 130

76. ——— **Transfer of case.**—*Applications under s. 4, Act XXIII of 1861.—Suits on bonds, &c.*—In all applications under section 4, Act XXIII of 1861, in suits brought on a bond or other document the place at which the document was executed must be definetely stated. ANONYMOUS [7 Mad., Ap., 34

77. ——— **Transmission of documents.**—*Documents relating to security for costs of appeal.*—Judges should not transmit to the High Court documents used before them to make out the title of parties offering immoveable property as security in Privy Council cases; but should, in reporting upon the securities, state particulars of the documents upon which the title of the surety appears to be made out. IN THE MATTER OF AMEEROONISSA KHATOON [14 W. R., 94

78 ——— **Withdrawal of suits or appeals.**—*Withdrawal of suit.—Landlord and tenant.—Forfeiture for non-payment of rent.—Right to relief from application in motion.*—A motion was made on summons that a suit, seeking a declaration that defendants had forfeited their right to a lease by reason of non-payment of rent, be discontinued or dismissed. *Held*, such an application should not be made by motion but the defendant was entitled to be relieved from the forfeiture on payment of what was due. GHOLAM MOHAMED *v.* CALCUTTA CLUB . Cor., 67

PRACTICE—*continued.*

1. CIVIL CASES—*continued.*

Withdrawal of suits or appeals—*continued.*

79. ——— *Withdrawal of second appeal.—Discovery of new evidence.—Review by lower Court.—Civil Procedure Code (Act X of 1877), s. 623.*—Having regard to the decisions in *Nanabhai* v. *Nathabhai, 9 Bom., 89*, and *Narayan* v. *Davudbhai, 9 Bom., 238*, and the uniform practice in accordance with them which had since obtained, and the practical similarity on this point of Act X of 1877, section 623, and Act VIII of 1859, section 376 (on which the cases above mentioned were decided), the High Court allowed the appellant to withdraw his second appeal, after it had been argued though not decided, in order that he might apply to the lower Court for a review of its judgment on the ground of the discovery of new evidence: the appellant to pay the respondent's costs of appeal. PANDU *v.* DEVJI [I. L. R., 7 Bom., 287

2. CRIMINAL CASES.

80. ——— **Adjournment.**—*Adjournment of trial by proclamation.*—The adjournment of a trial by public proclamation is irregular and objectionable. ANONYMOUS . . 6 Mad., Ap., 30

81. ——— **Affidavits.**—*Contradicting allegation in verified petition.*—Important statements made in a verified petition to the High Court, if untrue, should be contradicted on affidavit. REG *v.* KASHINATH DINKAR . . 8 Bom., Cr., 126

82. ——— *Showing want of jurisdiction and error in law on merits.*—Though affidavits may be used to show a want of jurisdiction in a Magistrate, even though the affidavits contradict for this purpose the finding of the Magistrate, they cannot be used as affording materials for reviewing the Magistrate's decision on the merits. REG. *v.* NATHALAL PITAMBAR . 10 Bom., 102

83. ——— **Caution to accused**—*Warning accused before hearing his statement.*—In an allegation of having warned an accused person before taking down his statements, a Magistrate should state how the accused was warned. QUEEN *v.* DEDAR NUSHYO . . . . . 14 W. R., Cr., 81

84. ——— **Evidence, Mode of recording.**—*Applications under Criminal Procedure Code, 1861, s. 196.*—All applications from Judges and Magistrates for bringing into operation the provisions of section 196 of the Code of Criminal Procedure should be made through the High Court. ANONYMOUS . . . . . 5 Mad., Ap., 9

PRACTICE—*continued.*

2. CRIMINAL CASES—*continued.*

85. ——— **Judgments, Copies of.**—*Copies of judgments for prisoners.*—Copies of judgments should be made out at once without waiting for written applications from prisoners under sentence. IN THE MATTER OF RAM CHUNDER MUNDLE . . . . . **9 W. R., Cr., 19**

86. ——— **Record in Sessions cases.**—*Proper contents of record.*—There ought to be only one Sessions record, which should be continuous, and should contain accurately and consecutively the whole of the proceedings in the trial, including the examination of the accused. QUEEN *v.* BILASH MOSULMANY . . . . **14 W. R., Cr., 46**

87. ——— *Criminal Procedure Code, 1861, ss. 372-374.*—A Sessions nuthee should contain the record of the defence set up by the prisoners in the Sessions Court. Points out how such record is to be made up with reference to sections 372, 373, and 374 of the Code of Criminal Procedure. QUEEN *v.* GOPAL HAJJAM **[15 W. R., Cr., 16**

88. ——— *Principal documents on record in Sessions cases.*—The principal documents in a case should be put in a prominent place on the record, not buried among a mass of less important papers in the nuthee. QUEEN *v.* BHEEKUN . . . . . **8 W. R., Cr., 30**

QUEEN *v.* RUTTON MEAH . **8 W. R., Cr., 57**

See QUEEN *v.* BROOND SHAHOO *alias* CHUNDRA CHATTERJEE . . **7 W. R., Cr., 112**

89. ——— **Revision, Application for.**—*Form of application.—Motion.*—Application for revision by the High Court of an order passed in appeal by a Sessions Judge must be by motion. HAZARI *v.* CHUNDI CHURN CHUCKERBUTTY **[16 W. R., Cr., 72**

90. ——— **Rule to show cause.**—*Mode in which Magistrate should appear to show cause.—Appearance through Legal Remembrancer.*—When a Magistrate wishes to show cause against a rule issued by the High Court, the proper course for him to adopt is to apply to the Legal Remembrancer to cause an appearance to be made for him in Court, and not to address the Registrar by letter. IN THE MATTER OF HURRO SOONDERY CHOWDHRAIN **[I. L. R., 4 Calc., 20 : 3 C. L. R., 93**

91. ——— **Signature of Magistrate.**—*Warrant of commitment.—Summary trials.*—The signature of a Magistrate to a warrant of commitment under section 303 of the Code of Criminal Procedure, 1872, should not be affixed by a stamp. In summary trials under the provisions of Chapter XVIII of the Code of Criminal Procedure, 1872, the record in non-appealable cases and the judgment in appealable cases must be written by the Magistrate. A Magistrate in such cases is not authorised to depute that duty to a clerk, nor to affix his signature to the record or judgment by a stamp. SUBRAMANYA *v.* QUEEN . **I. L. R., 6 Mad., 306**

PRACTICE—*continued.*

2. CRIMINAL CASES—*continued.*

92. ——— **Transmission of record to High Court.**—*Record of proceedings prior to commitment.*—The Magistrate's record of the proceedings prior to commitment should always be forwarded to the High Court. QUEEN *v.* KASIM ALI **[15 W. R., Cr., 67**

93. ——— **Undefended accused.**—*Court to test statements of witnesses for prosecution.—Per* PETHERAM, *C. J.*—Where an accused person is not defended, the Court should, in the interests of justice, test the statements of the witnesses for the prosecution, by questions in the nature of cross-examination. QUEEN-EMPRESS *v.* KALLU **[I. L. R., 7 All., 160**

PRE-EMPTION.

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PRE-EMPTION—*continued.*

1. SUBJECTS OF, AND TRANSFERS GIVING RISE TO, PRE-EMPTION

1. ——— **Permanently-settled estates in Sylhet.**—*Act XXIII of 1861, s. 14.—Extension of Act.*—Section 14 of Act XXIII of 1861 was not applicable to permanently-settled estates in Sylhet, nor to estates in any district of Bengal, unless extended thereto. ABDUL JABEL *v.* KHELATCHUNDER GHOSE [1 B. L. R., A. C., 105; 10 W. R., 165

2. ——— **Right and interest of co-sharer in estate in Sylhet.**—*Substitution of claimant for actual purchaser.—Act XXIII of 1861, s. 14.*—The right and interest of a co-sharer in an estate in Sylhet being put up for sale in execution of a decree, the petitioner claimed the right of pre emption under section 14, Act XXIII of 1861, and he was thereupon substituted for the actual purchaser,—*Held* that in such circumstances the Court executing a decree had no authority to substitute the claimant for the actual purchaser without the consent of the latter, and that a party claiming a share under the section cited was simply in the position of a party who, having a right of pre-emption, has observed the requisite formalities to enable him to assert the right, and must resort to a civil suit to obtain the benefit thereof. The orders of the lower Courts were set aside accordingly. ABDOOL JALEEL *v.* KALEE COOMAR DUTT [6 W. R., Mis., 3

3. ——— **Puttadari estate.**—*Act I of 1841, s. 2.*—A claim for pre-emption under section 2 of Act I of 1841 was sustainable in respect of an imperfect puttadari tenure. KADIR BUX *v.* RAM TAHUL BHAGUT . . . . . 3 N. W., 125

4. ——— **Confiscated property.**—*Confiscation of property in suit for pre-emption.*—A pre-emption suit is not barred by the fact that the property in suit had been the subject of confiscation. SHEODUT RAM TEWARY *v* RAMADHREE [1 N. W., Pt. II, p. 35 : Ed. 1873, 93

5. ——— *Purchaser of confiscated property.—Held* that a claim for pre-emption would not lie against the purchaser of a confiscated property sold by the revenue authorities. MOHAMED VILLAYET-OOL-LAH KHAN *v.* AHMED HUSSUN KHAN [3 Agra, 70

6. ——— *Confiscation and sale of rebel's property.—Right of co-sharers.*—Where Government confiscates the share of a convict, and sells it for valuable consideration, the co-sharers have a right to claim such share by right of pre-emption on such sale, and the condition in the wajib-ul-urz is binding on Government as much as it was on the original owner, Government acquiring the share subject to the same condition as the former held it. COLLECTOR OF FUTTEHPORE *v.* YAD ALI . 1 Agra, 88

7. ——— **Buildings.**—*Custom—Exercise of pre-emption in kotee and golah.*—Exercise of right of pre-emption allowed in respect of a kotee and golah, as it was proved that according to local usage and custom such properties were subject to pre-emption. KESHO RAI *v.* BINAYAK RAI. BINAYAK RAI *v.* LUCHMEE BAI . . 3 Agra, 179

PRE-EMPTION—*continued*

1. SUBJECT OF, AND TRANSFERS GIVING RISE TO, PRE-EMPTION—*continued.*

Buildings—*continued.*

8. ——— **Separate estates.**—*Coparcenary, Pre-emption on ground of.*—Properties bearing separate numbers in the Collector's rent-roll are separate estates in the legal sense of the word "estate," implying such a separation as bars a claim to pre-emption on the ground of coparcenary JOOBRAJ SINGH *v.* TOOKUN SINGH . . 14 W. R., 476

9. ——— **Claim to mesne profits.**—A claim to mesne profits due before the date on which a right to pre-emption arose cannot form the subject of pre-emption. EMAMODDEEN SOWDAGUR *v.* ABDOOL SOOBHAN . . . 7 W. R., 117

10. ——— **Lease in perpetuity.**—*Transfer other than sale.*—Pre-emption applies only to sales. A lease in perpetuity, with a rent (however small) reserved is not a sale, and cannot therefore be the subject of pre-emption. MOOROOLY RAM *v.* HUREE RAM . . . . . 8 W. R., 106

11 ——— **Transfer by lease.**—*Alienation or transfer of proprietary right.—Held* that a provision in the wajib-ul-urz securing a right of pre-emption to the sharers in cases of sale or mortgage was not applicable to transfer by lease, which was not such an alienation as was contemplated by the terms of the wajib-ul-urz,—*viz*, alienation or transfer of proprietary right. MANICK CHAND *v.* BISHAISHUR BUKHSH SINGH . . . 2 Agra, 99

12. ——— **Transfer to manager on trust.**—*Alienation giving right to pre-emption*—Where shares in a mouzah were by arrangement between the parties made over to a manager upon trust to pay part of the profits to the debtors of the transferors, and the residue of the profits to the transferors, who bound themselves not to alienate until the debts were paid,—*Held* that it was not such alienation as would confer on the plaintiff a right of pre-emption under the wajib-ul-urz. OUTAR SINGH *v.* ABLAKHEE KOONWER . . . 2 Agra, 328

13. ——— **Alienation of "chuck" tenure.**—*Right of sharer in zemindari.*—Where a resumed maafee "chuck" was alienated by the holder thereof, and a preferential right to take it was claimed by a sharer in the zemindari under the terms of the wajib-ul urz agreed to by the co-sharers at the time of settlement, and to which the holder of the "chuck" was no party,—*Held* that such alienation was not an alienation of a share within the meaning of the wajib-ul-urz; that the holder of the "chuck" could neither confer on its possessor a right of pre-emption, nor subject his estate to such right in the event of alienation. SHEO LALL SAHOO *v* RUMZANEE . . . . . 2 Agra, 35

PRE-EMPTION—*continued.*

1. SUBJECTS OF, AND TRANSFERS GIVING RISE TO, PRE-EMPTION—*continued.*

14. ——— Exchange of property.—*Transfer giving right of pre-emption.—Consideration.*—A share in a mouzah, together with the dwelling-house of the proprietor, was exchanged for a share and dwelling-house in another mouzah. *Held* that the transaction being an exchange of property for property was a sale, and that the right to purchase the land, but not the house, was claimable by a co-sharer by right of pre-emption. The consideration payable by the pre-emptor is the estimated value of the property given in exchange, and not that of the property claimed. SEWA RAM *v.* RISAL CHOWDHRY [1 Agra, 144

15. ——— Sale and re-sale before confirmation.—*Transfer raising right of pre-emption.*—Where the decree-holder purchased the rights of his judgment-debtors sold at auction in satisfaction of his own decree, but, having received the amount of the decree, re-sold the property to the judgment-debtors before the confirmation of the sale,—*Held* that the transaction did not amount to an alienation such as would give a right to the co-sharers of the debtors to exercise the right of pre-emption under the terms of the wajib-ul-urz. MAHOMED RAZA KHAN *v.* JAWAHIR SINGH . . . . 2 Agra, 1

16. ——— Transfer under compromise and decree thereon to person claiming pre-emption.—*Wajib-ul-urz.*—An appeal having been preferred from a decree in a suit for pre-emption based on the wajib-ul-urz of a village, the parties to the suit entered into a compromise whereby the plaintiff-pre-emptor relinquished his claim to a part of the property in dispute in favour of the defendants-vendees, and the latter admitted his claim with respect of the remainder of the property. Upon this compromise a decree was passed. Subsequently a co-sharer in the village where the property was situate brought a suit for pre-emption, upon the contention that the compromise and the decree passed thereon amounted to a transfer to the plaintiff in the former suit, within the meaning of the wajib-ul-urz. *Held* that the suit was not maintainable. HANUMAN RAI *v.* UDIT NARAIN RAI . I. L. R., 7 All., 917

17. ——— Transfer by compromise.—*Wajib-ul-urz.—"Transfer."—"Sale."*—On the 1st September 1881 *L.* and *R.* entered into an agreement (which was duly registered) with *B.* that in consideration of their bringing a suit for recovery of a 12-annas share in a village which *B.* claimed by right of inheritance against *G.*, they should receive a moiety of the share. *L.* and *R.* found funds for the prosecution of two suits in respect of the share, which on the 5th April 1882 were compromised, *B.* getting 1 anna and 3 pies out of the 12 annas originally claimed by her. In that compromise *B.* stated as follows: "I make over 1 anna to *L.* and *R.* my partners, in lieu of the prosecution of the two cases. I, the plaintiff, shall remain in possession of the remaining 3 pies." Meanwhile, on the 3rd September 1881, *G.* had sold 3 annas out of the 12 annas share to *M.* On the 3rd April 1883,

PRE-EMPTION—*continued.*

1. SUBJECTS OF, AND TRANSFERS GIVING RISE TO, PRE-EMPTION—*continued.*

Transfer by compromise—*continued.*

M. brought a suit against *L.* and *R.*, claiming the right of pre-emption in respect of the 1 anna which they had acquired from *B.* on the allegation that the transfer of the share had taken place on the 5th April 1882. This claim was based on the wajib-ul-urz of the village, which gave a right of pre-emption to the co-sharers of any sharer wishing to "transfer" his share. *Held* that the compromise of the 5th April 1882 was only a re-adjustment of the amount of the interest in the share between *B* and *L.* and *R.*; that the real transfer to *L.* and *R.* was given effect to on the 1st September 1881, and that this having been prior to the acquisition by *M.* of any right in the village, he was not a co-sharer at the time of the transfer; and that he had consequently no right as against *L.* and *R.* by way of claim for pre-emption. LACHMI NARAIN *v.* MANOG DAT . I. L. R., 7 All., 291

2. RIGHT OF PRE-EMPTION.

18. ——— Sale in execution of decree.—*Act XXIII of 1861, s. 14.—Share sold in execution of decree.*—A suit by a person claiming possession by right of pre-emption, under the provisions of section 14 of Act XXIII of 1861, of a share sold in the execution of a decree was held to be premature and unmaintainable. The claimant should have sued to set aside the order of the Court confirming the sale in favour of the auction-purchaser, and to have himself declared entitled to the pre-emption of the property and to be substituted for the auction-purchaser as its purchaser. SHIB SAHAI *v.* THIKA RAM [7 N. W., 97

19. ——— Property subject to conditional sale.—*Time for making claim.*—A party alleging a right of pre-emption in respect of property which is the subject of a conditional sale, is bound to make his claim immediately on the expiry of the year of grace mentioned in the notice of foreclosure. AMEER ALI *v.* BHABO SOONDUREE DEBIA [6 W. R., 116

20. ——— Rights and interests of mortgagee.—*Share of undivided immoveable property.—Civil Procedure Code, 1877, s. 310.*—The provisions of section 310 of Act X of 1877 are not applicable in a case where the property sold is not a share of undivided immoveable property, but the rights and interests of a mortgagee in such a share. JAIRAM DAS *v.* BENI PRASAD . . . I. L. R., 3 All., 15

21. ——— Co-sharer.—*Sale in execution of share in immoveable property.—Stranger.—Highest bidder.—Civil Procedure Code, 1877, s. 310.*—A co-sharer in undivided immoveable property of which a share is sold in the execution of a decree does not, under section 310 of Act X of 1877, acquire the right of pre-emption as against a stranger to whom such share has been knocked down, by merely asserting such right at the time of sale and fulfilling the conditions of sale required by sections 306 and 307 of that Act. He must

PRE-EMPTION—*continued.*

2. RIGHT OF PRE-EMPTION—*continued.*

Co-sharer—*continued.*

bid at the sale and as high as the stranger before he can acquire a right of pre-emption under that section. TEJ SINGH *v.* GOBIND SINGH

[I. L. R., 2 All., 850

22. ——— *Sale in execution of share in immoveable property.—Manner of claiming pre-emption.—Highest bidder.—Civil Procedure Code, 1877, s. 310.*—The requirements of section 310 of Act X of 1877 are not satisfied by the co-sharer preferring his claim to the right of pre-emption before the property is knockedd own, and offering to pay a sum equal to that bid by the highest bidder. That section contemplates a distinct bid by the co-sharer in the ordinary manner of offering bids. *Tej Singh* v. *Gobind Singh, I. L. R., 2 All., 850,* followed HIRA *v.* UNAS ALI KHAN . I. L. R., 3 All., 827

23. ——— *Holder of puttidari estate.—Act XXIII of 1861, s. 14.*—A person holding a share in a puttidari estate as mortgagee was not in a position which gave him a right of pre-emption, under the provisions of section 14 of Act XXIII of 1861, in respect of a share in the estate sold in execution of a decree; nor does he obtain such a position because a share in the estate has been put up for sale and knocked down to him. DWARKA PARSHAD SUKUL *v.* RAM AUTAR SUKUL . 7 N. W., 281

24. ——— *Right against stranger.—Act XXIII of 1861, s. 14.*—A share in the mouzah having been put up for sale in the execution of a decree and knocked down to the defendant, a stranger, the plaintiff, a co-sharer of the share, was held to be entitled, under the provisions of section 14 of Act XXIII of 1861, to take the share. RAM AUTAR *v.* SHEO DUTT . . . 6 N. W., 243

25. ——— **Puttidari estate.**—*Act XXIII of 1861, s. 14.—Sale of land for arrears of revenue.—Act XVIII of 1873, s. 177.—Act XIX of 1873, s. 188.*—The provisions of section 14 of Act XXIII of 1861 were not applicable, where the land was sold in execution of a decree of a Revenue Court. *Held,* on the assumption that, where land is sold in execution of such a decree, a claim to the right of pre-emption can be preferred under the provisions of section 177 of Act XVIII of 1873 and section 188 of Act XIX of 1873, that such claim can only be preferred where the land is a putti of a mehal, not where it is part only of a putti of a mahal —*Semble,* that, where land which is a putti of a mehal is sold in execution of such a decree, a claim to the right of pre-emption can be preferred under the provisions of section 177 of Act XVIII of 1873, and section 188 of Act XIX of 1873. NARAIN SINGH *v.* MUHAMMAD FARUK

[I. L. R., 1 All., 277

26. ——— **Requisite of valid claim.**—*Act XXIII of 1861, s. 14.—Conditions required by Mahomedan law.*—If a person claiming pre-emption under the provisions of section 14 of Act XXIII of 1861 fulfilled the conditions of sale respecting the deposit of the purchase-money, the sale could not be

PRE-EMPTION—*continued.*

2. RIGHT OF PRE-EMPTION—*continued.*

Requisite of valid claim—*continued.*

held void merely by the failure of the person to whose bid the property was knocked down also to complete the deposit. All that the claimant was bound to do was to establish that he was a puttidar within the meaning of the section in the estate of which the property sold formed part, and that he had fulfilled the conditions of sale. If he established this the sale should be confirmed in his favour, unless some irregularity in publishing or conducting the sale was shown which would justify the setting aside of the sale. The conditions of pre-emption under the Mahomedan law did not apply to a claim brought under the section. DANEE PERSHAD *v.* BISHESHUR PERSHAD SINGH

[6 N. W., 289

27. ——— *Wajib-ul-urz, Claim under.—Conditions required by Mahomedan law.—Held* that the person in whose favour a preferential right of purchase is stipulated for, by the terms of the wajib-ul-urz, is entitled to a decree if he comes forward and claims his right, without unreasonable delay, after he hears that a sale has been made without any tender to him, although he may not have proved specially that he has fulfilled all the conditions required in the case of a claim of pre-emption under the Mahomedan law of Shuffa. KOULA PUT *v.* MAHARAJ DOOBEY . 1 Agra, 278

28. ——— *Act XXIII of 1861, s. 14.—Sale of puttidari estate in execution of decree.—Act I of 1841, s. 2.—Right of co-sharer.*—It was incumbent on an officer conducting a sale in execution of decree, of land which was a share of a puttidari estate paying revenue to Government, as defined in section 2 of Act I of 1841, to take notice of a claim made by a person under the provisions of section 14 of Act XXIII of 1861, and to receive the purchase-money as a fulfilment of the conditions of the sale, subject to any question which might be raised by any party interested in the sale as to the claimant's title to advance the claim. When the whole of the purchase-money has been paid by the claimant within due time, the Court executing the decree, unless it is satisfied that he has no right to advance the claim, cannot treat the payment by him as a nullity, but must accept it as a fulfilment of the conditions of the sale respecting the purchase-money, and the sale is not defeasible by the failure of the bidder to complete the deposit of the purchase-money. The sale to the claimant cannot become absolute until it has been confirmed, and until it has become absolute he cannot maintain a suit for possession. If the claimant has fulfilled the conditions of sale, and his right is clear, the Court executing the decree is bound to give effect to the right. TASUDUK ALI *v.* MUKSUD ALI . . . . . 6 N. W., 272

29. ——— **Sale in execution of decree.**—During the minority of two out of four brothers an ikrarnama was entered into between them to the effect that no separation was to take place without the consent of all, and that if one of them separated without such consent he was to forfeit his share of

PRE-EMPTION—*continued.*

2. RIGHT OF PRE-EMPTION—*continued.*

Sale in execution of decree—*continued.*

the family property, and that if any one wished to dispose of his share he was to give his brothers the preference. One *F.* purchased at a private sale the share of *M.*, one of the brothers. On this two of the brothers, *A.* and *I.*, brought a suit against *F.* to set aside the sale as contrary to the terms of the ikrarnama, and urged their claim to pre-emption. The suit was decreed with a stipulation that the purchase-money should be paid back. This not having been done, *F.* sued *M.*, got a decree, and in execution put up for sale *M.'s* rights and interests in the family estate, bought them himself, and took possession. The present suit is by *A.* and *I.* to recover possession on the ground that *M.* had no rights and interests left which could be sold in execution. *Held* that as *M.* had never separated, his share had not been forfeited, and that the only other privilege left to he plaintiffs under the ikrar—*viz.*,—pre-emption, could not be exercised, inasmuch as *M.* had not sold his share, the sale having been the act of the Court. FERASUT ALI *v.* ASHOOTOSH ROY SINGH **[15 W. R., 455**

30. ——————— *Right of auction-purchaser as against party whose claim to pre-emption is allowed.*—The auction-purchaser at a sale in execution of a decree of a share in a puttidari estate seeking to establish his right as against a person whose claim to the right of pre-emption under the provisions of section 14, Act XXIII of 1861, has been allowed, and in whose favour the sale has been confirmed, cannot maintain a suit for possession of the share, but should sue for a declaration that the person claiming the right of pre-emption has no such right and to set aside the sale. FARZAND ALI *v.* ALIMULLAH . . . **I. L. R., 1 All., 272**

SANGAM RAM *v.* SHEOBART BHAGAT **[I. L. R., 3 All., 112**

31. ——— **Condition for assertion of right.**—*Wajib-ul-urz.—Offer of property.—Notification that property is for sale and offers will be received.—Acquiescence.*—In order to entitle a co-sharer to assert a right of pre-emption based on the wajib-ul-urz, there must, as a condition precedent to such assertion, be a sale of a share already negotiated with a stranger, and a price fixed with the stranger by the co-sharer desiring to sell. The only mode in which a pre-emptive claim can then be defeated is by proof of a distinct intimation to the co-sharer seeking to maintain such claim, of the contemplated sale, and of the price agreed to be paid by the stranger, of an offer to him (the co-sharer) at such price, and of his refusal to purchase. Where the sale in respect of which the pre-emptive claim was raised was one made by the Collector as Manager of the Court of Wards, and the Collector, before selling the property, issued a proclamation through the tehsildar, notifying to all the shareholders that the property was for sale, and that sharers intending to purchase should make offers,—*Held* that such a notification was not a sufficiently distinct and definite notice of a negotiated and

PRE-EMPTION—*continued.*

2. RIGHT OF PRE-EMPTION—*continued.*

Condition for assertion of right—*continued.*

intended sale to a stranger, so as to estop co-sharers failing to make an offer to purchase from subsequently asserting their pre-emptive rights. SUBHAGI *v.* MUHAMMAD ISHAK . **I. L. R., 6 All., 463**

32. ——— **Association of strangers in purchase.**—*Specification of interest purchased by each person.*—Where two co-sharers entitled to pre-emption in certain villages associated strangers with them in the purchase of such villages and other landed property,—*Held* that they must be regarded in the light of total strangers in respect of the whole of the property included in the sale-deed, and that a note at the foot of the sale-deed mentioning the interest severally purchased by each of the vendees would not entitle them to retain the shares respectively purchased by them. GUNESHEE LAL *v.* ZARAUT ALI . . . . . **2 N. W., 343**

33. ——— *Joint purchase by co-sharer and strangers.—Specification of interests taken by purchasers.*—A co-sharer of an estate sold his share to *R.*, who was also a co-sharer in such estate, and to two other persons, who were not co-sharers, but "strangers," selling it to all of them jointly and collectively, for one integral sum as the consideration for the whole. The deed of sale specified that each of the purchasers took a one-third share of the property sold. The co-sharers of the estate were entitled, on the sale by a co-sharer of his share, to the right of pre-emption. *Held* that such specification could not alter the joint nature of the sale transaction or permit of its being broken up and treated as involving three separate contracts, so as to entitle *R*, as a co-sharer having an equal right of pre-emption, to resist, so far as one-third of the property was concerned, a claim by another co-sharer to enforce a right of pre-emption in respect of such sale, but *R.* must be regarded as a "stranger" in respect of the whole of the property sold by reason of having associated himself with "strangers." *Guneshee Lal* v. *Zaraut Ali, 2 N. W., 343,* observed on. MANNA SINGH *v.* RAMADHIN SINGH **[I. L. R., 4 All., 252**

34. ——— **Benami purchaser.**—*Purchaser not a coparcener.—Act XXIII of 1861, s. 14.*—Where the rights of a judgment-debtor in a puttidari estate were sold at auction in execution of decree, and bid for by the son of the judgment-debtor who gave the name of his father-in-law to whom the property was knocked down (and who was not a coparcener in the estate) as the actual purchaser, such father-in-law subsequently waiving his claim as auction-purchaser in favour of the judgment-debtor. *Held* under section 14 of Act XXIII of 1861 that the property had been knocked down to a stranger, and that the right of pre-emption attached in favour of the person entitled thereto on such sale, he having done all that was necessary to assert his claim. GUNGA RAM *v.* MOOLA . . . . **2 N. W., 200**

35. ——— **Co-sharers in puttidari village.**—*Preferential claim.*—In a puttidari village

PRE-EMPTION—*continued.*

2. RIGHT OF PRE-EMPTION—*continued.*

Co-sharers in puttidari village—*continued.*

the sharers in each putti have a preferential claim to the right of pre-emption in that putti. MAHARAJ SINGH *v.* BEECHOOK LALL . . 1 W. R., 233

36. ——— **Co-sharers in puttidari estate.**—*Act XXIII of 1861, s. 14.—Stranger.—Purchaser at sale in execution of decree.*—A shareholder in one putti of a puttidari estate was not a "stranger" with reference to a shareholder in another putti of the estate within the meaning of that term in section 14, Act XXIII of 1861. FARZAND ALI *v.* ALIMULLAH . I. L. R., 1 All., 272

SANGAM RAM *v.* SHEOBART BHAGAT [I. L. R., 3 All., 112

37. ——— *Strangers.*—Where a share in a certain putti was sold by the holder of the share to a stranger, and three persons, holding equal shares in the putti, were equally entitled under the village administration paper to the right of pre-emption of the share,—*Held,* that such persons were each entitled to have the sale made to him to the extent of one-third of the share. MAHABIR PARSHAD *v.* DEBI DIAL . I. L. R., 1 All., 291

38. ——— *Act XXIII of 1861, s. 14.—Land held rent-free in zemindari.*—Where a plot of land formerly held rent-free situate in a pure zemindari estate is sold at auction,—*Held* that the claim of preferential purchase under section 14, Act XXIII of 1861, would not lie, as the estate was not a puttidari estate within the meaning of section 2, Act I of 1841. GHOOROO SINGH *v.* DABEE DYAL . . . . . 2 Agra, 280

39. ——— *Act I of 1841, s 2.—Preferential right.*—Where a resumed maafee estate comprising three puttis in an adace mehal was assessed with a lump sum of Government revenue payable through the lumberdars of the adace mehal, who were empowered to proceed summarily against the sharers of the puttis in case of default, and to bring the share of the defaulter to public sale, and were held liable to Government for payment of the revenue assessed on the three puttis, and in case of default their rights in the mehal, not of the sharers of the defaulting puttis, were liable to sale for satisfaction of Government demand on those puttis,—*Held* that the estate was not a puttidari estate as contemplated by section 2, Act I of 1841, and the right of pre-emption given to co-sharers of the putti by that enactment could not attach to it. To constitute a puttidari estate as contemplated by the 2nd section of the Act it was necessary not only that it should come within the express terms of that section, but also that it should be liable to the same incidents which attach to the estates described in the section by the other provisions of the same Act. SALIG RAM *v.* PURSIDH RAM . . 1 Agra, 186

40. ——— *Act I of 1841, ss. 2 and 4.—Act XXIII of 1861, s. 14.—Imperfect puttidari estate.—Right of co-sharer to pre-emption*

PRE-EMPTION—*continued.*

2. RIGHT OF PRE-EMPTION—*continued.*

Co-sharers in puttidari estate—*continued.*

against stranger.—It appeared from the settlement wajib-ul urz that the lands in a certain mouzah were held in the following manner,—that is to say, the co-sharers had divided them into puttis, and each puttidar realised the rents or proceeds of his own separate holding, and his share of the rent of the common lands, and paid his own quota of revenue separately. *Held,* the tenure came within the definition of a puttidari estate contained in section 2 of Act I of 1841. RAM AUTAR *v.* SHEO DUTT [6 N. W., 243

41. ——— *Wajib-ul-urz.—Partition of mehal.—Mode of division of property where there are several pre-emptors equally entitled.*—The wajib-ul-urz, framed in 1856, of a village consisting of several puttis or thokes, gave a right of pre-emption to the owners of each thoke in respect of property situate in every other thoke, when such property was sold to any one having no share in the village coparcenary. The mehal subsequently became the subject of perfect partition under the N.-W. P. Land-Revenue Act (XIX of 1873), and one of the puttis was constituted a separate mehal and a new wajib-ul-urz was framed for it. Prior to the partition, a proprietor of land both in the puttis which remained in the original mehal and in the putti which formed the new mehal, sold property in both to a stranger. Thereupon a co-sharer in the original mehal brought a suit for pre-emption in respect of the property situate therein which had been sold, excluding the property situate in the new mehal. *Held* that the effect of the partition was to exclude property situate in the new mehal from the operation of the wajib-ul-urz framed in 1856, and to place it under new conditions as to the right of pre-emption; that the plaintiff could, after the separation, exercise no such right against and in respect of shareholders and property so separated, nor could the separate shareholders exercise any right of pre-emption against the plaintiff and his property remaining in the mehal from which they had separated; and that the suit to pre-empt that portion only of the property sold which was situate in the original mehal was maintainable. *Durga Prasad* v. *Munsi, I. L. R., 6 All., 423, Hulasi* v. *Sheo Prasad, I. L. R., 6 All., 455; Kashi Nath* v. *Mukhta Prasad, I. L. R., 6 All., 370; Motee Shah* v. *Gokli, N.-W. P., S. D. A., 1861, p. 506; Ram Prasad* v. *Buljeet Singh, 2 Agra, 252; Oomar Khan* v. *Murad Khan, N.-W. P., S. D. A., 1865, p. 173,* and *Salig Ram* v. *Debi Prasad, 7 N. W., 38,* referred to. *Per* MAHMOOD, *J.*—The rule of the Mahomedan Law that where more persons than one owning the property in virtue of which the pre-emptive right exists appear for the purpose of suing, their rights are to be taken as equal *per capita,* with reference to the number of pre-emptors and not with reference to the number of the shares of each pre-emptor in such property, is so consistent with justice, equity, and good conscience, that it must be followed in cases of rival suits for pre-emption under the wajib-ul-urz where there is nothing to show that the rival pre-emptors are not equally entitled. JAI RAM *v.* MA-

PRE-EMPTION—*continued.*

2. RIGHT OF PRE-EMPTION—*continued.*

Co-sharers in puttidari estate—*continued.*

HABIB RAI. MAHABIR RAI *v.* RAGHUNANDAN RAI. RAGHUNANDAN RAI *v.* MAHABIR RAI
[I. L. R., 7 All., 720

42. ——— Hindu widow with estate of inheritance.—*Shareholder in village.*—A Hindu widow holding by inheritance her deceased husband's share in a village fully represents his estate as regards such share, and is entitled to prefer a claim to pre-emption as a shareholder in such village. PHULMAN RAI *v.* DANI KUARI
[I. L. R., 1 All., 452

43. ——— *Joinder of plaintiffs one of whom has no right to sue for pre-emption.*—*Amendment of plaint.*—The plaintiffs in a suit to enforce a right of pre-emption based on the wajib-ul-urz of a village, which gave the right to "co-sharers," alleged themselves to be jointly interested in the village, and, in their plaint, claimed relief jointly. One of the two plaintiffs was the widow of a co-sharer in the village, who, at the time of his death, was a member of a joint Hindu family. *Held* that, inasmuch as the widow had only a right of maintenance out of the estate of her husband, she was not a co-sharer in the village, and therefore had no right to claim pre-emption. KARAN SINGH *v.* MUHAMMAD ISMAIL KHAN
[I. L. R., 7 All., 860

44. ——— *Possession of share of village in lieu of maintenance.*—*Right of pre-emption.*—Possession for life by a Hindu widow of a share of a village in lieu of maintenance under a decree of Court does not give her such an interest in the share as to entitle her to enforce the right of pre-emption on the sale of another share of the village. DILA KUARI *v.* JAGAR NATH KUARI
[I. L. R., 6 All., 17

45. ——— Purchaser of share subsequent to sale.—*Wajib-ul-urz.*—*Purchaser's right of pre-emption.*—Where there is a right of pre-emption under the wajib-ul-urz, which a shareholder could claim and enforce in respect of a sale of property, a person purchasing the said shareholder's interest in the village subsequently to the sale cannot claim and enforce pre-emption as his vendor might have done. SHEO NARAIN *v.* HIRA
[I. L. R., 7 All., 535

46. ——— Reservation of interest by father on partition.—*Right of son to pre-emption.*—Where a Hindu father made a partition of his property among his sons, reserving to himself an interest in one village, which upon his death was to be divided among his sons,—*Held* that during the father's lifetime no son could claim a right of pre-emption in respect of the village so reserved by the father. RAM ADHEEN PANDEY v. GOORDIAL PANDEY . . . . . 2 N. W., 434

47. ——— Sale to a co-sharer and stranger.—*Specification of interest sold to stranger, and price.*—*Right of pre-emption of vendee co-sharer.*—The principle of denying the right of pre-emption except as to the whole of the property sold, is that by breaking up the bargain the pre-emptor would be at liberty to take the best portion of the property and leave the worst part of it with the vendee. The rule applies only to those transactions which, while contained in one deed, cannot be broken up or separated. It should be limited to such transactions, and the reason of it does not exist where the shares sold are separately specified, and the sale to the stranger is distinct and divisible, though contained in the same deed as the sale to the co-sharers. The *ratio decidendi* of *Bhawani Prasad* v. *Damru, I. L. R., 5 All., 197,* explained. *Sheodyal Ram* v. *Bhyro Ram, N.-W. P., S. D. A., 1860, p. 53,* distinguished. *Guneshee Lal* v. *Zarauf Ali, 2 N. W., 343,* and *Manna Singh* v. *Ramadhin Singh, I. L. R., 4 All., 252,* dissented from. A co-sharer in a village conveyed by deed of sale certain land to four persons, three of whom were co-sharers in the same putni as the vendor. The deed contained a specification of the interests purchased and the considerations paid by the co-sharers and the stranger vendees respectively. In a suit for pre-emption by certain co-sharers of the same putti as the vendor, the lower Appellate Court held that although the co-sharers-vendees had a pre-emptive right of the same degree as the plaintiffs, nevertheless they, having joined a stranger with them in purchasing the property, had forfeited their right, and could not resist the claim even in respect of such portions as they had purchased under the sale-deed. *Held* that this view was erroneous, and that inasmuch as the deed of sale contained an exact specification of the shares purchased by the co-sharers-vendees, who had an equal right of purchase to that of the plaintiffs in respect of such shares, and as the shares purchased and the consideration paid by the stranger vendee were also exactly specified, the lower Court should not have decreed the claim for pre-emption as to that portion of the property which had been purchased by the co-sharers. SHEOBHAROS RAI *v.* JIACH RAI . . . I. L. R., 8 All., 462

48. ——— Time from which right takes effect.—*Profits of property accruing between purchase and transfer to pre-emptor.*—*B.* purchased a share in a mehal on the 3rd January 1880 (Pous 1287 Fasli). *A.* sued *B.* and the vendor to enforce his right of pre-emption, and, on the 24th March, 1882 (Chait 1289 Fasli), obtained a final decree enforcing the right. Subsequently *B.*, as a co-sharer in the mehal, during 1288 Fasli, claimed from *A.*, as lumberdar of the mehal, the profits of the share for 1288 Fasli. *Held* that the pre-emptive right which was declared in the suit instituted by *A.*, when it was once established, existed, and must be presumed to have taken effect on the date when the subsequently awarded sale to *B.* took place, and therefore there was no period of time during which *B.* was

PRE-EMPTION—*continued.*

2. RIGHT TO PRE-EMPTION—*continued.*

Time from which right takes effect—*continued.*

properly in possession of the share and entitled to profits from *A.* in his character of lumberdar, but *A.* must be presumed to have been in possession and entitled to the profits from the date of the sale to *B.* AJUDHIA *v.* BALDEO SINGH [I. L. R., 7 All., 674

49. ———— Rights as to period before transfer.—*Interest.*—Although a successful pre-emptor becomes substituted for the original transferee, and thus becomes entitled to the benefits of the transfer, those benefits cannot be claimed by him for any period antecedent to such substitution itself, and a pre-emptor, before his pre-emption is actually enforced, possesses no such right in the subject of pre-emption as would entitle him to any benefits arising out of the property which he is entitled to take but has not yet taken. The original vendee cannot, whilst he is in possession, be regarded as a trespasser, who would have no right to enjoy the usufruct of the property which he has purchased. *Uodan Singh* v. *Muneri Khan, 2 Sel. Rep., 85,* dissented from. *Manik Chand* v. *Rameshur Rae, N.-W. P., S. D. A., 1865, Vol. II, p. 171; Buldeo Persad* v. *Mohun, 1 Agra, Rev., 30;* and *Ajudhia* v. *Baldeo Singh, I. L. R., 7 All., 674,* followed. DEO DAT *v.* RAM AUTAR . . I. L. R., 8 All., 502

3. CONSTRUCTION OF WAJIB-UL-URZ.

50. ———— Presumption of compliance with conditions of law.—*Intention of parties.*—*Held* that where a pre-emptive claim is based on the wajib-ul-urz, it is not to be assumed that the claimant of pre-emption complied with the peculiar conditions which, under the Mahomedan law, are essential to give validity to such a claim, unless expressly provided by the wajib-ul-urz, and the Court construing such contracts ought to consider the intention of the parties as expressed in those contracts, and to give effect to them without alteration or addition. CHOWDHREE BRIJ LALL *v.* GOOR SUHAI [Agra, F. B., 128: Ed. 1874, 95

51. ———— "Brethren."—*Sharers in putti.*—*Preferential right.*—Where the wajib-ul-urz provided that alienation should be first made to brethren of common ancestor, and then to the other sharers of the putti,—*Held* that the brethren in whose favour the first right of pre-emption was secured must be construed to be brethren who were sharers in the putti. HUR SAHAI *v.* JAWALA . 2 Agra, 31

52. ———— Bhai-band.—*Suit to enforce the right of pre-emption.*—*Non-joinder of vendor.*—*Mortgage.*—In a suit for pre-emption it was objected by the vendee in second appeal that the vendor had not been made a party. *Held* that, whether the omission to make the vendor a party in a suit to enforce the right of pre-emption renders the suit unmaintainable or not, as the vendee had not been prejudiced by such omission in this case, the objection taken at such a late stage of the case could not be allowed. *Held,* also, that the word "bhai-band" in the wajib-ul-urz in this case meant the brotherhood of the village, and not merely those persons who were related by blood. *S. A. No. 1054 of 1881* decided the 1st April, 1882, referred to. HIRA LAL *v.* RAMJAS . . . . I. L. R., 6 All., 57

PRE-EMPTION—*continued.*

3. CONSTRUCTION OF WAJIB-UL-URZ—*continued.*

Bhai-band—*continued.*

53. ———— Shikmee showkayan.—*Preference to sharers in thoke.*—*Sharers in village.*—*Held* by a Full Bench, in concurrence with the lower Court, that the proper construction of the words "shikmi showkayan" used in a clause of the administration paper was that they gave a preference to sharers in the thoke over those who were merely sharers in the village. JEY MULL *v.* KESREE [Agra, F. B., 171: Ed. 1874, 128

54. ———— Intiqual.—*Absolute transfer.*—*Conditional sales and usufructuary mortgages.*—*Alienation.*—*Held* on the construction of a wajib-ul-urz that the word "intiqual" not only signifies an absolute transfer but also applies to conditional sales and usufructuary mortgages. CHUTTUR MULL *v.* CHUTTUR KISHORE LALL . . 3 Agra, 396

55. ———— Co-sharers.—*Members of joint Hindu family.*—The members of a joint and undivided Hindu family, other than that member who is recorded in the Collector's book as a sharer in the mehal, are "co-sharers," for the purposes of pre-emption, in the sense of the wajib-ul-urz. GANDHARP SINGH *v.* SAHIB SINGH [I. L. R., 7 All., 184

56. ———— Express limitation of operation of wajib-ul-urz.—*Time limited by agreement for pre-emption.*—When by the express terms of a wajib-ul-urz its operation is limited to the period of the settlement, a right of pre-emption created by it cannot be enforced after the expiry of that period, unless a provision has been made for that purpose, or the operation of the wajib-ul-urz has been extended by the agreement of the parties. RUTTUN SINGH *v.* OOMRAO SINGH [4 N. W., 13

57. ———— Right of alienation.—*Express conditions.*—*Held* that the conditions of the wajib-ul-urz do in no way confer on any person under disability a right of alienation which he does not otherwise enjoy. RADHEY PANDEY *v.* MUNSARAM . . . . . 2 Agra, 85

58. ———— *Condition that sharer's consent shall be obtained.*—*Held,* on the construction of the wajib-ul-urz, that the condition stipulating that alienations should be made with the consent of all the sharers did not stipulate for the existence of pre-emption, and that the claim based on that was untenable. RAM PERSHAD SAHOO *v.* RUMZANEE . . . . . 2 Agra, 37

GAYADEEN *v.* RAMSAHAI . 2 Agra, Pt. II, 181

BUBBOO DOOBEY *v.* ISHREE . . 3 Agra, 74

PRE-EMPTION—*continued.*

3. CONSTRUCTION OF WAJIB-UL-URZ —*continued.*

59. ——— Agreement to offer property to co-sharers.—*Mode of offer.*—Where the terms of a wajib-ul-urz are that the property before sale to a stranger must be offered to the co-sharers, such offer must be made to each and every one of such co-sharers. DOWLUT *v.* NETRAM . **3 N. W., 42**

60. ——— Preferential right of co-sharers.—*Right of refusal.*—Where the terms of the wajib-ul-urz recognise the right of each sharer to sell without the consent of the others, but limit that right so far as to give preference or right of refusal to the co-sharers, the sale to a stranger can only be good and valid on proof of offer being made and refused by the co-sharers. PERMESHREE DOSS *v.* RAIKOONDUN SINGH . . . **3 Agra, 3**

61. ——— *Usufructuary lease, Construction of.*—Where the wajib-ul-urz provided that, in cases of transfer by "sale, &c.," the co-sharers would have a preferential right to the same, —*Held* that the co-sharers were entitled to claim by right of pre-emption to take over an usufructuary lease which was made for the term of eight years. AHMED ALI KHAN *v.* AHMED . **1 Agra, 101**

62. ——— *Shareholders, Right of.—Relatives, Right of.—Strangers.*—One of the provisions in the wajib-ul-urz of a village was that when a shareholder was desirous of selling his share, the right of purchase should lie, first, with the real brother of the shareholder; secondly, with the nearest relatives; thirdly, with the shareholders in the thoke; and lastly, with the shareholders in other thokes. *Held* that, if a person was a near relative, he fulfilled all the conditions required, and there was no necessity that he should belong to the same thoke as the vendor. *Held*, also, where the parties were Mahomedans, that the wife of the vendor must be regarded as a near relative within the meaning of the wajib-ul-urz, and that though she was not a shareholder, she could not be considered a stranger, that is, a person who had no interest whatever in the family. MAHOMED TUKEE *v.* HUJJEE *alias* KHUJJAI . . . . . **5 N. W., 142**

63. ——— Partition, Effect of.—*Co-sharers.—"Village."—Effect of perfect partition on covenants contained in the wajib-ul-urz.*—The wajib-ul-urz of a village contained a covenant among the co-sharers that, in the event of any one of them selling his share, a right of pre-emption should be enforceable, first, by a "near shareholder;" next, by a partner in the thoke; and thirdly, by a partner in the village. The village was subsequently divided into three separate mehals by means of a perfect partition under the N.-W. P. Land Revenue Act (XIX of 1873). *Held* that the agreement regarding pre-emption remained in force after the partition. The term "village," as used in the wajib-ul-urz, means a definite area of land with houses upon it, and does not necessarily imply a joint ownership of such land, inasmuch as after partition there may remain some community of interest, and things held and used in

PRE-EMPTION—*continued.*

3. CONSTRUCTION OF WAJIB-UL-URZ —*continued.*

Partition, Effect of—*continued.*

common by all the inhabitants. Every one who lives in that area has a share in it, and may therefore be regarded as a "shareholder" within the meaning of the wajib-ul-urz. GOKAL SINGH *v.* MANNU LAL **[I. L. R., 7 All., 772**

64. ——— Division of lands in village. —*Right of sharer in one division to right of pre-emption of share in another division.*—The greater portion of the lands of a certain village were divided into "thokes," each thoke comprising a certain amount of land, and the rest of the lands were held in common according to the interest of the co-sharers in the village. The wajib-ul-urz contained the following provision regarding the right of pre-emption: "Each sharer is by all means at liberty to transfer his right and share, but first of all the transfer should be effected by him in favour of his own brothers and nephews who may be sharers, and, in case of their refusal, in favour of the other owners of the thoke." *Held*, in a suit by a sharer in one thoke to enforce a right of pre-emption, under the wajib-ul-urz, in respect of a share in another thoke, that the fact that the plaintiff in common with all the sharers of the different thokes was a sharer in the common lands did not make her a sharer in the vendor's thoke, and she had therefore no right of pre-emption under the wajib-ul-urz. MAYA RAM *v.* LACHHO **[I. L. R., 2 All., 631**

Affirmed on appeal to the Privy Council. LACHCHO *v.* MAYA RAM . . . **I. L. R., 5 All., 158 [L. R., 10 I. A., 1**

65. ——— Nearer co-sharer.—*Mortgage by conditional sale.—Limitation.—Acquiescence.—Equitable estoppel.*—The two joint owners of a 2 annas 8 pies share in a village jointly executed two deeds of mortgage by conditional sale, each for a share of 1 anna 4 pies, in favour, respectively, of *R.* and *A.*, co-sharers in the village, and related to the vendors. In 1875 the conditional sale in favour of *R.* became absolute, and he was recorded as proprietor of half the share of the vendors, and obtained possession thereof. In 1882 *A.* foreclosed his mortgage, and obtained possession of the other half share. *R.* thereupon claimed the right to purchase the half share so acquired by *A.* on the allegation that he had a right of pre-emption in respect thereof, having become the vendee in 1875 of the other half share, and therefore being the "nearer co-sharer" of the vendors within the meaning of the wajib-ul-urz, and also being nearer in relationship to the vendors than *A.* The wajib-ul-urz provided that each co-sharer was competent to transfer his own share, but that, when making a transfer, it was incumbent on him to notify the same to his near co-sharer, and, on his refusal, to other sharers in the village. The lower Appellate Court held that the plaintiff was estopped from preferring a claim to pre-emption on the ground that he had acquiesced in the conditional sale in favour of the defendant, and also that he had no right

PRE-EMPTION—*continued.*

3. CONSTRUCTION OF WAJIB-UL-URZ —*continued.*

Nearer co-sharer—*continued.*

to pre-emption under the wajib-ul-urz. *Held* that inasmuch as from 1875 to 1882 the only owners of the 2 annas 8 pies share were the plaintiff and the mortgagors, they were the only co-sharers in respect of this particular share, although there were other co sharers in the village; that the plaintiff must therefore be regarded as a "nearer co-sharer" of the vendors than the defendant within the meaning of the wajib-ul-urz, and that as such he was entitled to claim pre-emption. *Held,* also, that the right of pre-emption which arose upon the sale was a new right, and not the same as that which arose at the time of the mortgage, inasmuch as the wajib-ul-urz distinctly contemplated the right of pre-emption as arising upon the two different events of mortgage and sale; that the alleged acquiescence of the plaintiff pre-emptor therefore occurred at a time when the right claimed by him was not yet in existence; and that consequently the claim was not barred. RUP NARAIN *v.* AWADH PRASAD

[I. L. R., 7 All., 478

66. ———— **Stipulated price.**—"*Rights and interests.*"—"*Qimat.*"—"*Sale.*"—*Exchange*— The wazib-ul-urz of a village gave a right of pre-emption by a clause providing that in case of transfer by any co-sharer of his rights and interests (haqiyat), his partners should have a right to purchase at the same price (qimat) as the vendee had given. One of the co-sharers transferred to a stranger 1 biswa and 6 dhurs of a grove or garden in exchange for another piece of land.—*Held* by the Full Bench that this transaction was a transfer of haqiyat within the terms of the wajib-ul-urz. *Held,* also, that the plot of land which was given in exchange for the 1 biswa and 6 dhurs must be considered as a price (qimat) within the terms of the wajib-ul-urz. *Per* MAHMOOD, *J.,* that the word "qimat" must be interpreted in the sense given to it by the Mahomedan law, including not only money, but other kinds of property capable of being valued at a definite sum of money, and covering the consideration of "sale" as well of exchange as defined in sections 54 and 118 of the Transfer of Property Act (IV of 1882) respectively. NIAMAT ALI *v.* ASMAT BIBI . . . I. L. R., 7 All., 626

67. ———— **Simple mortgage.**—"*Transfer.*"—*Mortgage.*—*Charge.*—*Act IV of 1882 (Transfer of Property Act), s. 58.*—The wajib-ul-urz of a village gave a right of pre-emption to co-sharers on a transfer (intikal) by sale or mortgage (rahn) by a co-sharer of "rights and interests" (hakkiyat). *Per* PETHERAM, *C. J.*—That as a simple mortgage, as defined in section 58 of the Transfer of Property Act, 1882, by giving a right to sell, transfers an interest in the property mortgaged, a simple mortgage of his share by a co-sharer created a right of pre-emption under the terms of the wajib-ul-urz. *Per* MAHMOOD, *J.*—The circumstance that possession had not been transferred to the mortgagee was one which had no bearing on the question whether a right of pre-emption arose under the terms of the wajib-ul-urz in the case of a simple mortgage. The word "intikal," as used in Hindustani, has the broadest meaning in connection with "alienation," "conveyance," "assignment," or "transfer" of rights in immoveable property. The word "hakkiyat" means rights and interests in the legal sense of the phrase. The word "rahn" is a generic word indicating all that is included in the English word "mortgage," and is not limited to usufructuary mortgages, but includes simple mortgages also. When general words are used in a document, they must be understood in a general sense, unless they are accompanied by any expression limiting or restricting their ordinary meaning, or unless such limitation or restriction arises from necessary implication. The words "intikal," "hakkiyat," and "rahn" in the wajib-ul-urz could be understood only in the most general sense. "Mortgage," as understood in Indian law, includes simple mortgage as well as usufructuary, and one is as much a "transfer of an interest in specific immoveable property" as the other. A simple mortgage is a "transfer," being the transfer of the right of sale. *Held,* therefore, by MAHMOOD, *J.,* that a right of pre-emption accrued under the terms of the wajib-ul-urz in the case of a simple mortgage by a co-sharer of his share to a "stranger." *Per* BRODHURST, *J.,* that one of the entries in a statement showing the transfers which had taken place in the village at or about the time the wajib-ul-urz was framed, which statement was connected with the wajib-ul-urz, related to a simple mortgage, from which it appeared that it was the intention that the co-sharers should have the right of pre-emption in all cases of mortgage, whether usufructuary or otherwise, and therefore a right of pre-emption accrued under the terms of the wajib-ul-urz in the case of a simple mortgage. *Per* DUTHOIT, *J.,* that a pre-emptive right was raised by the terms of the wajib-ul-urz only upon the occurrence of a transfer of a share in the property of the mehal, and a simple mortgage was not a transfer of property. OLDFIELD, *J.*—The word "transfer" used in the wajib-ul-urz was not intended to refer to a simple mortgage, but to mortgages where possession of the property passes to the mortgagee. SHEORATAN KUAR *v.* MAHIPAL KUAR . . I. L. R., 7 All., 258

68. ———— **Mortgage by conditional sale.**—"*Transfer.*"—*Transfer of Property Act, IV of 1882, s. 58.*—A clause in the wajib-ul-urz of a village gave a right of pre-emption in respect of "transfer" by the sharers of their rights and interests by sale and mortgage. *Held* that a deed of conditional sale of a share in the village, which did not transfer possession, was a transfer of an interest in the village, and was sufficient to let in the right of pre-emption. *Sheoratan Kuar v. Mahipal Kuar, I. L. R., All., 258,* followed. AZIMAN BIBI *v.* AMIR ALI

[I. L. R., 7 All., 343

69. ———— **Sale without registration of transfer.**—*Transfer of Property Act, IV of 1882,*

PRE-EMPTION—*continued.*

3. CONSTRUCTION OF WAJIB-UL-URZ —*continued.*

Sale without registration of transfer— *continued.*

s. 5.—Fraudulent omission to transfer by registered instrument.—The wajib-ul-urz of a village gave the co-sharers a right of pre-emption in cases where any one of them should wish to "transfer his share wholly or partly by sale or mortgage." One of the co-sharers entered into a transaction by which he transferred the possession of his share to a stranger for R300 and had mutation of names effected in the Revenue Department, but, in order to avoid the right of pre-emption, the parties omitted to execute or register a deed of sale in respect of the transfer. *Held* by the Full Bench (MAHMOOD, *J.*, dissenting) that the transaction gave rise to the right of pre-emption within the meaning of the wajib-ul-urz. *Per* PETHERAM, *C. J.*, that the terms of the wajib-ul-urz meant that if any co-sharer transferred his right wholly or partly, the right of pre-emption should arise: that although the legal interest in the share was never transferred, the effect of the transaction in question was to transfer absolutely the whole right of possession from the vendor to the vendee, and that it was therefore such a transfer as let in the right of pre-emption. *Per* STRAIGHT, *J.*, that inasmuch as the defendants deliberately omitted to observe the necessary legal formality of a registered instrument with the object of defeating the pre-emptive right, it was very doubtful whether a Court of Equity would be justified in allowing them to set up, and in giving effect to, a defence based upon their own intentional evasion of the law. *Per* OLDFIELD and BRODHURST, *J.J.*, that the failure of the parties to the transfer to comply with the requirements of section 54 of the Transfer of Property Act (IV of 1882), as to the manner in which the transfer should be made, did not alter the nature of the transaction or affect the fact that a sale had been made, and could not affect a pre-emptor's right in respect of it. *Per* MAHMOOD, *J.*, that a valid and perfected sale was a condition precedent to the exercise of the pre-emptive right; that in the present case nothing had happened which could properly be termed a "sale" within the meaning of the wajib-ul-urz; that the application for mutation of names not having been registered, the provisions of section 54 of the Transfer of Property Act prevented it from taking effect as a sale, or passing the ownership from the vendor to the vendee; and that therefore, under the wajib-ul-urz, the right of pre-emption could not arise. JANKI *v.* GIRJADAT I. L. R., 7 All., 482

70. ——— **Calculation of price, Mode of.**—*Proportionate share of purchase-money.*—The wajib-ul-urz of a village contained this clause regarding the transfer of shares by sale or mortgage, *viz.*—"Whenever a shareholder intends to transfer his rights, his nearest co-sharer shall be first entitled to purchase the same, and on his refusal the other sharers in the thoke, and on their refusal sharers in other thokes, will be entitled." *S.*, the proprietor of a 4 pies share in one thoke and of a 9 pies share in another thoke, sold both shares, together with a bungalow, garden, and factory situated on the land comprised in the 4

PRE-EMPTION—*continued.*

3. CONSTRUCTION OF WAJIB-UL-URZ —*continued.*

Calculation of price, Mode of—*continued.*

pies share, for R10,000 to *T.* and others, shareholders in the thoke containing the 9 pies share. *D.* and others, shareholders in the thoke containing the 4 pies share, sued to obtain possession of that share and the bungalow, garden, and factory, claiming the right of pre-emption under the wajib-ul-urz, on payment of a proportionate part of the purchase-money, which they estimated at four thirteenths of that sum, calculating the numbers of pies sold. It was held (in accordance with the opinion of the Full Bench) that the plaintiffs were entitled to claim the right of pre-emption in respect of the 4 pies share to the exclusion of the 9 pies It was also held that the right of pre-emption did not extend to the bungalow, garden, and factory. Instead of adopting the plaintiffs' mode of calculating the price payable for the property claimed, the lower Courts should have ascertained separately the value of the several properties sold. SALIG RAM *v.* DEBI PARSHAD . . . . 7 N. W., 38

4. PURCHASE-MONEY.

71. ——— **Apportionment of purchase-money, Illegality of.**—A person claiming to exercise his right of pre-emption must take the bargain as it was made. Any apportionment of the purchase-money is altogether illegal. MADHUB CHUNDER NATH BISWAS *v.* TOMEE BEWAH . 7 W. R., 210

72. ——— **Dispute as to price.**—*Arrangement between vendor and vendee.*—In a suit to establish a right of pre-emption to property which had been sold, in which the plaintiff alleged that the actual value was different from that which was recited in the deed of sale between the defendants, the vendor and vendee,—*Held* that plaintiff was entitled to have the property at the price agreed upon between the vendor and the vendee, but not to the benefit of an arrangement by which a portion of the price had been allowed to remain in the hands of the vendee that he might pay off a mortgage-debt. GOLAM AYHYA *v.* JOY MUNGUL SINGH . . 13 W. R., 435

73. ——— **Rights of pre-emptor.**—*Sale-contract.—Deduction of amount recovered by vendee.*—A pre-emptor is entitled to all the benefit which the vendee takes under the contract of sale. *Held*, therefore, where a certain sum was fixed as the price of the property, and such sum was paid by the vendee, but it was subsequently agreed between him and the vendor, as part of the sale-contract, that the vendee should recover for his own benefit certain moneys due to the vendor at the time of the sale, and the vendee recovered such moneys, that the pre-emptor was entitled to a deduction of the amount of such moneys from the sum originally fixed as the price of the property. TAJAMMUL HUSAIN *v.* UDA [I. L. R., 3 All., 668

74. ——— **Bad title of vendor as to part of property.**—*Pre-emptor and preferential pre-emptor.*—Certain persons sold an 8-anna share

PRE-EMPTION—*continued.*

4. PURCHASE-MONEY—*continued.*

Bad title of vendor as to part of property—*continued.*

of a village. *G.* sued the vendors and purchasers of the share to enforce his right of pre-emption in respect of the sale, and obtained a decree. *M.*, claiming 1 anna 4 pies of the share as his property, sued the vendors and purchasers of the share and *G.* for such 1 anna 4 pies, and obtained a decree. He then sued the same parties to enforce his right of pre-emption in respect of the remainder of the share, that is, 6 annas 8 pies, claiming to pay only a proportionate amount of the price paid for the whole share. *Held* that *M.* was not bound to pay the price paid for the whole share, but only the proportionate amount of such price. MUHAMMAD LATIF *v.* GOBIND SINGH [I. L. R., 5 All., 382

75. ——— **Amount of purchase-money.**—*Mortgage by conditional sale.—Reg. XVII of 1806, s. 8.—Foreclosure.—Held* that a proceeding under Regulation XVII of 1806 foreclosing a mortgage by conditional sale was not conclusive as to the amount of the mortgage-money against persons subsequently claiming to enforce a right of pre-emption and raising the question as to the amount of the purchase-money. *Forbes v. Ameeroonnissa Begum, 10 Moore's I. A., 340,* referred to. Also that, on general principles, a decree in a suit to foreclose a mortgage by conditional sale cannot bind a person not a party to the suit claiming to enforce a right of pre-emption and raising a similar question. *Held,* also, that a person claiming a right of pre-emption in respect of a mortgage by conditional sale was bound to pay as the price of the property the entire amount due on such mortgage at the time it became absolute. *Ashik Ali* v. *Mathura Kandu, I. L. R., 5 All., 187,* followed. TAWAKHUL RAI *v.* LACHMAN RAI. TAWAKHUL RAI *v.* SHEO GHULAM . . . I. L. R., 6 All., 341

76. ——— **Arrangement between vendor and vendee as to payment of purchase-money.**—*Right of pre-emptor to stand in the position of the purchaser.*—A co-sharer of a village sold part of his share to a stranger. This sale was subject to a right of pre-emption created by the wajib-ul-urz in favour of the partners of the vendor. Only a part of the purchase-money was paid in cash, it being agreed that the balance should remain on credit, and be secured by two deeds in which the property was hypothecated by the purchaser to the vendor. *Held* that it could not be said that the partners of the vendor had not only the right of pre-emption, but also the right to be put in the same position with reference to all the peculiar incidents of the payment of the purchase-money as that arranged between the vendor and purchaser. NIHAL SINGH *v.* KOKALE SINGH [I. L. R., 8 All., 29

77. ——— **Clause in wajib-ul-urz fixing price in case of sale to a co-sharer.**—*Vendor and purchaser.—Sale to a stranger for higher price.—Agreement running with land.—Pre-emptor entitled to take property on payment of price fixed in wajib-ul-urz.—Purchaser entitled to recover purchase-*

PRE-EMPTION—*continued.*

4. PURCHASE-MONEY—*continued.*

Clause in wajib-ul-urz fixing price in case of sale to a co-sharer—*continued.*

money.—The wajib-ul-urz of a village contained a provision that any co-sharer desiring to sell his share should offer it to the other co-sharers before selling it to a stranger, and further, that, in case of sale to a co-sharer, the price to be paid should be calculated in proportion to the price for which a particular share had been sold in 1860. One of the co-sharers, without first offering his share to the other co-sharers, sold it to a stranger, for a price higher than that which would be payable according to the above-mentioned provision. A suit for pre-emption was brought by a co-sharer against the vendor and the purchaser, and the plaintiff claimed the benefit of the sale upon payment of a sum calculated according to the condition of the wajib-ul-urz relating to sales between co-sharers. *Held* by the Full Bench that the condition of the wajib-ul-urz regarding the price to be paid for the share was still binding on the land, notwithstanding the sale; that a co-sharer was entitled to purchase the share at the price agreed before it could be sold to anyone else, and, in case of sale to a stranger, could call on the vendor and the purchaser to hand it over on payment of such price; and that, if the stranger vendee had paid more than was payable according to the wajib-ul-urz, he was entitled to recover it from the vendor. *Akbar Singh* v. *Juala Singh, Weekly Notes, All., 1885, p. 216,* distinguished by TYRRELL, *J.* KARIM BAKHSH KHAN *v.* PHULA BIBI [I. L. R., 8 All., 102

78. ——— **Calculation of price.**—*Covenant for pre-emption, Breach of.—Suit to enforce covenant.*—Four brothers, on making a partition of their joint property, covenanted with each other that if any one of them, or their heirs, had to sell his share, he should offer to sell the same to one of the co-sharers. One of the brothers having died, his widow sold his share which she had inherited without such an offer to the surviving brothers, who thereupon sued her and her vendee for possession upon payment of what they alleged to be the value of the property, *viz.*, R27. The Munsif found the value to be greater (*viz.*, R95), and set aside the sale without giving possession. The lower Appellate Court made an order that, if plaintiffs deposited R95 in Court, their appeal would be decreed. The plaintiffs deposited the amount, and a decree for possession was given them. *Held* that neither of the Courts had the power to make the decrees which they did; and the order of the lower Appellate Court to deposit the money was not binding on the plaintiffs, who had no right under their contract to an election, after the value had been ascertained, whether they would purchase at that price or not. *Quære,*—Can a perpetual covenant as to the disposition of land be enforced? TRIPOORA SOONDURYI *v.* JUGGERNATH DUTT . . . 24 W. R., 321

5. LOSS OR WAIVER OF RIGHT.

79. ——— **Refusal to purchase.**—*Conditional decree.—Held* that the plaintiff, having re-

PRE-EMPTION—*continued.*

5. LOSS OR WAIVER OF RIGHT—*continued.*

Refusal to purchase—*continued.*

fused to purchase at the sum actually given, could not come into Court and ask for a conditional decree, which is given in cases where a higher price than was actually paid has been alleged to have been paid to the prejudice of the pre-emptor. KUDHARA *v.* KHUMAN SINGH . . . . **1 Agra, 265**

80. ——— *Bonâ fide belief that price stated is in excess of real price.*—A person having a right of pre-emption does not lose it by refusing to purchase the property at the price at which it is offered to him, because he believes that such price is in excess of the real price, where such belief is entertained and expressed in good faith. LAJJA PRASAD *v.* DEBI PRASAD **[I. L. R., 3 All., 236**

81. ——— **Effect of imperfect partition on right of pre-emption.**—Where there is imperfect partition,—*viz.*, where the land is divided, but the joint liability to the Government remains, and the property is not made into separate mehals,—the right of pre-emption is not lost. RAM PERSHAD *v.* BULJEET SINGH . . . **2 Agra, 252**

82. ——— **Pre-emptor opposing mutation of names.**—*Effect of such opposition on right of pre-emption.*—*Held* that a pre-emptor is not precluded from claiming the property by right of pre-emption because he opposed the mutation of names only on the ground that the vendor was not in possession. PEERA *v.* SHIMBHOO . **2 Agra, 348**

83. ——— **Insertion of names of purchaser's sons in deed of sale, Effect of.**—*Absence of intention to defraud.*—*Held* that a preferential right to purchase is not lost merely by the inclusion of the names of the sons of the purchaser in the sale-deed, if it be proved that the actual purchaser was the father, and the names of the sons were included in accordance with the prevailing usage, without any intention to defraud the other co-sharers. DOWLUT SINGH *v.* KEDAR SINGH . **3 Agra, 25**

84. ——— **Re-sale.**—*Effect of re-sale on right of pre-emption.*—A re-sale cannot destroy the right of pre-emption in a property the sale of which is admitted by the vendor. PUTOOARAM *v.* SHAM LALL SAHOO . . . . **7 W. R., 206**

85. ——— **Relinquishment of right.**—*Partition of property sold on application of vendee.—Silence of pre-emptor.—Waiver.—Estoppel.*—Subsequently to the sale of a one-third share in a village, the vendee applied for partition of the share. A co-sharer, who had a right of pre-emption in respect of the sale, made no objection to this application, and the partition was effected. The co-sharer afterwards set up a claim to pre-emption. *Held* that there was nothing in the conduct of the pre-emptor which could amount to estoppel, or to a waiver of his right of pre-emption. *Motee Sah* v. *Goklee, N.-W. P., S. D. A., 1861, p. 506,* distinguished and dissented from; and *Bhairon Singh* v. *Lalman, Weekly Notes, All., 1884, p. 216,* referred to by MAHMOOD, *J.* THAMMAN SINGH *v.* JAMAL-UD-DIN . . . . . **I. L. R., 7 All., 442**

PRE-EMPTION—*continued.*

5. LOSS OR WAIVER OF RIGHT—*continued.*

Relinquishment of right—*continued.*

86. ——— *Transfer of property to "stranger."—Right of decree-holder to possession.*—The holder of a decree enforcing a right of pre-emption, who subsequently to the date of the decree sells the property to a "stranger," and permits the latter to pay the purchase-money decreed into Court, does not by such conduct debar himself from obtaining possession of the property in execution of the decree. *Rajjo* v. *Lalman, I. L. R., 5 All., 180;* and *Sarju Prasad* v. *Jumna Prasad,* distinguished. RAM SAHAI *v.* GAYA **[I. L. R., 7 All., 107**

87. ——— *Co-sharer joining relatives with him in claiming right.—Effect on co-sharer's right.—Stranger.*—A co-sharer of an estate, who has a right of pre-emption, does not, merely by joining with himself members of his family, who are not co-sharers in such estate, in a suit to enforce such right, defeat such right. *Manna Singh* v. *Ramadhin Singh, I. L. R., 4 All., 252,* distinguished. BHUREY MAL *v.* NAWAL SINGH **[I. L. R., 4 All., 259**

88. ——— **Forfeiture of right.**—*Transfer by pre-emptor to stranger.—Co-sharer in village.—Wajib-ul-urz.—"Justice, equity, and good conscience."—Held,* applying the doctrine of the Mahomedan law of pre-emption, such doctrine being in accordance with justice, equity, and good conscience, that a co-sharer in a village who had under the wajib-ul-urz a right to the mortgage of a share in such village, who, in anticipation of obtaining the mortgage, mortgaged such share to a "stranger" (that is, a person who had not a preferential right to the mortgage), thereby forfeited such right. RAJJO *v.* LALMAN . . . . **I. L. R., 5 All., 180**

89. ——— **Forfeiture of right.**—*Suit by pre emptor and "stranger" to enforce right.—Effect on pre-emptor's right.—"Justice, equity, and good conscience."—Mahomedan law.—Held,* applying the doctrine of the Mahomedan law of pre-emption, such doctrine being in accordance with justice, equity, and good conscience, that a co-sharer in a village who had under the wajib-ul-urz a right of pre-emption in respect of the sale of a share who joined a "stranger" (that is, a person who has not such right) with himself in suing to enforce such right, thereby forfeited such right. *Sheodyal Ram* v. *Bhyro Ram, N.-W. P., S. D. A., 1860, p. 53; Guneshee Lal* v. *Zaraut Ali, 2 N. W., 343;* and *Fakir Rawot* v. *Emambaksh, B. L. R., Sup. Vol., 35,* referred to. BHAWANI PRASAD *v.* DAMRU **[I. L. R., 5 All., 197**

6. MISCELLANEOUS CASES.

90. ——— **Suit for pre-emption.**—*Custom and contract.—Practice.*—It is the practice

PRE-EMPTION—*continued.*

6. MISCELLANEOUS CASES—*continued.*

Suit for pre-emption—*continued.*

of the Courts to allow claims to pre-emption to be asserted on the grounds both of contract and custom in one and the same plaint. NEHCHUL *v.* THAN SINGH . . . . . 2 N. W., 222

91. ——— **Pleading right of pre-emption.**—*Right pleaded in defence to suit for possession by purchaser of co-sharer's rights and interests.*—A co-sharer of a village, who is in possession, cannot plead the existence of a right of pre-emption in defence to a suit for possession by the purchaser of the rights and interests of another co-sharer. AJUDHIA BAKHSH SINGH *v.* ARAB ALI KHAN [I. L. R., 7 All., 892

92. ——— **Want of opportunity to exercise right.**—*Conditions essential before alienation.*—*Held* that the plaintiff, who had a preferential right to purchase, and had no opportunity offered him, had a right to enforce those conditions, a compliance with which was essential before alienation to others. ABDOOLLAH KHAN *v.* AMEERUN [1 Agra, 274

PRELIMINARY INQUIRY.

See CRIMINAL PROCEEDINGS. [9 W. R., Cr., 54

See CRIMINAL PROCEDURE CODE, 1882, s. 351 (1872, s. 104; 1861-69, s. 206). [14 W. R., Cr., 20

See MAGISTRATE, JURISDICTION OF—COMMITMENT TO SESSIONS COURT. 3 B. L. R., A. Cr., 47

PREROGATIVE OF THE CROWN, STATUTE LIMITING—

See SUPREME COURT, BOMBAY. [3 Moore's I. A., 468, 488

PRESCRIPTION.

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1. CLAIM TO PRESCRIPTION	4560
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See POSSESSION—EVIDENCE OF TITLE. [I. L. R., 1 Bom., 592

PRESCRIPTION—*continued.*

1. CLAIM TO PRESCRIPTION.

1. ——— **Assertion of right, Form of.**—*Election in alternative case.*—The right asserted in a claim founded on prescription should be strictly and clearly defined, and cannot be based on rights which are inconsistent. When a party is called upon by the Court to elect which branch of a double case he will proceed with, the election must be distinct and clear and such as will bind him and will show accurately on the face of the record the claim (if any) which is abandoned. BIJOY KESHUB ROY *v.* OBHOY CHURN GHOSE . . 16 W. R., 198

See DHUNPUT SINGH BAHADOOR *v.* NARAIN PERSHAD SINGH . . . 20 W. R., 94

2. EASEMENTS.

(*a*) GENERALLY.

2. ——— **Prescription Act.**—*Law of mofussil of India.*—The English Prescription Act does not apply to the mofussil of India. JOY PROKASH SINGH *v.* AMEER ALLY . 9 W. R., 91

3. ——— **Easements, Law of.—Applicability of, to British subjects in India.**—*Civil law.*—The law of easements in England, being derived from the civil law, has no peculiarities to debar its being applied to British subjects in India. CULLIANDOSS KIRPARAM *v.* CLEVELAND [2 Ind. Jur., O. S., 15

4. ——— **Foundation of prescriptive rights.**—*Presumption of grant.*—Prescriptive rights are founded on the presumption of a grant from long-continued uninterrupted user and enjoyment as of right. CHUNDER JALEAH *v.* RAMCHURN MOOKERJEE . . . . . 15 W. R., 212

5. ——— **Easement, how created.**—*User.*—*Easement creating damage to servient tenement.*—A grant, either express or implied, in prescription, is necessary to establish an easement. Conclusive evidence is required to prove an easement the result of which is great damage to the servient tenement. Without an uninterrupted user there can be no claim to an easement. ZUMEER ALI *v.* DOORGABUN [1 W. R., 230

6. ——— **Long possession.**—*User.*—*Presumption of title.*—Long and undisturbed user or possession confers title by prescription, because it is presumed to be founded on title. GOOROO PERSHAD ROY *v.* BYKUNTO CHUNDER ROY . 6 W. R., 82

7. ——— *Permissive possession.*—To constitute a right by prescription, the possession must have been as of right. Mere permissive possession cannot be the basis of right by prescription. ASKAR *v.* RAM MANICK ROY [5 B. L. R., Ap., 12: 13 W. R., 344

8. ——— **Right of user.**—*Ancient and uninterrupted right.*—A party claiming the right of user by prescription over the property of another

PRESCRIPTION—*continued.*

2. EASEMENTS—*continued.*

(*a*) GENERALLY—*continued.*

Right of user—*continued.*

must show not only that the right has existed from ancient days, but also that it has been exercised as of right, and has not been interrupted. MALLIK JAWAD-UL-HUQ *v.* RAM PRASAD DAS [3 B. L. R., A. C., 281

9. ——— Period creating right.—*User as creating prescriptive title.*—It was formerly held that no fixed period had been laid down to create a right by prescription. KRISHNA MOHAN MOOKERJEE *v.* JAGANNATH ROY JUGI . 2 B. L. R., A. C., 323

RUPCHANDRA GHOSE *v.* RUPMANJARI DASI [3 B. L. R., A. C., 325 : 12 W. R., 274

DOORGA CHURN PAUL *v.* PEARBE MOHUN [9 W. R., 283

BIJOY KESHUB ROY *v.* OBHOY CHURN GHOSE [16 W. R., 198

10. ——— *Uninterrupted enjoyment.*—*Bom Reg. V of 1827, s. 1, cl. 1.*—*Held* that uninterrupted enjoyment for a period of more than thirty years was necessary in order to acquire a title by prescription to an easement in the mofussil of the Bombay Presidency; the law applicable to such cases being Regulation V of 1827, section 1, clause 1, and that Act XIV of 1859 had made no alteration in this respect. ANAJI DATTUSHET *v.* MORUSHET BAPUSHET . . 2 Bom., 354: 2nd Ed., 334

RAMBHAU BAPUSHET *v.* BHAI BAPUSHET [2 Bom., 352: 2nd Ed., 333

11. ——— *User.*—*Cases prior to Limitation Act, 1871.*—Prior to the passing of the Limitation Act, 1871, in order to give rise to an easement by prescription over immoveable property in the island of Bombay it was necessary for a plaintiff claiming such an easement to prove twenty years' uninterrupted user of it. NAROTAM BAPU *v.* GANPATRAV PANDURANG . . 8 Bom., O. C., 69

The period was fixed by the Limitation Act, 1871, section 27, at twenty years, and that provision has been continued in the present Limitation Act, section 26.

12. ——— Alterations in property.—*Severance of tenements.*—*Continuance of easement without grant.*—If the alterations which a man makes in his property before alienation of any part of it are palpable and manifest, and in their nature permanent changes in the disposition of the property, so that one part thereof becomes dependent on another, the purchaser of either part must take the land either burdened or benefited, as the case may be, by the qualities thus attached thereto. On a severance of tenements, an easement in its nature continuous would pass by implication of law without any words of grant. AMUTOOL RUSSOOL *v.* JHOOMUCH SINGH [24 W. R., 345

(*b*) HOUSES.

13. ——— Loss of easement.—*Discontinuance of user.*—*Pulling down house.*—Where the

PRESCRIPTION—*continued.*

2. EASEMENTS—*continued.*

(*b*) HOUSES—*continued.*

Loss of easement—*continued.*

house, the right of easement to which was claimed, was not and had not been in existence for several years, nor was the intention shown of rebuilding it within a reasonable time,—*Held* that the right of easement which is acquired by prescription and enjoyment, and continues so long as the person enjoying it continues the enjoyment and shows an intention to continue it, had thus been lost by discontinuance; and that by the destruction of the tenement the servitude had been extinguished, and the plaintiff had no right to maintain the suit for the right of easement. TEEKA RAM *v.* DOORGA PERSHAD [1 Agra, 196

KALEE DASS BANERJEE *v.* BHOOBUN MOHUN DOSS . . . . 20 W. R., 185

14. ——— Long-continued user of house as house of prayer.—*Public right.*—A thatched house, which had been used by the proprietor of the land whereon it stood as a house of prayer for himself, family, neighbours, and the public, having been blown down, a brick-built one was erected in its stead by public subscription and maintained for the same purpose. After the proprietor's demise his heirs claimed the right and title to the house. *Held* that the consent of the proprietor, added to the long use of the house by the public, entitled the public by way of implied grant to the occupation of the same as a house for prayer, and the plaintiffs could not succeed. SUFROO SHAIKH DURJEE *v.* FUTTEH SHAIKH DURJEE . . 15 W. R., 505

(*c*) LAND.

15. ——— Title by prescription.—*Adverse possession.*—*Quære,*—Whether a title to land can be gained by prescription without adverse possession. RAJ NARAIN DUTT *v.* GOURMONEE DOSSEE . . . . . 6 W. R., 215

16. ——— Immemorial use of land for burial ground.—*Right of zemindar.*—Where a piece of land has been used from time immemorial by the inhabitants of a mohulla for the purpose of burying their dead, such use excludes any claim to exclusive possession by the zemindar which interferes with that use. MOHUN LALL *v.* NOOR AHMUD . . . . 1 N. W., Ed. 1873, 202

17. ——— Right to land for stall in market.—In a suit to recover possession of a piece of land on which defendant had erected a stall for the sale of commodities on market days, it was held that defendant's right of resort to the market as a member of the public did not warrant his having a stall located in a particular spot, and that the latter right could only be acquired either by grant or by prescription. RAM MANICK ROY *v.* ASGUR [11 W. R., 112

PRESCRIPTION—*continued.*

2. EASEMENTS—*continued.*

(*c*) LAND—*continued.*

18. ——— Intervention of owner after title lost by lapse of time.—Where a proprietor of certain land lost all title to it through the operation of the Statute of Limitations, but subsequently intervened and held it for a year or two twenty-eight years before action brought, while Regulation V of 1827 was in force, it was held that he could not rely on this possession to defeat the statute, but must show affirmatively that this intervention was rightful and in virtue of proprietorship, and such as to supersede the previous prescriptive right acquired against him. RAM CHANDRA BIN MADHAVRAV *v.* ABAJI . . . . . **1 Bom., 64**

19. ——— Right to watan.—*Bom. Reg. V of 1827, s. 1, cl. 1.—Uninterrupted possession.*—The plaintiff in 1861 sued to recover his share in a watan. The defendants had been in actual possession of it from 1811 to 1830, when the Government attached the watan and enjoyed its revenues till 1845. In 1846 it was restored to the defendants. *Held* that the defendants had uninterrupted possession for more than thirty years, under clause 1 of section 1 of Regulation V of 1827. LADO LAKSHUMAN *v.* KRISHNAJI SADASHIV. **6 Bom., A. C., 41**

(*d*) MONEY ALLOWANCE.

20. ——— Allowance attached to hereditary office.—*Bom. Reg. V of 1827.—Immoveable property.*—An annual allowance for palki haq to the holder of the hereditary office of desai paid by Government out of the land revenue of a particular pergunnah to successive desais for upwards of thirty years was held not to create a prescriptive title, as such money payment was not "immoveable property" within the meaning of Bombay Regulation V of 1827, section 1, clause 1. GOVERNMENT OF BOMBAY *v.* DESAI KULLIANRAI HAKOOMUTRAI **[14 Moore's I. A., 551**

21. ——— Annual allowance.—*Presumed grant.*—For upwards of a century the holders of an inam had paid an annual allowance to the parties represented by the appellants, plaintiffs below. *Held* (TUCKER, *J.*, *dissentiente*) that the recipients had acquired a good title to the allowance by prescription, and that an original grant for a sufficient consideration must be presumed. BHAVANI *v.* HASAN MIYA . . . . . **1 Bom., 45**

22. ——— Continued voluntary payment.—*Bom. Reg. V of 1827, s. 1.—Chirda haqs.—Acquisitive prescription.*—A prescriptive right to have a yearly payment made by Government to a private individual cannot be acquired by reason of a continued series of voluntary payments made to him by Government extending over a period of more than thirty years. Thus where Government paid a yearly sum of R32-4-6 to a chirda haqdar, by whom no services in return were rendered, from the year 1818 to 1860, and then discontinued such payment to the heir of the last holder, it was held that such

PRESCRIPTION—*continued.*

2. EASEMENTS—*continued.*

(*d*) MONEY ALLOWANCE—*continued.*

Continued voluntary payment—*continued.*

yearly payments gave the haqdar no prescriptive rights against Government. COLLECTOR OF SURAT *v.* DAJI JOGI . . . **8 Bom., A. C., 166**

23. ——— Allowance not incidental to hereditary office.—*Bom. Reg. V of 1827, s. 1, cl. 1.*—In considering, with reference to prescription, whether an allowance (not being incidental to an hereditary office) is or is not immoveable property, the High Court has generally followed the test—"Is or is not the allowance a charge upon land or other immoveable property?" Where an allowance by Government was neither incidental to an hereditary office nor a charge upon immoveable property, and was not supported by a grant from Government, the enjoyment of it for thirty years did not create a prescriptive title to its continuance under Regulation V of 1827, section 1, clause. 1. GOVERNMENT OF BOMBAY *v.* GASVAMI SHRI GIRDHARLALJI **[9 Bom., 222**

24. ——— Fixed permanent allowance.—*Grant.—Immoveable property.—Nibandha.—Hindu law.*—The right to receive annually a fixed permanent allowance payable out of the revenues of a temple is "nibandha," and must be regarded as immoveable property under the Hindu law; but this rule could not enable the right to be acquired by prescription. LAKSHMANDAS BHAGATRAMJI *v.* MANOHAR GANESH TAMBEKAR . **I. L. R., 10 Bom., 149**

(*e*) OFFICE.

25. ——— Religious office held by successive appointees.—*Bom. Reg. V of 1827, s. 1, cl. 1.*—When a religious office with lands attached thereto was held by several gurus in succession, each holding such office by virtue of an appointment made on his accession, it was held that no proprietary right could be acquired by such gurus in the office or lands against the patron or owner, by prescription, as such a case did not come within the meaning of clause 1 of section 1 of Regulation V of 1827. TVATAT SVAMI *v.* ANDANYA CHARANTI. **[6 Bom., A. C., 132**

(*f*) COLLECTION OF REVENUE.

26. ——— Joint kabuliatdars.—*Exclusive collection by one kabuliatdar for more than 30 years.*—Where a kabuliatdar collected Government revenue for more than thirty years, the kabuliat being signed each year by his co-kabuliatdar as well as by himself, it was held that by so doing he had not, under the circumstances, acquired a prescriptive right to collect the revenue to the exclusion of his co-kabuliatdar. BAPU RAM PARBHU *v.* VISAJI CHANDO SAKTANEKAR . **8 Bom., A. C., 182**

(*g*) LIGHT AND AIR.

27. ——— Light and air, Right to.—*Easements to dwelling-house.—Use as a dwelling-*

PRESCRIPTION—*continued.*

2. EASEMENTS—*continued.*

(*g*) LIGHT AND AIR—*continued.*

Light and air, Right to—*continued.*

house.—To acquire by prescription a right to the uninterrupted access of light and air through the windows of a dwelling-house, it is sufficient that the building in respect of which the right is claimed has assumed the appearance and outward aspect of a dwelling-house for more than twenty years before the time of the commencement of the suit, though not completed or used as a dwelling-house for the full period of twenty years before that time. When a building is so far completed as to show an intention to use it as a dwelling-house, with certain windows or openings for light and air, from that time it becomes the duty of those who are concerned in preventing a prescriptive right to the access of light and air from arising in respect of such windows, to take steps to challenge and hinder the acquisition of such right. PRANJIVAN DAS HARJIVAN DAS *v.* MAYARAM SAMAL DAS . . . . **1 Bom., 148**

28. ——————— *Ancient lights.*—Ancient lights cannot be obstructed by the owner of the adjacent land building on it, so as to obscure the light and air always enjoyed. Whether the party has or has not other windows on another side of his premises is immaterial. PURAN MUDDUCK *v.* OODAY CHAND MULLICK . . . **3 W. R., 29**

MAHOMED HOSSEIN *v.* JAFUR ALI . **4 W. R., 23**

29. ——————— *Right to have windows closed.—Invasion of privacy, comfort, and ventilation.*—If the plaintiff's privacy was invaded, and the defendant could not establish his right by long usage, the former was entitled to have the windows closed, and the latter could not be allowed to open new windows, merely because the comfort and ventilation of his own building would be increased. GOOR DASS *v.* MANOHUR DASS . **2 Agra, 269**

30. ——————— *Presumption of lost grant.—Positive and negative servitudes.—Obstructions.—2 & 3 Will. IV., c. 71.*—In a suit to remove an obstruction to the enjoyment of light and air and for damages,—*Held* by MARKBY, *J.*, that in cases where English law is applicable, the law of prescription is that existing in England prior to the passing of the Prescription Act. Although the enjoyment of light and air as of right for upwards of thirty years is evidence from which an enjoyment from time immemorial may be presumed, yet inasmuch as the period of legal memory is about 700 years, the claim by prescription in this country is defeated by the fact that English law has only been introduced here for about 200 years. Where an easement has been enjoyed for upwards of twenty years, the presumption of a grant is a question of fact, and not of law. Distinction drawn between positive and negative servitudes. *Held* by PEACOCK, *C. J.*—A right to air may be acquired by express grant, but it cannot be acquired merely by presumption arising from user, whether the presumption is a presumption of prescription or not. The only amount of light which can be claimed by prescription or by length

PRESCRIPTION—*continued.*

2. EASEMENTS—*continued.*

(*g*) LIGHT AND AIR—*continued.*

Light and air, Right to—*continued.*

of enjoyment, without an actual grant, is such an amount as is reasonably necessary for the convenient and comfortable habitation of the house. The uninterrupted enjoyment of light for twenty years acquiesced in by the owner of the servient tenement raises a presumption of right which, in the absence of any evidence to rebut it, ought to be acted upon by those who have to determine the facts. Such presumption is one of law, and not of fact. *Held* by NORMAN, *J.*—Servitudes are known and recognised both in Hindu and Mahomedan law. A right to the unobstructed access of light is not a property or interest in the light itself, nor a right to be enjoyed in or over the soil of the adjacent owner. By analogy to the law of limitation, an adverse and uninterrupted use of an easement for twenty years confers a right to it: therefore, where the access of light and air through the windows of a house has been enjoyed for twenty years, and there is nothing to rebut the presumption of title, the law implies an obligation on the part of an adjoining owner not to interrupt the free access of necessary light and air through such windows. BAGRAM *v.* KHETTRANATH KARFORMAH **[3 B. L. R., O. C., 18**

31. ——————— *Knowledge and acquiescence.—2 & 3 Will. IV., c. 71.*—In a suit for enforcing the removal of an obstruction to the alleged right of the plaintiffs to the light and air through certain windows in a room of a house contiguous to the house of the defendants, it was proved that the plaintiffs had purchased the premises in 1847, and that the building of the room in which the windows in question were had been subsequently commenced in 1849; and the Judge of the Court below found on the evidence that the room and windows had been completed and in use for a period of twenty years prior to the date of suit, May 18th, 1870; that the plaintiffs had enjoyed the light and air through the windows for a period of twenty years without any interruption by the defendants; and it being proved that the defendants had by buildings obstructed the light and air coming to the plaintiffs' windows, he granted an injunction commanding the defendants to take down so much of the wall as rose to the height of more than five feet above the level of the plaintiffs' floor, and restraining them, the defendants, from continuing their building above the height of five feet *Held*, on appeal, *per* COUCH, *C. J.*—By the English law before the Prescription Act (which is the law governing the case), the presumption of a grant, in the case of a claim to the access and use of light for a building, was a presumption of fact, the presumption being founded on the consent or acquiescence of the owner of the servient tenement. Acquiescence implies knowledge, and knowledge may be presumed where the owner is in possession. There must be knowledge for twenty years, at any rate; if the knowledge were for a lesser period, whether there was a grant would be a question of fact, and no presumption could arise.

PRESCRIPTION—*continued.*

2. EASEMENTS—*continued.*

(*g*) LIGHT AND AIR—*continued.*

Light and air, Right to—*continued.*

The question of whether or not there was knowledge is one preliminary to the consideration whether or not a grant is to be presumed. *Held* on the evidence that there had been no knowledge on the part of the defendants during the whole time, and therefore there had not been a twenty years' enjoyment of the light and air with their acquiescence. *Held per* MARKBY, *J.*—The presumption of a lost grant is one of fact. An uninterrupted user for twenty years would be evidence from which, taken with other circumstances, it might be inferred that a grant had existed. No "patientia," or "submission" on the part of the defendants being shown so as to constitute an acknowledgment of the existence of the right of the plaintiffs to the light and air, the defendants were entitled to succeed. BHUBAN MOHAN BANERJEE *v.* ELLIOTT . . . . **6 B. L. R., 85**

Held on appeal to the Privy Council, that the law of prescription applicable to India was the English law previous to the passing of the Prescription Act, 2 & 3 William IV., Cap. 71. In order to establish a right to light and air, an uninterrupted user of at least twenty years, with the acquiescence of the owner of the servient tenement, must be shown. In a suit to restrain the defendants from obstructing the light and air through certain windows of a house belonging to the plaintiffs, it was shown that the enjoyment of the alleged right began on 14th April 1850, the windows then being in a sufficiently finished state to create the right. In March 1870, the plaintiffs received notice from the defendants of their intention to erect a building which would have the effect of obstructing the passage of light and air through the plaintiffs' windows. The building was actually commenced on 23rd March 1870, but it was not actually raised to such a height as to amount to an obstruction until some days after the twenty years had elapsed. *Held* that there was not an enjoyment for twenty years with the acquiescence of the defendants such as entitled the plaintiffs to maintain the suit. *Quære,*—Whether proof of constructive knowledge on the part of the defendants would not be sufficient to show their acquiescence. ELLIOTT *v.* BHOOBUN MOHUN BONERJEE

[12 B. L. R., 406 : 19 W. R., 194
L. R., I. A., Sup. Vol., 175

32. ——————— *Act IX of 1871, s. 27.—Enjoyment "as of right."—Unity of possession.—The English Prescription Act (2 & 3 Will. IV., c. 71), s. 3.—Grant independent of user.*—In a suit to restrain the defendant from obstructing the access of light and air through certain windows of the plaintiff's house, it appeared that both the tenements had formerly constituted the joint property of a Hindu family, and that in 1835 a partition took place among the various members composing it, by which the tenement in the occupation of the plaintiff became separated from that occupied by the defendant; that the latter property was, in 1860, purchased by the plaintiff jointly with one *G*, but under

PRESCRIPTION—*continued.*

2. EASEMENTS—*continued.*

(*g*) LIGHT AND AIR—*continued.*

Light and air, Right to—*continued.*

the purchase the plaintiff took sole possession thereof; that in 1867, however, he relinquished it in favour of *G.* in pursuance of an award, wherein it was found the plaintiff had no right or title thereto; and that in 1870 it was purchased by the defendant, who, in 1871 and 1872, erected the obstructions complained of by the plaintiff. *Held* that though, in the interval between 1860 and 1867, the plaintiff had not such an estate in the servient tenement as to constitute unity of title in him to the two tenements, and thereby extinguish all easements between them, yet the unity of possession in the plaintiff during that period excluded the operation of section 27 of Act IX of 1871, as the enjoyment during that time was not "of right." *Semble,*—In order that the enjoyment should be "of right," there must be an adverse exercise of it as against the servient holder. Act IX of 1871 does not exclude other modes than therein provided of acquiring an easement by enjoyment. In this case, applying the law of prescription in force in Calcutta prior to 1871, which was the English law previous to the passing of 2 & 3 William IV., Cap. 71, a grant might be implied independently of user: and under the circumstances of the case, the plaintiff was entitled to such right to easements of light and air as can be inferred from enjoyment,—*i.e.*, a right to restrain the defendant from committing any act whereby the access of light or air should be so diminished as with respect to air to prove a nuisance or injurious to health, and with respect to light to render the house unfit for comfortable habitation. MODHOOSOODUN DEY *v.* BISSONATH DEY

[15 B. L. R., 361

33. ——————— *Ancient lights.—Enlargement of window.—Obstruction.—Notice.—Delay.—Mandatory injunction.*—Where a person, who has a right to light from a certain window, opens a new window, or enlarges the old one, the owner of an adjoining house has a right to obstruct the new or enlarged opening, if he can do so without obstructing the old; but if he cannot obstruct the new without obstructing the old, he must submit to the burden. A plaintiff entitled as of right to light and air through a certain window, subsequently enlarged it, and on the light thereto being interfered with by the defendant, gave him notice to remove the obstruction two days after it had been completed. *Held* that he had been guilty of no delay in taking steps to prevent the obstruction, and that he was entitled to a mandatory injunction requiring the defendant to remove it. PROVABUTTY DABEE *v.* MOHENDRO LALL BOSE

[I. L. R., 7 Calc., 453

34. ——————— *Obstruction.—Substantial injury.—Injunction.—Damages.—Acquiescence.*—Any act by which the control of light and air are taken out of the hands of the person entitled to them, or by which the access of light and air to the window of a dwelling-house is interfered with, is *prima facie* an injury of a serious character.

PRESCRIPTION—*continued.*

2. EASEMENTS—*continued.*

(*g*) LIGHT AND AIR—*continued.*

Light and air, Right to—*continued.*

Where the defendant, without leave or license, took possession of the plaintiff's window as completely as if he had blocked it up altogether,—*Held* that no precedent warranted the substitution of damages for an injunction in such a case against the plaintiff's will. The defendant's building which obstructed the access of light and air to the plaintiff's window began in May and the plaintiff instituted his suit in July. *Held* that, *primâ facie*, the plaintiff was entitled to the removal of the obstruction, and that it was for the defendant to show that the right had been lost by acquiescence. NANDKISHOR BALGOVAN *v.* BHAGUBHAI PRANVALABDHAS

[I. L. R., 8 Bom., 95

35. ———————— *User.—Adjoining houses with party wall.*—The plaintiff and defendant being owners of two adjoining houses, with a common party wall between them, the former placed a window-frame in an aperture in an upward extension of his part of the wall which he had erected eight years before suit, and the latter thereupon raised the wall on her side so as to cut off the supply of light and air which the plaintiff used to receive before, and after the placing of the window-frame. *Held* that there had been no appropriation of the light and air by the plaintiff for the statutory period (twenty years) creating in him a right of easement, and entitling him to relief against the inconvenience sustained by him. SARUBAI *v.* BAPU NARHAR

[I. L. R., 2 Bom., 660

36. ———— Air, Right to.—*Right to uninterrupted passage of air.*—The owner of a house cannot by prescription claim to be entitled to the free and uninterrupted passage of a current of wind. He can claim no more air than what is sufficient for sanitary purposes. BARROW *v.* ARCHER

[2 Hyde, 125

(*h*) RIGHT OF WAY.

37. ———— Path across land.—*Implied grant.—Modes of acquiring easements.—Limitation Act (XV of 1877), s. 26.*—In a suit for an injunction to restrain the defendant from using a path on the plaintiff's land, it appeared that the land held by the plaintiff and defendant had originally belonged to one owner, and that the plaintiff and the defendant had obtained their respective tenements more than twenty years previously. The path had been admittedly made by the original owner, but the plaintiff contended that when he purchased the land he had closed the path. This the Munsif disbelieved, and refused the injunction. The District Judge, treating the case as if it fell under section 26 of the Limitation Act, and being of opinion that the defendant had not proved twenty years' peaceable, open, and uninterrupted exercise of the right of way, gave the plaintiff a decree *Held* that the mode of acquiring an easement provided by section 26 of the Limitation Act is not the only way in which an easement may be acquired, but an easement may also be acquired by implied grant. In the present case the use of the path might be absolutely necessary to the enjoyment of the defendant's tenement, in which case there would be an easement of necessity; or the use of the path, though not absolutely necessary to the enjoyment of the defendant's tenement, might be necessary for its enjoyment in the state in which it was at the time of severance; and in this case, if the easement were apparent and continuous, there would be a presumption that it passed with the defendant's tenement. CHARU SURNOKAR *v.* DOKOURI CHUNDER THAKOOR

[I. L. R., 8 Calc., 956 : 10 C. L. R., 577

PRESCRIPTION—*continued.*

2. EASEMENTS—*continued.*

(*h*) RIGHT OF WAY—*continued.*

Path across land—*continued.*

38. ———— Lane from public road to house.—*User.—Limitation Act (IX of 1871), s. 27.*—In a suit for declaration of the plaintiff's right of way over a lane leading from a public road to a door in the plaintiff's house, which lane the defendant, who resided at the end of the lane, had obstructed so as to prevent access to the plaintiff's house, it appeared that the house in respect of which the easement was claimed belonged in 1855 to one *H. C.*, during the time of whose occupation there was user of the right of way over the lane to the door, until he had the door bricked up. In April 1865 the house was sold by *H. C.*, and in June 1867 was conveyed by the purchaser to the plaintiff. From the blocking up of the door until the plaintiff's purchase no user was proved. The suit was brought in June 1875, about a month after the erection by the defendant of the obstruction complained of. *Held*, both in the Court below and on appeal, that the owner of the dominant tenement having, with the intention of preventing the use of the way, created an obstruction of a permanent nature which rendered such use impossible, the way could not be said, during the continuance of such obstruction, to have "been openly enjoyed" within the meaning of section 27 of Act IX of 1871, and that, accordingly, though there had been no interruption within the meaning of that section, a right to the way had not been established under the Act. SHAM CHURN AUDDY *v.* TARINEY CHURN BANERJEE

[I. L. R., 1 Calc., 422 : 25 W. R., 228

39. ———— Right of passage.—*Unity of possession.—Severance.—Nuisance arising from acts of several persons.*—The words "appurtenant" or "belonging" will ordinarily carry only actual existing easements, and therefore will carry no right of way over the land of the grantor, though, under certain circumstances, even these words will have a wider construction. Where further words are used, such as "therewith held or used," such words will carry a way formerly enjoyed as an easement, but as to which the right has been suspended by unity of possession. But such words will not carry a way made by the owner of both properties during the unity of possession for his own greater convenience in the use

PRESCRIPTION—*continued.*

2. EASEMENTS—*continued.*

(*h*) RIGHT OF WAY—*continued.*

Right of passage—*continued.*

of the two properties jointly. But where, during the unity of possession, a way, which has never existed as an easement, is in fact used for the convenience of one of the tenements afterwards severed, the authorities show that the words in question are large enough to carry it. One who has a right of passage over any place, must not, any more than the owner of the soil might, use it in an excessive or improper manner so as to obstruct the exercise by others of their rights. The acts of several persons may together constitute a nuisance, though the damage occasioned by the acts of any one, if taken alone, would not be appreciable. CHUNDER KOOMAR MOOKERJI *v.* KOYLASH CHUNDER SETT

[I. L. R., 7 Calc., 665

Substantially confirmed on appeal; *see* SHAMA CHURN DEY *v.* CHUNDER COOMAR MOOKERJEE. CHUNDER COOMAR MOOKERJEE *v.* KOYLASH CHUNDER SETT . . I. L. R., 8 Calc., 677

40. ——— Right of passage for boats in the rainy season.—*Water.*—A right of passage for boats in the rainy season over a channel wholly in another man's land, is, in respect of extent, analogous to an ordinary right of way; and the dominant owner cannot complain of the servient owner's narrowing the channel, so long as the latter, by so doing, does not prevent the former from passing and repassing as conveniently as he has always been accustomed to do. A right of passage for boats in the rainy season over another person's tank must be claimed in a particular direction in order to be valid. DOORGA CHURN DHUR *v.* KALLY COOMAR SEN . I. L. R., 7 Calc., 145: 8 C. L. R., 375

41. ——— Right of private ferry.—*User for twenty years.*—*Per* GARTH, *C. J.*, and WHITE, *J.*—Twenty years is the shortest period within which such a right of ferry can be established by user. *Per* MITTER, *J.*—Where the existence of a private right of ferry plying between the lands of *A.* and *B.* is admitted by *B*, no question of user arises; the issue that is raised between the parties is not whether a private ferry exists, but whether the recognised private ferry which is in existence is the property of *A.* or *B.*: but *semble*—supposing such question of user to arise, a right of private ferry cannot be established as an indefeasible right by long user. PARMESHARI PROSAD NARAIN SINGH *v.* MAHOMED SYUD

[I. L. R., 6 Calc., 608: 7 C. L. R., 504

(*i*) RIGHT TO WATER.

42. ——— Right to flow of water.—*Obstruction to flow of water.*—*Continual user.*—The plaintiff brought a suit to establish his right to an uninterrupted flow of water through a channel which ran into a tank in a village which was the plaintiff's property, and to compel the removal of sluices erected across the said channel by the first defendant's predecessor in office, and used for the purpose of diverting the flow of the water. *Held* that acquiescence in the sense of mere submission to the interruption of the enjoyment does not destroy or impair an easement. To be effectual for that purpose it must be attributable to an intention on the part of the owner to abandon the benefit before enjoyed. *Held*, also, that the diversion of the water was a continuing injury down to the time of the institution of the suit, and that the plaintiff's suit was not barred. *Held*, also, that it must appear from the circumstances in evidence in such case that the interference or obstruction complained of is not a trivial but a substantial injury in order to warrant relief by way of injunction. *Held*, also, that the right to an easement in the flow of water through an artificial water-course is as valid against the Government as it is against a private owner of land. *Held, per* SCOTLAND, *C. J.*—That the grant of an easement may be presumed from mere continued user of the privilege openly enjoyed by the occupiers of the dominant tenement as of right throughout any long period of time without interruption on the part of the proprietor of the servient tenement, but with this qualification, that the user should be for at least the period of adverse possession which is prescribed by section 1, clause 12 of the Act of Limitations, as a bar to the enforcing of title to corporeal property. *Per* INNES, *J.*—That no precise period of uninterrupted enjoyment can be fixed as sufficient of itself to establish a right to an easement. PONNUSAWMI TEVAR *v.* COLLECTOR OF MADURA . . . 5 Mad., 6

43. ——— *Presumption from long user.*—*Limitation Act, 1877, s. 27.*—A right to the uninterrupted flow of water along a defined channel over the lands of others may exist independently of the provisions of section 27 of the Limitation Act, 1871. When such a right is claimed as a hereditary and customary right and evidence is given in support of long user, such evidence may be sufficient to justify the Court in presuming a grant of the easement, and a Court is not justified in dismissing the suit on the ground that there had been no user by the plaintiff within two years prior to suit. SRINIVASA RAU SAHEB (JAGIRDAR OF ARNI) *v.* SECRETARY OF STATE FOR INDIA

[I. L. R., 5 Mad., 226

44. ——— *Permission to erect dam.*—*Grant.*—*Relief against injury done by permissive act.*—When a tenant by his lessor's permission erected a dam upon his holding, and thereby obstructed the natural flow of the water to other lands of the lessor,—*Held* that the mere permission did not amount to a grant. *Held*, also, that there was no implied grant of the right to use water so as to derogate from the rights of those through whose lands the stream would otherwise flow. *Held*, also, that the right under the permission might be terminated by revocation of the latter, but that such

PRESCRIPTION—*continued.*

2. EASEMENTS—*continued.*

(*i*) RIGHT OF WATER—*continued.*

Right to flow of water—*continued.*

revocation would only be permitted on the terms of the landlord paying to the tenant the expenses which that permission had led him to incur. Even when the dominant and servient tenements are the property of different persons, a man may license an act in its inception, and yet be entitled to relief when the act is found to have injurious consequences which he could not have contemplated at the time of the license. KESAVA PILLAI *v.* PEDDU REDDI [1 Mad., 258

45. ——————— *Exclusive right to use of water.*—The plaintiffs, as shareholders in, and heads of, the villages of Ariyur and Kuvirikudi, sued for an injunction directing the defendants to close an irrigation channel which was opened in 1869 and to remove the sluice. It appeared that a channel called Kaduvai had, by means of a branch, for very many years supplied the plaintiff's village with water. The village of Partical, of which the first defendant was mirasidar, up to the date of the opening of the new channel had received its supply from the Mallattar channel. The supply from this was insufficient, and the second defendant, the Superintending Engineer (representing Government) designed a new channel from the Kaduvai to supplement the deficiency of the Mallattar. The water of the Kaduvai was diverted into the new channel at a point above the point of divergence of the branch channel from the Kaduvai to the plaintiff's village. The relief was prayed for in the Court of first instance, on the ground that the supply by the Kaduvai had never been sufficient for the wants of the village, and that the new channel must necessarily cause a still further deficiency. The Civil Judge found that the plaintiffs had sustained no loss by the opening of the new channel, and dismissed the suit. On appeal it was contended, first, that plaintiffs had an absolute right to the uninterrupted flow of all the water in the Kaduvai channel without subtraction or diminution by the defendants or by the Government, represented by the second defendant, and that any diminution, though not causing loss, was an invasion of their rights; second, that if they had not such absolute right, they had a right to a supply of water for the necessary purposes of irrigation and otherwise for their village, and that the possibility of loss at some future time, arising from a possible wrongful diminution of the water to their detriment through the new sluice and channel, entitled them to the relief claimed. Upon the first point,—*Held* that the plaintiffs had not the extensive and exclusive right to the water contended for by them, but that their right was limited to the beneficial enjoyment of the water for the irrigation and other necessary purpose of their tenancies as heretofore enjoyed. Also, that the Government, as proprietor of the Kaduvai channel and water in it, had, subject to the above limited use by the plaintiffs and other villages in the same position as the plaintiffs, a right to distribute the water of the Kaduvai channel for the benefit of the public. *Ponusami Tevar v. Collector of Madura, 5 Mad., 6,* distinguished. KRISTNA AYYAN *v.* VENKATACHELLA MUDALI . 7 Mad., 60

46. ——————— *Suit to restrain interference with water rights.—Damages.—Right of Government to distribute water.*—The plaintiffs, who were ryots under the Government, brought a suit to restrain the defendants, the agents of the Government, and others, from so altering a calingula as to diminish the quantity of water which the plaintiffs were entitled to receive for the irrigation of their lands, and the plaintiffs alleged that the supply of water had been materially diminished by reason of the acts of the defendants. The only ground upon which the plaintiffs' claim was put was that they had received the water for a long time. The District Court held that the Government were authorised to regulate the distribution of water in such cases. *Held,* on regular appeal, *per* HOLLOWAY, *J.,* that no legal right was shown by the plaintiffs which could have been violated by the defendants, and that if such right were established, there was nothing to show that a decree for damages would not have been the proper remedy. *Per* INNES, *J.*—That the evidence did not show any diminution of the supply of water below the quantity to which the plaintiffs were entitled. VENKATA REDDY *v.* LISTER . . 7 Mad., 342

47. ——————— *Interruption.—Abandonment.*—The plaintiff claimed a prescriptive right to the flow of the surface drainage water from the land of the defendant on to his land. *Held* that such an easement can be acquired only where the water flows in a definite channel. In a suit for interrupting the flow of water from the land of the defendant to the land of the plaintiff it appeared that eight years before suit, the defendant had diverted the water, and that it had been diverted ever since. *Held* that the right if acquired would not necessarily be lost by the interruption, but that if the plaintiff acquiesced during that time in the interruption, it might be some evidence of an abandonment of the right. KENA MAHOMED *v.* BOHATOO SIRCAR [Marsh., 506

LUCHMEE PERSHAD *v.* FUZEELUTOONISSA BIBEE [7 W. R., 367

48. ——— **Right to passage of water.**—*Limitation Act (XV of 1877), ss. 23 and 26.—Continuing nuisance.—Easement.*—From time immemorial, and certainly for more than twenty years prior to the date of the obstruction by the defendants, the plaintiff enjoyed the right of having an egress for his rain water through a drain in the defendants' land. The plaintiff, more than two years after the date of the obstruction, sued the defendants for the removal of the obstruction. *Held* that though, under the circumstances, the plaintiff had failed to prove a title acquired under section 26 of Act XV of 1877, yet the plaintiff, having a title, evidenced by immemorial

PRESCRIPTION—*continued.*

2. EASEMENTS—*continued.*

(*i*) RIGHT TO WATER—*continued.*

Right to passage of water—*continued.*

user, did not require the aid of that Act; and inasmuch as the obstruction complained of constituted a continuing nuisance, as to which the cause of action was renewed *de die in diem*, the plaintiff's claim was not barred by any provision of the Act, but, on the contrary, was saved by the express provision of section 23. PUNJA KUVARJI *v.* BAI KUVAR

[I. L. R., 6 Bom., 20

49. ——————— *Water in defined channel.*—From time immemorial a certain "al" formed the boundary of two pieces of land belonging to the plaintiffs and the defendants respectively. The plaintiffs' land was on a higher level than that of the defendants, and from time immemorial the surplus water used to flow from the plaintiffs' land through certain passages in the "al" and across the defendants' land. The defendants closed up the passages and increased the height of the "al." *Held* that, it having been established that for a long series of years the waters from the plaintiffs' lands had been accustomed to escape in a particular direction and by certain separate passages across the defendants' land, the defendants could not do anything which would interfere with the plaintiffs' rights in this respect. IMAM ALI *v.* PORESH MUNDUL

[I. L. R., 8 Calc., 468: 10 C. L. R., 396

50. ——— **Right to use of water.**—*Irrigation.—License creating right of easement.—Revocation of agreement to use water.*—In a suit to establish a right of water and for damages for interruption of the same the facts were as follow: Plaintiff and defendant by agreement between them constructed a dam across a main channel, and from thence a smaller channel was made through the land of the defendant to the plaintiff's land, by means of which it was agreed that the plaintiff should be at liberty to irrigate the fields. The agreement was acted upon for a long course of years. *Held* that the agreement was not a mere parol license revocable at the pleasure of the defendant, but an agreement which created a right of easement, unlimited in point of time, to the use of the water by the plaintiff, and imposed upon the defendant the corresponding duty of allowing the accustomed supply to flow. A mere license differs in its effects from a license coupled with the creation of an interest. The former is revocable, but the latter is subject to the same incidents, and is as binding and irrevocable as any other contract, gift, or grant. KRISHNA *v.* RAYAPPA SHANBHAGA . **4 Mad., 98**

51. ——————— *Artificial water-course.*—The right to water flowing to a man's land through an artificial water-course, constructed on a neighbour's land, must rest on some grant or arrangement, proved or presumed, from or with the owner of the land from which the water is artificially brought, or on some other legal origin. Such a right may be presumed from the time, manner, and circumstances under which the easement has been enjoyed. RAMESSUR PERSAD NARAIN SING *v.* KOONJ BEHARI PATTUK . **I. L. R., 4 Calc., 633: L. R., 6 I. A., 33**

PRESCRIPTION—*continued.*

2. EASEMENTS—*continued.*

(*i*) RIGHT TO WATER—*continued.*

Right to use of water—*continued.*

52. ——————— *User.—Artificial water-course.*—In 1860 *R.*, whom the plaintiff in this suit represented, agreed with Government for the lease of a plot of ground called the D. estate and got possession. In 1865 *R.* took a lease of the estate from Government for 999 years, to enure as a lease from 1860, the time at which he entered upon possession. The defendant's estate adjoined plaintiff's. Defendant's title also derived from Government dated from 1869. A formal lease was granted to his predecessor in 1874 in similar terms to that to plaintiff. In 1864 *R.* opened an artificial channel for the conveyance of water for the use of his estate. This channel was taken off from a ravine in Government waste land, and before reaching the plaintiff's estate passed through land which in 1864 belonged to Government, but which subsequently formed portion of the defendant's estate. When the lease, under which the defendant claimed, was made in 1874, the flow of water through the channel was enjoyed by the plaintiff. The plaintiff sued to restrain the defendant from interfering with and diverting the flow of water in this channel and for damages. *Held* that the flow of water in the channel having existed as an apparent and continuous easement in fact at the time of the execution of the lease in 1865, a right to it passed by implication under that lease, and that the plaintiff was accordingly entitled to it; that the defendant, whose lease was subject to that right, was not entitled to interrupt the flow; but that he might use the water in a reasonable manner as it flowed through his land. MORGAN *v.* KIRBY

[I. L. R., 2 Mad., 46

53. ——————— *Obstructing water-course.—Presumption of title founded on user.—Limitation Act, 1871, s. 27, and art. 31.—Continuing act of wrong.*—More than twenty years, and possibly fifty or sixty, before suit, the plaintiff's ancestors and predecessors in estate had constructed and used a páin, or artificial water-course, on the defendants' land, making compensation to them. The páin, by a channel at one part of its course, contributed to the water in a tál, or reservoir, belonging to the defendants; and by a channel at another part, took the water which overflowed from the tál, after the defendants had used as much of the water therein as they required. Less than twenty years before the suit, the defendants, without authority, obstructed the flow of water along the páin in several places. The Courts below differed as to whether some of these obstructions had not been made more than two years before the suit, the rest having been made within that period. *Held* that the provisions of Act IX of 1871—a remedial Act, and neither prohibitory nor exhaustive—did not exclude, or interfere with, the acquirement of rights otherwise than under them. A title might be acquired under that Act by a person having no other right at all; but it did not exclude, or interfere with, other titles and modes of acquiring easements. And section 27, by

PRESCRIPTION—*continued.*

2. EASEMENTS—*continued.*

(*i*) RIGHT TO WATER—*continued.*

Right to use of water—*continued.*

allowing a user of twenty years, if exercised until within two years of suit, under the conditions prescribed, to give, without more, a title, did not prevent proof of an easement founded on another title, independently of the Act. Such a long enjoyment as the plaintiff had proved should be referred to a legal origin, and the long user of the páin and of the superfluous water of the tál, afforded evidence giving rise to a presumption that a grant, or an agreement, had been made creating an easement. Although, on the assumption that some of the obstructions in question had existed for more than two years before the suit, the plaintiff might not have shown a right under Act IX of 1871, section 27, yet he did not require its aid. *Held*, also, that such obstructions being continuous acts, as to which the cause of action accrued *de die in diem*, Act IX of 1871, schedule II, part V, clause 31, fixing two years from the date of the obstruction as the period of limitation "for obstructing a water-course," did not preclude a suit complaining of obstructions though made more than two years preceding the date of the commencement of the suit. RAJRUP KOER *v.* ABUL HOSSEIN

[I. L. R., 6 Calc., 394: L. R., 7 I. A., 240 7 C. L. R., 529

54. ———— Right to discharge surplus water on another's land.—*Servitudes.—Servient and dominant owners.*—Where *A.* has a right to discharge the surplus rainfall from his land on to the land of *B.*, no length of time will give *B.* a right to compel *A.* to send the water on; provided that *A.* does not interfere with any portion of the water which flows from his land to that of *B.* in a natural and defined channel. The servient owner cannot prevent the dominant owner from putting an end to the servitude at any time he may think proper. KHOORSHED HOSSEIN *v.* TEKNARAIN SING . **2 C. L. R., 141**

55. ———— Right to use of water-drain.—*Proof of enjoyment of easement for term sufficient to give right to it.*—In a suit for the recovery of a right of easement in a drain that had been closed up, in which suit the Munsif found that a drain had existed which had recently been closed, and that there was no other way whereby water could escape from plaintiff's land, and accordingly gave the plaintiff a decree which was upheld by the Judge,—*Held* that the real issue to be tried was whether the plaintiff had enjoyed the easement for the time (twenty years) and in the manner laid down in the law. RAMESSUR MISSER *v.* BROJO BHOOKUN MISSER

[25 W. R., 271

56. ———— Right to divert flow of water.—*Presumption of grant.—User.*—A right to divert the flow of water into a particular channel by erecting a dam across a stream was held to be established in a suit brought in 1878 by proof of exercise of the right for eighteen years prior to 1871. ZAMINDAR OF HURUPAM *v.* ZAMINDAR OF MERANGI.

PRESCRIPTION—*continued.*

2. EASEMENTS—*continued.*

(*i*) RIGHT TO WATER—*continued.*

Right to divert flow of water—*continued.*

VERICHERLA SURYA NARAYANA RAJU *v.* SATRACHERLA JAGANADA RAJU

[I. L. R., 5 Mad., 253

57. ———— Right to water of river.—*Relative rights of riparian proprietors and occupiers to the water of river.—Diversion.—User.—Rights of the Government.—Khalsa or rayatwadi land.*—A dam had been in existence across a river for upwards of 280 years, and during all that time the villages of D. and P. had received an equal supply of water from separate sluices in the dam. The Government authorities being of opinion that D. required less water than P., reduced the size of the D. sluice, and consequently the amount of water flowing to the D. village. The village of D. was khalsa or rayatvadi,—*i.e.*, was held immediately of Government. The inhabitants of D. appealed against the action of Government. *Held* that the Government had no such right of interference, neither (1) as riparian proprietors (supposing them to be such), since the right to the enjoyment of the water of a river belongs to the occupant of the river-bank, whatever the nature of his tenancy; nor (2) by any other imaginable rights existing in the Government as such, since if any such rights ever existed, the long user for upwards of 280 years of the water from the dam by the village of D. would be amply sufficient to justify a presumption of an original *animus dedicandi* in the Government. COLLECTOR OF NASIK *v.* SHAMJI DASRATH PATIL

[I. L. R., 7 Bom., 209

58. ———— Right to throw back water on another's land.—*Right of other person to relieve himself from inconvenience.*—The tank used for the irrigation of the plaintiff's village was supplied in part by rain-water falling on the lands of the village occupied by defendants 9 to 17, and the bund of the tank used formerly to throw back the waters so flowing into the tank on to the lands of defendants, where it remained till gradually drawn off into the area of the tank. Defendants 9 to 17, through the agency of the Government, relieved themselves of this inconvenience by making a work for draining off the water so periodically thrown back upon their land. A channel was also constructed for conducting a supply of water to the plaintiffs' tank. Plaintiffs, however, claimed to have the former state of things restored, on the ground that they had a prescriptive right to throw back the water on to the defendant's lands and to keep it there till required for use. *Held* that there was here no object over which a right could be acquired. ROBINSON (COLLECTOR OF NORTH ARCOT) *v.* AYYA KRISHNAMA CHARIYAR. MANIYAM NARASIMMA GAUNDAN *v.* AYYA KRISHNAMA CHARIYAR . . . . . **7 Mad., 37**

59. ———— Right to discharge water from roof on another's land.—*Purchaser, Right of.*—If a party has ancient right to the discharge of water from his roof on a certain piece of land, it is not competent for a purchaser of the land to exercise

PRESCRIPTION—*continued.*

2. EASEMENTS—*continued.*

(*i*) RIGHT TO WATER—*continued.*

Right to discharge water from roof on another's land—*continued.*

his right thereto in such a manner as to interfere with the easement, and impose the trouble and expense on the owner of the easement of procuring some new mode of discharge. SHEO NAUTH SINGH *v.* BISHONATH SINGH . . **2 Agra, Pt. II, 191**

60. ——————— *Suit for removal of wall.*—In a suit for the removal of a wall on which plaintiff had been allowed by defendants for a number of years to rest the thatch of a hut, and which wall and thatch, after having been thrown down by a cyclone, had been rebuilt by plaintiff, though the thatched roof had been again blown down, and there was no thatch at the time of the suit,—*Held* that, under these circumstances, the plaintiff could not have acquired a prescriptive right that the water from the thatch should pass over defendant's lands, and was not entitled to restrain him building up the wall. LALL MONEE DOSSEE *v.* JOYNARAIN SHAHA **[11 W. R., 508**

61. ——— **Right to discharge water from roof on house of another.**—*Limitation.*—*User.*—The plaintiff and the defendant were owners, respectively, of two adjoining houses, having a space between them belonging to the plaintiff. The roof of the defendant's house, built more than thirty years previously, projected over a part of this space. The plaintiff built a new storey to his house, with a roof overhanging the roof of the defendant's house, and under an alleged custom of the country (Ahmedabad) claimed a right to remove the part of the defendant's roof which projected over his (plaintiff's) land. He also sued to establish his right to an easement as against the defendant of compelling the defendant to receive upon the roof of his house the rain-water which flowed from the newly-erected roof of the plaintiff. *Held,* with regard to the former claim, that if the enjoyment by the defendant were considered as possession, by him, of the space occupied by his projecting roof, the Limitation Act extinguished the plaintiff's right to sue; and if such enjoyment were to be regarded as a mere easement, then the uninterrupted user of more than thirty years vested in the defendant a proprietary right to the same. *Held,* further, with regard to the plaintiff's claim to an easement, that the plaintiff could only have acquired such easement either by contract or prescription, on neither of which did he rely. No custom can be admitted to override the provisions of the Limitation Act. MOHANLAL JECHAND *v.* AMRATLAL BECHERDAS **[I. L. R., 3 Bom., 174**

PRESCRIPTIVE RIGHT.

See BOMBAY REGULATION V OF 1827.
[I. L. R., 1 Bom., 352

See EMBANKMENTS.
[I. L. R., 3 Calc., 776

See LIMITATION—STATUTES OF LIMITATION—LIMITATION ACT, 1871, s. 2.
[I. L. R., 1 Bom., 287

PRESIDENCY BANKS ACT, XI OF 1876, s. 4.

——————— *Certificate of administration.*—*Act XXVII of 1860.*—*Registration of guardian as proprietor of shares.*—*Power to negotiate.*—*A.*, the mother and guardian of a minor, obtained a certificate under Act XXVII of 1860. Part of the property of the minor consisted of shares in the Bank of Bengal. *A.* obtained power under her certificate to draw the dividends due upon the shares. After the passing of the Presidency Banks Act, 1876, *A.* applied under section 4 of that Act to be registered as proprietor of the shares. The Bank refused to register her name as proprietor, and *A.* then applied to have her certificate amended by empowering her to negotiate the shares. *Held* that she was not entitled to have such a power inserted in the certificate. IN THE MATTER OF THE PETITION OF RADHABULLUBH SIL
[I. L. R., 8 Calc., 300: 11 C. L. R., 274

PRESIDENCY MAGISTRATE.

——————— *Summary trial.*—*Conviction in non-appealable case.*—*Code of Criminal Procedure, s. 370.*—In every case which is not appealable to the High Court, a Presidency Magistrate should state his reasons for convicting the prisoner, so that the High Court may judge as to whether there were sufficient materials before the Magistrate to support the conviction. IN THE MATTER OF THE PETITION OF YACOOB. YACOOB *v.* ADAMSON
[I. L. R., 13 Calc., 272

PRESIDENCY MAGISTRATES ACT, 1877, s. 39 (Criminal Procedure Code, 1882, s. 197).

See SANCTION TO PROSECUTION—WHERE SANCTION IS NECESSARY.
[I. L. R., 3 Calc., 758: 2 C. L. R., 520

——————— **s. 41 (Criminal Procedure Code, 1882, s. 195).**

See APPEAL IN CRIMINAL CASES—ACTS—PRESIDENCY MAGISTRATES ACT.
[I. L. R., 2 Calc., 466

——————— **s. 87 (Criminal Procedure Code, 1882, s. 209).**

See MALICIOUS PROSECUTION.
[I. L. R., 6 Bom., 376

See WITNESS—CRIMINAL CASES—EXAMINATION OF WITNESSES—GENERALLY.
[I. L. R., 5 Calc., 121
S. C. 4 C. L. R., 305

——————— **s. 124 (Criminal Procedure Code, 1882, ss. 92, 344).**

See COMPLAINT — DISMISSAL OF COMPLAINT—EFFECT OF DISMISSAL.
[I. L. R., 6 Calc., 523

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1. AUTHORITY OF AGENTS.

1. ——— **Proof of authority.** — *Agent acting out of scope of authority.*—To hold a person bound by the acts of his agent, it must be shown that the agent acted within the scope of his authority. MUNOHUR DASS *v.* DEEN DYAL . 3 N. W., 179

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2. ——— **Effect of act done without authority.**—*Signing document by unauthorised agent.*—The signature by an agent of a wajib-ul-urz from which the record of an important interest in property was omitted cannot be considered as a waiver of the right or claim unless he was properly authorised to sign it. IMAMBUNDEE *v.* BHUGWANDASS . . . 1 N. W., 41: Ed. 1873, 38

3. ——— *Suit against agent for account.—Payments or advances to third parties.—Proof of authority of agent.*—As a general rule an agent or collector cannot discharge himself of moneys for which he is liable to account, by proving payments or advances to third parties, unless he can show that such payments or advances were made by the express authority of the principal, or with his knowledge and consent. FAGAN *v.* CHUNDER KANT BANERJEE . . . . 7 W. R., 452

4. ——— **Implied authority of agent.**—*Liability of principal.*—When a person takes advantage of the management of his affairs by another, he must fulfil the engagements which that other has contracted in his name, provided such engagement be within the proper limits of the manager's authority, and be for the benefit of the estate. KOORA *v.* ROBINSON . . . . 2 Agra, Mis., 2

PRINCIPAL AND AGENT—*continued.*

1. AUTHORITY OF AGENTS—*continued.*

5. ——— **Evidence of authority.**—*Policy of insurance.*—To prove the authority of an agent who underwrites a policy of insurance, it is not necessary, in order to charge his principal, that the instrument appointing such agent should be produced, if it is shown that he has been in the habit of underwriting policies for his principal, and that the latter has been in the habit of paying losses upon policies so subscribed. MULCHAND CHUTUMAL *v.* SUNDARJI NARANJI . . 7 Bom., O. C., 39

6. ——— *General or special power of agent.—Evidence of agency.*—Where the evidence goes to show that a particular person said to be the agent of the defendant was really his general agent, and did transact business of various kinds for his principal, it is unnecessary to prove any special power enabling him to enter into a particular contract of bargain and sale. *Per* MACPHERSON, *J.*—The extent and nature of the powers vested in an agent are not so much matter of law as matter of fact. If it be proved that a person acted ordinarily as an agent for the defendant in buying and selling articles of merchandise, the fact of his not being proved to have previously purchased a particular kind of article would not necessarily operate against the plaintiff's case. The Court, in deciding the question of agency, must look to the general evidence on the record. RAM BAKS LAL *v.* KISHORI MOHAN SHAHA
[3 B. L. R., A. C., 273 : 12 W. R., 130

7. ——— *Factors, Shipments by.—Consignees.—Custom of Calcutta.*—Factors having an interest, by reason of their advances in their principal's goods, are justified in shipping those goods for sale, either "on account of those concerned," or "on account of themselves," unless their general authority was controlled by instructions from their principal or by contract. The evidence failing to show that any particular usage or custom qualifying the law of England as between principal and factor prevails in Calcutta,—*Held* that the powers and duties of the factors in making consignments of their principal's goods must be determined by the general mercantile law. Factors entrusted with possession of their principal's goods, and having advanced upon them, shipped the goods to London, drawing bills against them in their own names, and selling the bills with the shipping documents in the market. The acceptance of the factors' bills by the consignees, and the delivery of the shipping documents to them, made them the pledgees, but did not alter the character of the transaction, which was one whereby the factors had pledged the goods for the payment of bills on which they (and not the principal) were liable as drawers for an amount exceeding the value of the goods. In such a case no privity exists between the consignees and the undisclosed principal. *Held*, therefore, that a loss having occurred on the shipments, the principal was liable to the factors' estate for the full amount of re-drafts representing that loss, although the factors had become insolvents,

PRINCIPAL AND AGENT—*continued.*

1. AUTHORITY OF AGENTS—*continued.*

Evidence of authority—*continued.*

and had in fact paid only a small dividend on the re-drafts. MIRTUNJOY CHUCKERBUTTY *v.* COCHRANE [4 W. R., P. C. 1: 10 Moore's I. A., 229

8. ——— **Pledge by agent without authority.**—*Stat. 5 & 6 Vict., c. 39, ss. 1 & 3.—Factors Act, XX of 1844.—Notice of agents' mala fides.*—Where an agent entrusted with a document of title to goods pledged it *malâ fide*, or without authority, it was necessary, in order to deprive the transaction of the protection given by the 1st section of the 5 and 6 Victoria, Cap. 39, and to bring it within the proviso of the 3rd section, that the jury should find categorically that the lender had notice of the agent's *mala fides* or want of authority. To prove such notice it was sufficient to show that the circumstances attending the transaction were such as that a reasonable man, and a man of business, applying his understanding to them, would certainly infer that the agent had not authority to make the pledge, or that he was acting *malâ fide* in respect thereof against his principals. GOBIND CHUNDER SEN *v.* ADMINISTRATOR GENERAL OF BENGAL [1 Ind. Jur., O. S., 17 1 W. R., P. C., 43: 9 Moore's I. A., 140

9. ——— **Banian.**—*Del credere agent.—Dealings between Native and European firm.—G. S. & Co.* employed *R.* to make purchases for them in the bazar, upon orders which were in force for two days, and they imposed restrictions on *R.'s* authority to pledge their credit, which were not made known to those with whom he dealt. His remuneration was to be certain dustooree on the purchases, and he paid and gave receipts for the jute, as agents for *G. S. & Co.* He furnished accounts specifying the price of the goods and the expenses incurred by him upon them, and upon being paid he affixed his receipts to them. The purchases were unusually large, and in *R.'s* books *G. S. & Co.* were debited with the amount paid for the goods, *R.* retaining no interest in or profit out of it. *J. S.*, one of the vendors to *R.*, sued *G. S. & Co.* for the price of some of the goods so purchased by *R.* *Held* that a general authority implies all powers necessary, or usual, or proper, as means to effectuate the purposes for which it was created. A banian is a *del credere* agent with regard to his employer in making purchases, and is a principal with reference to third persons. *Held* also that a person who has been allowed to represent himself as agent of a merchant under a general authority is not, as such, a banian; that when a native dealer makes purchases for a European house, the presumption is that the vendor gave credit to the native dealer; and that goods having been purchased for an employer and entered to his debit, and receipts given for them in his name, raises no presumption that the buyer was a banian. GRANT, SMITH, & CO., *v.* JUGGOBUNDOO SHAW . Bourke, A. O. C., 17: 2 Hyde, 301

Held in the same case in the Court below—In the absence of a specific contract, a European firm in Calcutta is not bound by a contract made by third

PRINCIPAL AND AGENT—*continued.*

1. AUTHORITY OF AGENTS—*continued.*

Banian—*continued.*

parties with their banian. JUGGOBUNDOO SHAW *v.* GRANT, SMITH, & CO. . 2 Hyde, 129: Cor., 47

10. ——— **Agent exceeding authority.**—*Variation in time for delivery.*—Where a principal instructed his agent to enter into a contract for the delivery of cotton at the end of Kartik, but the agent entered into a contract for the delivery thereof by the middle of that month, it was held that the agent exceeded his authority in such a manner as to exempt the principal from liability upon the contract. Though the objection assigned by a principal for repudiating a contract at the time of such repudiation be unfounded, he is not precluded from subsequently availing himself of other valid objections. ARLAPA NAYAK *v.* NARSI KESHAVJI & CO. [8 Bom., A. C., 19

11. ——— *Taking advances.*—A native lady, possessing an estate in a district in which she did not reside, opened an account with a banker, through her son, as her agent, to provide for the punctual payment of Government revenue, and to meet current expenses. *Held* that such a course of dealing did not of itself warrant the banker in advancing to the son, as the accredited agent of his mother, large sums of money on bonds. MISRAIN *v.* GOPAL LALL DOSS . . 10 W. R., 376

12. ——— **General agent, Power of.**—*Universal agents.*—A general agent has not ordinarily powers co-extensive with those possessed by a universal agent. A general agent therefore employed to carry on a trading business has no authority to deal with immoveable property by sale. DOORGA CHURN *v.* KOONJBEHAREE PANDEY . 3 Agra, 23

13. ——— *Power of agent to borrow.—Evidence of authority.*—Although a general agent may not have power to borrow money for his principal, yet the authority to borrow in a particular case may be shown by a previous authority, either express or implied, or by subsequent ratification. BUNWAREELALL SAHOO *v.* MOHESHUR SINGH . . . Marsh., 544: 2 Hay, 644

14. ——— **General agent.**—*Power to purchase.—Authority to sell.*—An authority granted to an agent to purchase does not imply authority to sell; and the mere fact of the principal not questioning his agent's right to sell is no proof that he consents to the latter's exercising such right. GOLUCK CHUNDER CHOWDRY *v.* KANTO PERSHAD HAZAREE [15 W. R., 317

15. ——— **Government officers.**—*Officers acting as agents of Government.*—Question of authority of Government officers acting as agents of Government discussed. RUNDLE *v.* SECRETARY OF STATE . . . . . 2 Hyde, 25, 36

JOHNSON *v.* SECRETARY OF STATE [2 Hyde, 153

PRINCIPAL AND AGENT—*continued.*

1. AUTHORITY OF AGENTS—*continued.*

16. ——— **Master and servant.**—*Buying goods on credit.—Semble,*—If a master usually instructed his servant to buy goods upon credit, he will be bound by his acts, even when he has prohibited him specially from buying upon credit. NARAINEE KOONWAREE *v.* JOOGUL KISHORE ROY [6 W. R., 309

17. ——— **Agent employed to make wagering contract.**—*Money paid on account of wagering contract, Liability for.—Act XXI of 1848.*—An agent employed to effect a wagering contract is entitled to recover from his principal money paid on his account in respect thereof, his authority not having been revoked. The claim is not affected by Act XXI of 1848. TRIBHUVANDAS JAGJIVANDAS *v.* MOTILALL RAMDAS . . . 1 Bom., 34

18. ——— **Agent sent to bid at auction.**—*Contract Act, s. 237.*—The sending a man to bid at an auction cannot be considered as conduct calculated (in the language of the Contract Act, section 237) to induce third persons to believe he had general authority to buy. MACKENZIE, LYALL, & Co., *v.* MOSES . . . 22 W. R., 156

19. ——— *Agreement by agent with third party.*—When a principal merely authorises an agent to bid at an auction, he is not liable for an agreement entered into by the agent with a third party pledging him to pay to such party a certain sum in consideration that he should abstain from bidding. ESHAN CHUNDER SINGH *v.* SHAMA CHURN BHUTTO [2 Ind. Jur., N. S., 87: 6 W. R., P. C., 57 11 Moore's I. A., 7

20. ——— **Husband and wife.**—*Mortgage by wife.*—When a man allowed his wife to have control over certain property and to mortgage it,—*Held* that she acted as his agent, and that he was bound by her act. MOORADEE BEBEE *v.* SYEFOOLLAH . . . . . W. R., 1864, 318

21. ——— *Suit for goods sold and delivered to wife after separation.*—It is not necessary that knowledge of a separation between husband and wife should be brought home to the plaintiff in an action for goods sold and delivered to the wife after separation where plaintiff has long dealt with the wife as the husband's agent. SHAM CHUND DOSS *v.* COX . . . . Cor., 82

22. ——— **Gomashta, Power of.**—*Contract through broker.—N.* sued *J. S. & Co.* for damages occasioned by the inferiority of certain goods which he alleged that he bought of them on a verbal contract made by his gomashta, *M.*, through his broker *F.* The defendants' case was that the contract was a written one, and contained a stipulation exempting them from liability on certain conditions which had not been complied with, and was made by *K.*, one of the plaintiffs' gomashtas, by the pen of *J.*, one of their brokers, whom *R.* had authorised to sign the contract. The Court below found that *K.* was

PRINCIPAL AND AGENT—*continued.*

1. AUTHORITY OF AGENTS—*continued.*

Gomashta, Power of—*continued.*

N.'s gomashta, but could not, as such, depute a third party to sign a contract for *N.*, and judgment was given for the plaintiffs. On appeal,—*Held* that a gomashta has a general authority to manage his employer's business, not as a mere agent, but with power to do all acts necessary for carrying it on, and to authorise brokers to make contracts. A broker authorised to sign a particular contract is not authorised to sign it if it contain a stipulation unknown to his employer, and *vice versâ.* JARDINE, SKINNER, & Co., *v.* NATHORAM . Bourke, A. O. C., 43

23. ——— *Gomashta employed to collect rents.—Power to distrain.—Ratification.*—A gomashta employed to collect rents is not authorised to distrain, unless he has been expressly authorised by power of attorney. Therefore, if a gomashta, without such express authority, distrain for rent due, or pretended to be due, to his principal, his principal is not bound by his acts, unless he ratify them, as, for example, by receiving the proceeds of the distress, knowing they had been obtained by distress. RAMJOY MUNDUL *v.* KALLYMOHUN ROY CHOWDHRY . . . . Marsh., 282

S. C. KALLYMOHUN ROY CHOWDHRY *v.* RAMJOY MUNDUL . . . . 2 Hay, 289

24. ——— *Authority to sue for principal without special powers.*—A suit for rent under Act X of 1859 may be instituted by a gomashta employed in the collection of rents or management of land, on behalf of his principal, without his being specially empowered by warrant of attorney. MEAJAN KHAN *v.* AKALLY [Marsh., 384: 2 Hay, 426

25. ——— *Authority to sue on behalf of principal.*—In a suit, under Act X of 1859, where plaintiff sues as a gomasta of the zemindar, it is not necessary that a power of attorney or any other formal document conferring a special power on the plaintiff should be produced, if it is proved from the evidence that he filled that character. MADHO SINGH *v.* GUNESHEE LALL . . 2 Agra, 275

26. ——— **Tehsildar, Power of.**—*Act X of 1859, s. 69.*—A newly-appointed tehsildar stands in the same position in respect to arrears of rent which accrued during the time of his predecessor as in respect to rents accruing during his own time, and may take advantage of section 69, Act X of 1859, in respect of one as well as the other. *Held* (by MARKBY, *J.*) that no one can be plaintiff in a suit for rent except the person who has the right to recover; the only effect of section 69 being to enable the person who is employed in the collection of rents, to sue as agent. *Held,* also (by MARKBY, *J.*), that though it has been decided that a general authority to collect rents and to sue for them must be stamped, if in writing, it has not yet been decided whether such authority must be in writing. MODHOOSOODUN SINGH *v.* MORAN & Co. . . . 11 W. R., 43

PRINCIPAL AND AGENT—*continued.*

1. AUTHORITY OF AGENTS—*continued.*

27. ——— **Naib, Power of.**—*Power of mofussil naib to grant pottahs at fixed rents.*—As it does not fall within the ordinary scope of the duties of a mofussil naib to grant pottahs for fixed rents, it is requisite in such cases that express authority should be proved to make the grants valid. GOLUCKMONEE DABEA *v.* ASSIMOODEEN . **1 W. R., 56**

OOMA TARA DEBIA *v.* PEENA BIBEE **[2 W. R., 155**

PUNCHANUN BOSE *v.* PEARY MOHUN DEB **[2 W. R., 225**

KALEE COOMAR DOSS *v.* ANEES **[3 W. R., Act X, 1**

28. ——— *Power to grant mokurrari lease.*—The grant of a mokurrari lease is beyond the scope of a naib's general authority. To enable him to give such a lease his principal's special consent or approval is necessary. UNNODA PERSHAD BANERJEE *v.* CHUNDER SEKHUR DEB **[7 W. R., 394**

29. ——— **Agent of lessor.**—*Power to grant lease.—Stipulation for recovery of costs of litigation from lessor.*—The agent of a lessor was held to have acted in excess of his power in granting a lease containing a stipulation that the lessee was to receive from the lessor the expenses which he might incur in any litigation which might take place with third parties respecting the land leased. Where such litigation did ensue, and the lessee was cast in costs, he was held entitled to recover the same, not from the lessor, but from the agent. KENNY *v.* MOOKTA SOONDEREE DABEE . . . **7 W. R., 419**

30. ——— **Agent of inamdar.**—*Power to lease on permanent tenure.*—An inamdar's agent cannot grant lands on suti or other permanent tenure without express authority from his principal. NASARVANJI HORMASJI *v.* NARAYAN TRIMBAK PATIL **[4 Bom., A. C., 125**

31. ——— **Manager.**—*Agent granting lease on pretended title afterwards set aside.—Right of lessees to possession.*—Where a manager has conveyed certain property to himself by a pretended deed of gift, and under such pretended title granted a durmokurrari lease, and his title is set aside by a decree of Court, the lessees cannot be allowed to maintain possession, at any rate, where the lease granted is beyond the powers of the manager as agent. SHEO SHUNKUR LALL *v.* DHURM JOY POOREE **[8 W. R., 360**

32. ——— **Agent of zemindar.**—*Power to authorise transfer of lease.*—Without special powers the ordinary agent of a zemindar who cannot grant a lease cannot authorise the *quasi* transfer of a lease by a tenant to some other party. RAI MOORAREE DOSS *v.* BUCHA SINGH . **4 N. W., 122**

33. ——— **Agent of owner of estate.**—*Lease by agent.—Fraud and collusion.—Ratification.*—In a suit to set aside a lease as granted without authority by an agent to the defendant, who was the naib of the estate, and as procured by fraud by the defendant in collusion with the agent, the latter charge of collusion having been withdrawn at the hearing before the Subordinate Judge, the High Court remarked on the impropriety of presenting a plaint charging collusion between the agent and defendant without good grounds for such imputation, and on the withdrawal of such charge at the hearing if there were grounds for it; and agreed with the Subordinate Judge in thinking that the owner of the estate in issue must be presumed to know what was being done on her behalf by her agent. The presumption is that a man acts rightly and not fraudulently. The mere circumstance that the rents were low does not give rise to the presumption that there had been fraudulent conduct on the part of the naib, or that he did not state the circumstance to the agent before obtaining the lease from him. There is also this difference between this case and other cases in which contracts between principals and agents are sought to be set aside on the ground of good faith, that here another agent is interposed, and it is not the case of the defendant (the naib) making a report to the owner in England. Even supposing the original transaction liable to be set aside, the ratification by a person having authority from the owner to make inquiries and ratify what had been done would render it invalid. ANNUND CHUNDER BOSE *v.* BROUGHTON **[17 W. R., 301**

Affirmed by Privy Council, ADMINISTRATOR GENERAL OF BENGAL *v.* ANUNDO CHUNDER BOSE **[21 W. R., 425**

34. ——— **Agent for receipt of rent.**—*Notice of renewal to.*—A lessor's agent for the receipt of rent is not necessarily his agent to receive the lessee's notice of option to renew the lease; but if he has received such notice, and given it to the lessor within time, the notice is sufficient. BARNET *v.* SKINNER . . . . . **2 W. R., 208**

35. ——— **Agent to give lease.**—*Notice of prior claim.—Semble, per* NORMAN, *J.*,—A person who has authority to conduct the negotiation respecting a lease is such an agent that a notice to him may be notice to his principal. NUDDEAR CHAND SEIN *v.* KISHOREE LAL CHUCKERBUTTY . **7 W. R., 463**

36. ——— **Headman of village.**—*Acts of, to bind co-sharers.—Held* that to make the acts of the headmen of a village in boundary disputes and other matters binding on the co-sharers it is not necessary that there should be specific authority by power of attorney or otherwise, or subsequent express or implicit assent or sanction in absence thereof. Requisite authority may be inferred from the facts of each case by showing that the headmen of the village have usually in similar disputes been permitted to act and represent for the other sharers. *Held*, also, that agency in every case can only be created by the will of the principal, and his will may be manifested in writing or orally, or simply by placing

PRINCIPAL AND AGENT—*continued.*

1. AUTHORITY OF AGENTS—*continued.*

Headman of village—*continued.*

another in a position so as to be understood according to ordinary rules and usages to represent and act for one who has placed him. GUNGAPERSHAD *v.* AJOODHIA PERSHAD. GUNGAPERSHAD *v.* RAMPERSHAD [Agra, F. B., 31: Ed. 1874, 23

37. ——— **Agent in survey of land.**—*Thakbust map.—Act of agent.—Endorsement.—Evidence.*—In a suit for possession of certain lands, for rectification of a thakbust map, and reversal of an Act X decision, the plaintiffs obtained a decree in the Court of first instance, the lower Appellate Court, and subsequently in the High Court on appeal. It appeared that the lower Courts had before them an incorrect copy of the thakbust map, the original forming part of the record of another suit. The High Court on appeal refused to send for this map, but subsequently, on review, it was sent for. There was an endorsement on the back, which did not appear on the copies originally before the Court, to the effect that the lands in dispute were pointed out by one *T. C.*, acting as agent for the plaintiffs, to be measured as belonging to the defendant's talook. *Held*, the case must be remanded to the lower Appellate Court to determine (1) whether *T. C.* was the agent of the plaintiff; (2) whether, acting within the scope of his authority as such agent, he did sign the map as a correct map and pointed out the lands as belonging to the defendant; (3) and if so, how far these acts of the agent were binding on the plaintiffs. SUDAKHINA CHOWDHRAIN *v.* RAJ MOHAN BOSE [3 B. L. R., A. C., 377

38. ——— **Power to appear in suit.**—*Manager.*—The manager of an estate under a safunamah on behalf of *B.* cannot, without special authority from *B.*, represent him in any suit or charge him with the costs of the defence of an action brought against him. BHOLANATH SANDYAL *v.* GOUREE PERSHAD MOITRO . . . . . 16 W. R., 310

39. ——— *Power of attorney.—Option of agent to accept service of summons.*—A person holding a power of attorney, even if authorised by the power to appear and defend suits on behalf of his principal, is at liberty to refuse to accept service of summons and appear in a suit brought against his principal, but may either act upon the power or not as he may think proper. IN THE MATTER OF THE PETITION OF LUCHMEE CHUND [I. L. R., 8 Calc., 317

40. ——— **Power to carry on suits.**—*Assent to be bound by witness.*—An agent's assent to be bound by the statement of a particular witness is not an assent to arbitration, but is an act entirely within the scope of his general authority as agent to carry on his principal's suits, and to do all acts necessary to that end. RAJENDER CHUNDER NEWGEE *v.* MAHOMED AYNOODDEEN . W. R., 1864, 143

41. ——— **Mooktear, Power of.**—*Admission of title by mooktear.—Authority of mooktear to bind mortgagee.*—Where a mortgagee signed

PRINCIPAL AND AGENT—*continued.*

1. AUTHORITY OF AGENTS—*continued.*

Mooktear, Power of—*continued.*

a mooktearnama, in which he stated that he would abide by any arguments which might be urged, and any documents which might be filed by the mooktear thereby appointed, and the mooktear subsequently filed a written statement signed by himself alone in which he admitted the mortgagor's title,—*Held*, the written statement could not be incorporated with the mooktearnama so as to make it part of the document signed by the mortgagee. LUCHMEE BUKSH ROY *v.* RUNJEET RAM PANDAY [13 B. L. R., P. C., 177: 20 W. R., 375

S. C. in Court below . . 12 W. R., 443

42. ——— *Mooktear appointed by several co-sharers.—Authority of agent.—Evidence of general authority.*—Where a general mooktear empowered to act on behalf of co-sharers does formal acts to enforce the rights of his principals (the zemindars), it is not necessary to trace back his authority in each case to the explicit sanction of every single member of the family. Mooktears must be considered to have a certain discretion, and, unless the contrary is shown, to do such acts as come within the ordinary scope of their duty with authority. HURRY KISTO ROY *v.* MOTEE LALL NUNDEE . . . . . 14 W. R., 36

43. ——— *Authority to sign deed of sale.—Proof of authority of agent.*—Where a man resists liability for a deed of sale executed by his am-mooktear, it is necessary for the purchaser claiming under that deed to show that the mooktear had authority either by virtue of a general or special power of attorney to execute that deed and to bind his principal by executing that deed. MOHAN KOOER *v.* AJOODHYA DOSS [20 W., R., 119

44. ——— *Pardanashin woman.—Account stated.*—A mooktearnama executed by a pardanashin woman appointed her husband to be her general mooktear, and declared that "all acts done by the said mooktear, such as giving and taking loans to and from others, executing on my behalf, getting executed in my favour, deeds of absolute sale," and so on, "shall be accepted by me." It was sought to render the principal liable, on an account stated by her husband as her mooktear so empowered, for a debt, without proof that the money constituting it had been borrowed on her account. *Held*, on the construction of the mooktearnama, that the mooktear had no authority to bind her by such a statement of account, whatever authority he might have had to bind her by an actual borrowing of money on her behalf. No implication of authority in the mooktear to bind the woman by his stated account had arisen from the carrying on of a course of business. Accordingly, when the evidence of express authority failed, the statement of account by the mooktear was insufficient to render the principal liable. No evidence was given of the items lent, so as to estab-

PRINCIPAL AND AGENT—*continued.*

1. AUTHORITY OF AGENTS—*continued.*

Mooktear, Power of—*continued.*

lish an indebtedness independently of the account stated. SUDISHT LALL *v.* SHEOBARAT KOER [I. L. R., 7 Calc., 245 L. R., 8 I. A., 39

45. ——— **Manager of firm.**—*Power of manager to bind partners in concern.*—The partners of a concern are bound by the acknowledgments of their manager, as their avowed agent. MASSEYK *v.* GRISH CHUNDER CHUCKERBUTTY . 24 W. R., 34

46. ——— **Partner of firm.**—*Knowledge of person dealing with partner.—Contract incapable of division.*—A firm of carriers authorised one of their partners to draw bills on the firm to the extent of R200 each. The partner, acting in excess of his authority, and without the knowledge of the firm, made two promissory notes, in the name of the firm, for R1,000 each. The plaintiff knew the partner was limited to a particular sum, but also knew that two of his bills for R300 each had been previously accepted by the firm. In an action on the notes,—*Held*, first, that the firm was not liable for the whole amount drawn; and secondly, that the contract, whereon the action was founded, was not capable of division, and, therefore, the firm was not liable to the extent of R200. PREMABHAI HEMABHAI *v.* BROWN [10 Bom., 319

47. ——— **Partnership in tea garden.**—*Liability of partner for acts of managing partner.—Authority of agent.*—By an agreement made on 22nd July 1862 between *C.* and *T.* (since deceased) and the defendants *P.* and *S.*, *C.* agreed to sell, and *T.*, *P.*, and *S.* to purchase, a half share in the lands, plantation, and estate belonging to *C.*, known as the Laojan Tea Estates and Grants. The agreement provided that *C.* was to conduct and manage all matters and affairs of the estates, but nothing was said as to its being done in his own name or in that of the partners of any firm. Money to carry on the business was provided by means of bills drawn by the local manager upon *C.* in the same manner as if he (*C.*) had been the sole owner, the defendants being fully aware of this and finding the funds. This mode of dealing continued down to the time of the transaction which is the subject of this suit. The only act in the way of notice to the public on the part of the defendants was a notification in a directory published by them in Calcutta (*T.*, *S.*, *& Co.* being booksellers and publishers), in which in the list of tea estates the Laojan concern was mentioned, and *C.*, *T.*, *P.*, and *S.* named as proprietors. In the directory for 1870 and 1872 *C.* was also described as Calcutta agent. This suit was brought to recover a balance due in respect of moneys alleged to have been advanced by the plaintiffs on the tea to be manufactured in the season 1872, the plaintiffs being tea brokers who made the advances on the security of tea invoices and bills of lading. The terms on which the required advances were to be made were arranged by an agreement, dated 9th February 1872, between *C.* and the plaintiffs, who were under the

PRINCIPAL AND AGENT—*continued.*

1. AUTHORITY OF AGENTS—*continued.*

Partnership in tea garden—*continued.*

belief that *C.* was the proprietor of the Laojan concern and not merely manager. By reason of *C.'s* death and the non-delivery of a portion of the season's tea, the plaintiffs were unable to reimburse themselves for their later advances, and brought the present suit against the defendants, who, they contended, were bound by all *C.'s* acts and dealings. *Held* by COUCH, *C. J.*, that, assuming that the plaintiffs knew what was in the directory, it could not be considered as a notice to them that the authority which *C.* had been exercising, and which he continued to exercise with, so far as it related to bills and drafts drawn by the local manager, the knowledge of his partners, the defendants, had been determined, and that he had only the authority of an ordinary Calcutta agent. *Held*, also, that the question in the case was whether the transaction between *C.* and the plaintiffs was within the scope of the authority which *C.* had, or was allowed by his partners to appear to have, in managing and conducting the affairs and business of the partnership. It was a question of actual or apparent authority, and whether the transaction was one which the owner of a tea garden carrying on the cultivation of it would in the ordinary course of business enter into. *Held*, further, that the transaction would have been according to usage if *C.* had been the sole owner of the gardens, and the defendants, by allowing him to manage ostensibly as sole owner, clothed him with every authority incidental to a sole owner in that business. The defendants were therefore bound by the agreement of the 9th February 1872. SPINK *v.* MORAN [21 W. R., 161

48. ——— **Mercantile agent.**—*Power of agent to indorse bills.—Special authority.—Implied authority.*—A special authority is required to empower a mercantile agent to draw or indorse bills and notes, but the authority may be implied from circumstances. PESTONJEE NESSERWANJEE *v.* GOOL MAHOMED SAHIB . . . 7 Mad., 369

49. ——— **Managing agent.**—*Liability of principal.—Banker and customer.—Bills of exchange.—Indorser and acceptor.—N. & Co.*, the managing agents of the Baree Tea Company, had a general banking account with the Oriental Bank Corporation, which account they were allowed to overdraw on having the overdraft properly secured. Under the articles of association of the Baree Tea Company, *N. & Co.* had power to "draw, accept, indorse, and negotiate on behalf of the Company all such cheques, promissory notes, drafts, &c., as should be necessary for enabling them to carry on the business of the Company." Purporting to act under this power, *N. & Co.* drew a bill of exchange on the managing agents of the Company, which was accepted by the latter, and indorsed by *N. & Co.* to the Oriental Bank Corporation, who credited the amount to *N. & Co.'s* general account. The amount was drawn out by cheques drawn by *N. & Co.* personally without reference to the Baree Tea Company, and there was no proof that the money had been applied for the purposes of the

PRINCIPAL AND AGENT—*continued.*

1. AUTHORITY OF AGENTS—*continued.*

Managing agent—*continued.*

Baree Tea Company. *Held*, in an action by the Oriental Bank against the Baree Tea Company, that the latter were not liable on the bills as acceptors. ORIENTAL BANK CORPORATION *v.* BAREE TEA COMPANY . I. L. R., 9 Calc., 880 : 13 C. L. R., 412

50. ——— Agent acting contrary to authority.—*Liability of agent.*—An agent who acts contrary to the authority given him by his principal is himself liable on the transaction in which he has so acted. GOMANEE LALL *v.* JEWUN RAM [2 Agra, 33

51. ——— Agent acting out of scope of authority.—*Liability of principal.*—*Held* that an agent who is appointed for the general management and conduct of business cannot bind his principal by an unusual contract, not strictly relating to the conduct of the business, unless he has express or implied authority for the same. The fact that a consignor dealt in good faith with the agent, who exceeded his authority, is not sufficient to bind the principal. The consignor dealing with the agent ought to satisfy himself of the agent's authority. The defendant, not having ratified his agent's act by receiving the benefit of the contract, cannot be bound by the acts of his agent and liable to make good the losses. MUDAREE LALL *v.* GILMORE [3 Agra 196

52. ——— Payment to agent in belief he was principal.—*Liability of purchaser.*—Where a party purchased cotton from a person both banker and broker, upon the just belief authorised by the facts that he (the seller to him) was the principal and not merely a broker, and paid him in good faith the price of the article purchased, he cannot be held liable to the real principal's claim, such payment protecting him from further liability. PETUMBER BHUGUTT *v.* MUTHOORA DASS . . 1 Agra, 121

2. RATIFICATION.

53. ——— Effect of ratification.—*Act of principal.*—Where the act of the agent has been communicated to and ratified by the principal, it becomes the act of the principal in point of law. PESTONJEE NESSERWANJEE *v.* GOOL MAHOMED SAHIB [7 Mad., 369

54. ——— Promise to redeem mortgage.—*Consideration.*—*Contract made by agent on his own behalf.*—The plaintiff sued the defendant on mortgages executed to the plaintiff by the adoptive mothers of the defendant (who were also defendants) subsequently to his adoption. The plaintiff contended that the mortgages had become effectual as against the defendant by reason of his subsequent conduct. Evidence was given that he had promised his adoptive mothers to redeem the mortgages, and that he had stood by and allowed the plaintiff to carry out the provisions of the mortgage-deeds to his own detriment by paying maintenance to the defendant's adoptive

PRINCIPAL AND AGENT—*continued.*

2. RATIFICATION—*continued.*

Promise to redeem mortgage—*continued.*

mothers, and by paying off certain mortgages which had been created by them previously to the adoption of the defendant. *Held* that the defendant was not liable upon the mortgages. His promise to redeem the mortgages was not made to the plaintiff, but to his adoptive mothers, and there was no consideration for such promise as he made. Nor could the promise have the effect of ratification, for the ratification of the authorised contract of an agent can only be effectual when the contract has been made by the agent avowedly for or on account of the principal, and not when it has been made on account of the agent himself. SHIDDESHVAR *v.* RAMCHANDRARAV [I. L. R., 6 Bom., 463

55. ——— Acquiescence by co-sharers.—*Mortgage by lumberdar.*—*Acquiescence in acts of agent.*—Where a mortgage was made by a lumberdar of his own share and shares of his co-sharers as agent on their part in order to raise a sum required to pay the Government revenue,—*Held* that the co-sharers, being aware of the fact of mortgage, and not having at the time repudiated it, and, moreover, having acquiesced in the decree of the Court of first instance which awarded their shares on payment of their quota of the mortgage-debt and interest, must be taken to have thereby consented to the act of the lumberdar which was done on their behalf. PUNCHUM SINGH *v.* MUNGLE SINGH [2 Agra, Pt. II, 207

56. ——— Acquiescence by mortgagor.—*Condition in wajib-ul-urz.*—*Execution of wajib-ul-urz as mortgage.*—*Held* that the original proprietors were not bound by a condition in the wajib-ul-urz which had been signed and attested by a third party then in possession, not as authorised agent on behalf of the proprietors, but as a mortgagee. Subsequent acquiescence by the mortgagor or his representative might be only an acquiescence in the mortgagee's act to the extent and in the qualified way in which his consent was given. BHAGEERUTH *v.* MOHUN [2 Agra, 129

But *see* MISAJOOLNISSA *v.* BUNSEEDHUR [1 N. W., 193 : Ed. 1873, 277

3. REVOCATION.

57. ——— Agency of manager.—*Revocation by one of several shareholders.*—A principal can determine the authority given to an agent. The authority given to a manager may be revoked by a shareholder, and another shareholder cannot resist such revocation, unless there has been a stipulation in the deed providing for the appointment of a manager that the authority should continue for some definite time. BULAKEE LALL *v.* INDURPUTTEE KOWAR . . . . . 3 W. R., 41

58. ——— Agent to sell property.—*Agreement.*—*Remuneration for work and labour done.*—The defendant requested the plaintiff to sell for him

PRINCIPAL AND AGENT—*continued.*

3. REVOCATION—*continued.*

Agent to sell property—*continued.*

a plot of ground on the Esplanade in Bombay at any rate exceeding the price at which the defendant himself had purchased it, and agreed to give him as remuneration half of the net profit realised on the sale. The defendant subsequently revoked this authority, and the plaintiff shortly afterwards found a purchaser, whose offer the defendant did not accept. *Held* that the plaintiff could not recover on the agreement, which had not been performed on his part; that there was no ground for holding that the plaintiff and the defendant were partners in the transaction as between themselves; and that the plaintiff was not entitled to recover for work done as broker, or for commission, the nature of the agreement being that the plaintiff took the risk of the authority being revoked. HURST *v.* WATSON . . **2 Bom., 423 : 2nd Ed., 400**

59. ——— Hereditary agency.—*Contract.—Consideration.—Specific performance.—Contract Act (IX of 1872), ss. 202, 203.*—The defendant, by an agreement in the nature of a letter of attorney, constituted the plaintiff and his descendants the hereditary agents of the defendant, gave him authority to collect the rents of his share in an inam village, and promised to pay him an annual salary out of the rents. *Held* that, as between the parties and during their lifetime, the appointment was valid and binding, whether or not any valuable consideration passed,—the mere acceptance of the office by the plaintiff being a sufficient consideration for the appointment. But, independently of the terms of the agreement, and whether or not the agency had been created for valuable consideration, the defendant had, under the general provisions of section 203 of the Contract Act (IX of 1872), a right to revoke the authority, as the mere arrangement that the plaintiff's salary should be paid out of the rents could not be regarded as giving to the plaintiff an interest in the property, the subject-matter of the agency, within the meaning of section 202. If the defendant had revoked the agency improperly, the remedy lay, under ordinary circumstances, in a suit by the plaintiff for damages for breach of contract. Where, however, the plaintiff chose to sue for specific performance, and demanded arrears of salary,—*Held* that, without a valuable consideration for the defendant's promise, the agreement passed by him to the plaintiff would be *nudum pactum*, and the plaintiff would not be entitled to recover, except for work and services actually rendered. VISHNUCHARYA *v.* RAMCHANDRA **[I. L. R., 5 Bom., 253**

4. DUTY OF AGENTS TO ACCOUNT.

60. ——— Form of account.—*Right to inspect books.—Per* FIELD, *J.*—It is the duty of an agent to render proper accounts to his employer irrespective of any contract to that effect. And he does not discharge that duty by merely delivering to his employer a set of written accounts without attending to explain them, and produce the vouchers by which the items of disbursements are supported. In

PRINCIPAL AND AGENT—*continued.*

4. DUTY OF AGENTS TO ACCOUNT—*continued.*

Form of account—*continued.*

order to enable an agent to prepare accounts to be furnished to his principal, he should be allowed to have reasonable access, at proper times and in the presence of responsible persons, to such books and papers in the principal's possession as may be necessary for the preparation of the accounts. ANNODA PERSAD ROY *v.* DWARKANATH GANGOPADHYA **[I. L. R., 6 Calc., 754 : 8 C. L. R., 321**

61. ——— Right to account on death of manager.—*Manager of company and employer.—Liability to account.—Accrual of right on death of manager against representatives.*—A manager is bound to account to his employer whenever he is called upon to do so under reasonable circumstances. On the death of such manager a fresh right to an account accrues to the employer as against the manager's representatives. LAWLESS *v.* CALCUTTA LANDING AND SHIPPING COMPANY. CALCUTTA LANDING AND SHIPPING COMPANY *v.* LAWLESS **[I. L. R., 7 Calc., 627**

5. LIABILITY OF PRINCIPAL.

62. ——— Proof of purchase having been made for principal.—*Constructive purchase by agent with funds of principal.*—To establish a *primâ facie* case of constructive purchase by an agent out of the funds of the principal, it must be proved that at the time of the purchase the agent had in his hands funds of the principal sufficient to make the purchase. ROOKONISSA *v.* WOOLFUT ALI. SUFDUR ALI *v.* WOOLFUT ALI . **3 W. R., 232**

63. ——— Right to sue principal.—*Election to sue agent.—Suit, Dismissal of.*—Where a creditor sued an agent of his debtor, alleging that the agent had made himself personally liable for the debt, and the suit was dismissed on the ground that the creditor gave credit to the principal,—*Held* that the creditor was not debarred by such proceedings from suing the principal. RAMAN *v.* VAIRAVAN **[I. L. R., 7 Mad., 392**

64. ——— Purchase by agent out of scope of authority.—*Assistant in indigo factory. Purchase of seed by.—Disclosed principal.—Held* by the majority (GLOVER, *J.*, *dissentiente*) that it is not within the reasonable scope of the authority of an assistant in an indigo factory to purchase any amount of indigo seed for his master and to make his master liable, particularly when the seed was not purchased or used for the factory; and that though the assistant, in writing to the vendor for the seed, styled himself in the body of the letter as the manager of the concern, yet his signing himself for another person, and not for the owner of the factory, disclosed to the vendor that the other person and not the owner of the factory was his principal. ROGHOOBURDYAL MUNDUR *v.* CHRISTIAN **[3 W. R., 123**

PRINCIPAL AND AGENT—*continued.*

5. LIABILITY OF PRINCIPAL—*continued.*

65. ——— Carriage of goods by railway.—*Goods passing over the lines of several companies.—Agreement for interchange of traffic.—Loss of goods.—Liability.*—The plaintiff delivered to the Madras Railway Company a bale of cloth for carriage from B., a station belonging to that company, to S., a station belonging to the defendants, the G. I. P. Railway Company, and obtained from the Madras Company a receipt which recited that it was granted "subject to the rules and regulations and charges in force on that or any other railway over which the goods might pass." The goods were lost while on the line and in the charge of the defendants, the G. I. P. Railway Company, and the plaintiff sued them for damages for breach of the contract of carriage. Between the two railway companies there existed an agreement arranging for the interchange of traffic, which provided, *inter alia*, that goods should be booked through to and from all stations on both lines at certain stated rates; that in such cases one company should receive payment and should account to the other; that any claim for loss or damage should be paid by the company in whose custody the goods were when lost or damaged, or, if that could not be ascertained, then by both companies rateably; and that no alteration affecting the through traffic should be made by either company without previous notice to the other. The defendants pleaded that the suit was wrongly brought against them, as there was no contract between themselves and the plaintiff. *Held* that the suit, whether or not it might also have been brought against the Madras Railway Company, was rightly brought against the defendants, inasmuch as the agreement between the two companies, if it did not actually constitute a partnership between them, showed, at least, that the Madras Railway Company became the agents of the defendants to make the contract for carriage with the plaintiffs. G. I. P. RAILWAY COMPANY *v.* RADHAKISAN KHUSHALDAS [I. L. R., 5 Bom., 371

66. ——— Undisclosed principal.—*Settlement of accounts between principal and agent.—Right of unpaid vendor.—Contract Act (IX of 1872), ss. 231, 232.*—The defendant, who resided in Dholera, employed the firm of *S. K.* as his agents in Bombay. A running account was kept, in which the defendant was debited with the price of goods purchased on his account by *S. K.*, and was credited with the price of goods sold by *S. K.* on his account, and with the amount of the remittances which he made from time to time. In fulfilment of orders received from the defendant on 16th March 1879, *S. K.*, on the 23rd March 1879, bought from the plaintiff 20,000 cocoanuts (out of a cargo of 42,000 then lately arrived at Bombay); on the 24th March 1879, 10,160 cocoanuts (out of a cargo of 23,000); and on the 27th March, 26,626 cocoanuts (out of a cargo of 71,250). By each of these three contracts it was agreed that the purchase-money should be paid on delivery. At the time of making these contracts the plaintiff did not know, nor had he any reason to suspect, that *S. K.* was an agent and not principal in the transactions. On the 27th and 28th March 1879, the 30,160 cocoanuts (the subject-matter of the first two contracts) were trans-shipped into the vessel *Lakhmiprasad*, and on the 29th March 1879, the 26,626 cocoanuts (the subject-matter of the third contract) were trans-shipped into the vessel *Lalsari* for conveyance to Dholera. The *Lalsari* sailed from Bombay on the 31st March, and on her arrival at Dholera the defendant obtained possession of the third lot of 26,626 cocoanuts which had been shipped on board. On the 1st April *S. K.* received from the defendant remittances sufficient to pay for all the cocoanuts, and to leave a balance of R1,727 to the credit of the defendant in his account with *S. K.* These remittances were made by the defendant in good faith, and were received by *S. K.* at a time when the plaintiff gave credit to *S. K.* and did not know of any one else to be charged with the price of the cocoanuts. On the 2nd April the firm of *S. K.* stopped payment, and on the 3rd April 1879 the plaintiff, in consequence of the failure of *S. K.* and the non-payment of the price of the cocoanuts, trans-shipped the 30,160 cocoanuts (the subject of the first two contracts) from the *Lakhmiprasad* into the *Ramprasad*. These cocoanuts were subsequently sold, and the proceeds of the sale deposited in the Bank of Bombay to abide the result of this suit. On the 4th April the plaintiff discovered that the defendant was the principal in the cocoanut transaction, and brought this suit against him to recover the price of the three lots of cocoanuts. The defendant denied that *S. K.* had authority to pledge his (defendant's) credit in making purchases, and contended that, having in good faith paid his agent *S. K.* for the cocoanuts prior to the institution of the suit, he (the defendant) was not liable to the plaintiff. *Held* that the plaintiff was entitled to recover. The rule of English law, which makes the liability of an undisclosed principal subject to the qualification that he has not *bonâ fide* paid the agent, or that the state of accounts has not been altered, is not adopted in the Contract Act. Section 232 is to be read as a qualification of the first portion of paragraph 1 of section 231, which gives a principal a general right to enforce a contract entered into by his agent. Section 232 qualifies that general right by making it subject to the rights and obligations subsisting between the agent and the other contracting party. The 2nd clause of paragraph 1 of section 231 gives a party contracting with an agent the same rights against the principal only as he would have had against the agent; and section 234 adds a further qualification to his rights as against the principal. Section 232 of the Contract Act adopts the qualification imposed by English law upon the right of the principal to enforce a contract,—*viz.*, that he must take the contract subject to all the equities, in the same way as if the agent were the real principal; but it does not impose upon the right of the other contracting party the qualification laid down by the cases of *Thompson v. Davenport, 2 Smith's L. C., 7th Ed., 364*, and

PRINCIPAL AND AGENT—*continued.*

5. LIABILITY OF PRINCIPAL—*continued.*

Undisclosed principal—*continued.*

Armstrong v. *Stokes, L. R., 7 Q. B., 598,*—namely, that the principal has not paid the agent, or that the state of the account between the principal and agent has not been altered to the prejudice of the principal. The only qualification to the right of the other contracting party against the principal, is that imposed by section 234,—namely, that he has not induced the principal to act upon the belief that the agent only will be held liable. PREMJI TRIKAMDAS *v.* MADHOWJI MUNJI . **I. L. R., 4 Bom., 447**

67. ——— Secret arrangement by agent.—*Purchase by agent afterwards adopted by principal.*—If a principal adopts the acts of an agent in respect of the purchase of a property, he must take the property subject to the conditions with which the agent encumbered it, notwithstanding any secret arrangement between them not known to third parties. ISHENCHUNDER SINGH *v.* SHAMA CHURN . . . . . **W. R., 1864, 3**

68. ——— Fraud.—*Fraudulent statements made by agent.*—Statements fraudulently made by an agent for his own benefit are not binding on the principal. JOWAHIR LALL *v.* POOKURUM SINGH **[6 W. R., 252**

69. ——— *Fraud of agent in sale of property.*—If an agent, authorised to sell property, commits a fraud against his principal, the principal is the person who ought to suffer, and not a stranger. DOORGA NARAIN SEN *v.* BANEY MADHUB MOZOOMDAR . . **I. L. R., 7 Calc., 199**

70. ——— *Fraud of agent, Adoption of, by principal.*—Principals are not allowed to benefit by adopting the fraud of their agents. KOYLASH CHUNDER BANERJEE *v.* KALEE PROSONNO CHOWDHRY . . . . . **16 W. R., 80**

71. ——— *Liability in civil action of principal for consequences of agent's fraud.*—In a suit to recover the value of bullocks hired by the defendants gomashta to convey quantities of salt from the Government golahs, which, proving to be in excess of the quantity entered in the Government pass owing to the fraud of the gomashta in making an addition to the lawful quantity, was seized by the Salt officials as contraband, and the bullocks sold under the provisions of Regulation X of 1819,—*Held* that, neither the want of authority on the part of the gomashta, nor the ignorance of the salt merchant, the defendant, could be pleaded to exonerate him from the consequences of his servant's fraudulent act. SADHOOJUNNA *v.* RAMHURRY MUNDUL . . . . . **1 Hay, 461**

72. ——— *Bankruptcy of agent, Effect of.—Breach of contract.—Damages.—Amendment of bill of complaint.*—This was a suit for foreclosure of a mortgage for R50,000, during a certain contract, which, the plaintiffs contended, had determined by the bankruptcy of their Calcutta agents.

PRINCIPAL AND AGENT—*continued.*

5. LIABILITY OF PRINCIPAL—*continued.*

Fraud—*continued.*

The defence was that the contract was not so determined; and that even if it were, the defendant had a right of lien or set-off, which would cover the amount of the advances. This set-off consisted of the amount of loss in the sale of silk, which the defendants, after the said bankruptcy, had shipped direct to London, and sold there on non-acceptance by the plaintiffs; and of a claim of R18,024, the amount of a bill of the said agents which the defendant had accepted from them as payment for silk, but which bill was dishonoured after the said bankruptcy. Clause 6 of the agreement was as follows: "The silk to be paid for on delivery. Delivery to be taken within ten days of the arrival of any parcel in Calcutta; failing the payment within that time, Carr, Tagore, & Co. may sell it at the market price; and should this be under the contract rate, you agree to pay the difference." Clause 10 of the agreement was as follows: "As you have no authority to make advances previous to the receipt of the silk, and as Carr, Tagore, & Co. stipulate for the advance in part of the sum which they are out of pocket, to carry on the filatures, the advances proposed being R50,000, at such times and in such portions as they may require after the delivery of the first parcel of silk under this contract, so that such advances shall not at any time be in excess of R50,000, beyond the silk delivered, for which interest at the rate of 6 per cent. will be allowed, and it is agreed that the question of advances shall be an open question; and that in the event of advances being authorised, the contract shall at once be in force." The lower Court held that under these two clauses the defendants could not resort to the advances for their set-off; that the plaintiffs were not liable for the R18,024; and that the contract was not determined. Plaintiff also alleged a series of frauds on the part of their agents, with whom defendants were in collusion, but these charges were abandoned at the hearing. *Held* that acceptance by the agent binds the principal where there is no fraud; that voluntary acceptance of an agent's bill as payment discharges the principal; that a contract is not determined by death or bankruptcy of an agent, unless there has been an express stipulation to that effect; that an impossibility of fulfilling the terms of a contract must be clearly established in order to avoid a liability for breach thereof; that when a place of delivery is specified in a contract, delivery must be made there; that the plaintiff having failed to prove alleged fraud in a deed, although entitled to relief under a distinct head of equity, will not be allowed to make a new case, and cannot, in the same suit, obtain a decree on the footing of the said deed; that amendment of a bill will not be allowed, if it appear that an account, being the relief attainable, would have been given if demanded, and that the plaintiff has not offered to perform his part of a contract and allow compensation for breaches thereof to the defendant and to pay any balance that should be found against him; that the mode of ascertaining damages for breach of contract prescribed in the contract must

PRINCIPAL AND AGENT—*continued.*

5. LIABILITY OF PRINCIPAL—*continued.*

Fraud—*continued.*

be adopted, and the remedy by action at once accrues. POLE *v.* GORDON

[2 Hyde, 289: Cor., 83: Bourke, O. C., 1

73. ——— **Misfeasance and tort of agent.**—*Liability of principal for wrongful acts of agent.*—A principal is liable for the misfeasance, or tort of his agent, when such misfeasance or tort has been done or committed with the subsequent assent, adoption, or ratification of the principal. When it is found that a principal was cognisant of, and countenanced, the act of his agent, it may be inferred that he assented to it. RAI KISHEN CHAND *v.* SHEO BARAM RAI . . . . . 7 N. W., 121

6. LIABILITY OF AGENTS.

74. ——— **Banian, Liability of.**—*Custom.*—There is a presumption in Calcutta that where a vendor of goods deals with a banian of a European firm, *quâ* banian, he is only to look to the banian for the price. FAIZULLAH *v.* RAMKAMAL MITTER

[2 B. L. R., O. C., 7

JUGGOBUNDOO SHAW v. GRANT, SMITH, & CO.

[2 Hyde, 129: Cor., 47

S. C. on appeal, GRANT, SMITH, & CO., *v.* JUGGOBUNDOO SHAW

Bourke, A. O. C. 117: 2 Hyde, 301

75. ——— **Agent of foreign principal.**—*Presumption of law as to whom credit is given.*—Where it is sought to make the agent of a foreign principal liable on a contract, there is no presumption of law, but the case must be determined by the particular facts. But in the absence of evidence to the contrary it will be presumed, as a matter of fact, that credit was given to the agent. MCGAVIN *v.* WILSON . 1 Ind. Jur., N. S., 405

76. ——— **Agent mixing transactions of principal with his own.**—*Borrowing.*—An agent is personally liable who mixes up his private transactions with those of his principal by borrowing for both. JUGGURNATH ROY CHOWDHRY *v.* MUNOREKHA DOSSEE . . . 2 W. R., 156

77. ——— **Agent dealing with third parties' goods as those of the principal.**—*Liability to owner of goods.*—An agent who deals with another man's goods as if they belonged to his principal, may be answerable to the true owner, notwithstanding that he acts by the command or direction of his principal. WISE *v.* BURN

[4 W. R., Rec. Ref., 1

78. ——— **Unconditional acceptance of bill by agent.**—*Liability on bill.*—*Held* that the defendant's agent, having unconditionally accepted the bill, must be held liable for the amount. SALIG RAM *v.* JUGGUN NATH . 1 Agra, 137

79. ——— **Purchase by agent.**—*Knowledge of agency by vendor.*—*Government servant.*—The defendant, a servant of Government, having

PRINCIPAL AND AGENT—*continued.*

6. LIABILITY OF AGENTS—*continued.*

Purchase by agent—*continued.*

given orders for bricks, and the plaintiff being aware that the defendant was a servant of Government, and that the bricks were required for building bridges on account of Government,—*Held* that the Government was liable, and not the defendant personally. SEEENATH ROY *v.* ROSS

[4 W. R., S. C. C. Ref., 13

80. ——— **Goods ordered by principal and accepted by agent.**—*Personal liability of agent.*—In a suit for the recovery of the value of certain articles sold and delivered to defendant No. 1, who had given an order for payment, which defendant No. 2, as his agent, had accepted by an endorsement, plaintiff gave up the claim against defendant No. 1, and demanded the amount from defendant No. 2 alone. *Held* that, under the circumstances, there could be no claim against defendant No. 2. KALEE MOHUN SIRCAR *v.* HUMAUN KADER MAHOMED ALI . . . . . 25 W. R., 91

81. ——— **Liability in case of two innocent persons.**—*Liability of agents to third parties.*—*Forgery.*—Two letters were presented to *M.*, one addressed to himself and the other to the manager of the Mussooree Savings Bank, both purporting to be written by *K.* In the letter to *M.*, *M.* was requested to deliver to the manager of the Bank the letter addressed to him. In the letter to the manager he was asked to send R2,500 in currency notes through *M.*, payment being promised by a remittance through another bank or through *M. M.* delivered the letter to the manager, who upon the strength of it made over the notes to *M.*, who gave a receipt for them for and on behalf of *K.*, and afterwards handed them over to the person who had brought him the letter. The letters were forgeries. In a suit against *M.* by the Bank to recover the money paid to *M.*,—*Held* that, in presenting the letter, in receiving the notes, and in granting a receipt for them, the defendant was in some sense an agent of *K.*; but inasmuch as the notes were given on the authority of the letter addressed to the plaintiff himself, and not in consequence of any representation made by the defendant, the latter could not be held liable for the loss sustained by the former. MOONEY *v.* MUSSOOREE SAVINGS BANK

[6 N. W., 319

82. ——— **Undisclosed principal.**—*Promissory note signed by agent.*—If an agent signs a promissory note without disclosing the names of his principals, the latter are not liable. SHEO CHURN SAHOO *v.* CURTIS . . . 3 W. R., 139

83. ——— *Right to sue.*—*Liability of agent.*—*Charter-party.*—*Actual knowledge.*—*Disclosure of name of principal at time of making the contract.*—*Presumption of liability of agent where name of principal not disclosed.*—*Contract Act (IX of 1872), s. 230.*—The plaintiffs by charter-party contracted to let the steam-ship *Oakdale* to the defendants upon certain terms. The

PRINCIPAL AND AGENT—*continued.*

6. LIABILITY OF AGENTS—*continued.*

Undisclosed principal—*continued.*

first clause of the charter-party stated that the plaintiffs "agreed as agents for owners of the said steam-ship," and subsequent clauses provided that the owners should bind themselves to receive the cargo on board, and that the master on behalf of the owners should have a lien on the cargo for freight, &c. The charter-party was signed by the plaintiffs and defendants in their own names. The plaintiffs sued the defendants for breach of the charter-party in refusing to load the said steam-ship. *Held* that the plaintiffs had contracted as agents, and were therefore not entitled to sue. If a contract made by a person who is an agent is worded so as, when taken as a whole, to convey to the other contracting party the notion that the agent is contracting in that character, he cannot sue or be sued on the contract. Where one contracting party knows that the other is contracting as an agent for a third person whose name he also knows, the presumption laid down in clause 2 of section 230 of the Contract Act (IX of 1872) does not arise, although at the time of making the contract the agent does not disclose the name of his principal. The essential point is the knowledge, and actual knowledge is equivalent to disclosure, the whole object of which would be to convey such knowledge. MACKINNON, MACKENZIE, & Co., *v.* LANG, MOIR, & Co. **I. L. R., 5 Bom., 584**

84. ——————— *Liability of agent.—Contract Act (IX of 1872), s. 230.—Evidence Act (I of 1872), s. 92.—Charter-party.—Employment of stevedores to load and discharge cargo.*—The defendants let a steam-ship to the plaintiff for a certain term, and signed a charter-party "by and on behalf of the owners of the steam-ship *A.*" The charter-party was a time-charter to commence on arrival at Calcutta, and to terminate at one of certain ports; the steamer in the interim to ply to and from any port the charterers pleased. It was agreed that the steamer should be provided "with a proper and sufficient crew of seamen, engineers, stokers, firemen, and other necessary persons for working cargo with all despatch;" and that in taking and discharging cargo, "the master and his crew with his boats shall be aiding and assisting to the utmost of their power;" and that "the owners or agents of the said steam-ship shall be held responsible to the said charterers for any incapacity, want of skill, insobriety, or negligence on the part of master, officers, engineers, stokers, firemen, or crew of the said steam-ship." The names of the principals were not disclosed in the charter-party, but were verbally disclosed before the charter-party was signed. In an action against the agents for damages for refusing to supply stevedores and other persons, in addition to the crew, when loading and discharging cargo,—*Held* that the presumption created by the second clause of section 230 of the Contract Act is merely a *primâ facie* one and may be rebutted, and that the contract was not personally binding on the agents, because the *primâ facie* presumption of an intention to contract personally was rebutted by the language of the contract

PRINCIPAL AND AGENT—*continued.*

6. LIABILITY OF AGENTS—*continued.*

Undisclosed principal—*continued.*

itself. *Held*, also, that the terms of the charter-party showed that the crew only were to assist in loading and discharging cargo; and that the plaintiffs were not entitled to call on those responsible for the steamer to load and discharge cargo by stevedores instead of by the crew. Reading the second part of section 230 of the Contract Act with section 92 of the Evidence Act: *Semble*,—That if, on the face of a written contract, an agent appears to be personally liable, he cannot escape liability by evidence of any disclosure of his principal's name apart from the contract. SOOPROMONIAN SETTY *v.* HEILGERS

[I. L. R., 5 Calc., 71: 4 C. L. R., 377

85. ——————— On 6th April 1865, *A.*, who resided and carried on business at Bombay, through his gomastah at Calcutta, shipped on board the *Sir Jamsetjee Family* 268 bags of sugar, and received from the captain a bill of lading, by which he certified that they were shipped in good order and well conditioned on board the said ship bound for Bombay, to be there delivered in like good order and well conditioned to *B.*, or his assigns, on payment of freight at R16 per ton. The bill of lading was subject to the usual exceptions. The vessel was at the time chartered to *H. A.*, and *C. and C.* were agents for the owners. *H. A.* being unable to carry out the terms of the charter, there was a delay in the departure of the vessel. On 26th May 1865 *A.* wrote to *C. and C.*, addressing them as agents of the ship: "I beg to inform you that I have shipped per *Sir Jamsetjee Family* 268 bags of sugar for Bombay; I hold the bills of lading for the same, and the ship is still detained here. I hope you will be kind enough to let me know what you will do about the cargo,—if the said ship will sail for Bombay or trans-ship to any other vessel, or deliver the cargo here." To which *C. and C.* on the same day replied: "We shall be able to tell you in the course of a week or so what we propose doing with the ship *Sir Jamsetjee Family*; as soon as anything has been decided, due notice shall be given to the shippers of cargo already on board." On 1st June *C. and C.* again wrote: "*H. A.* having failed to carry out his charter of the *Sir Jamsetjee Family* in terms of the shipping order, and sundry goods having been sent on board by him, of which the following are believed to be to your order, and for which bills of lading have been signed and delivered to *H. A.*, we shall be glad to know whether you are willing that the said goods—268 bags of sugar—be trans-shipped to a steamer going to Bombay, at the current rate of freight, the bills of lading for the same being sent to the owners of the *Sir Jamsetjee Family*, to be delivered to the consignees of the goods upon production of the bills of lading already signed. You will, of course, understand that the goods are liable for the chartered rate,—*viz.*, R20·10 per ton; and the charterer having failed to complete the loading, the difference of freight between what *H. A.* granted you a shipping order at and the freight charged by the steamer will have to be paid

PRINCIPAL AND AGENT—*continued.*

6. LIABILITY OF AGENTS—*continued.*

Undisclosed principal—*continued.*

by the shipper previous to the goods being delivered in Bombay." On the 8th June *A.* replied: "I am agreed that my goods be trans-shipped to a steamer going to Bombay at the current rate of freight, but I must not pay the difference of freight, whatever it may be. In regard to *H. A.*, I have nothing to do with them, as the bills of lading per *Sir Jamsetjee Family* for 268 bags of sugar being signed by the captain of the same at the rate of freight, R16 per ton, I am liable for the same only. If you are willing to trans-ship my said goods to a steamer at the same rate of freight, I am willing and must pay it; otherwise you will kindly order to deliver my goods from *Sir Jamsetjee Family* here." *C. and C.* accepted and acted on the proposal in the last letter. The sugar was trans-shipped from the *Sir Jamsetjee Family* to the *Gunga*, from the mate of which *C. and C.* obtained a receipt, stating that the goods had been shipped in good order, &c. The goods were afterwards removed without the knowledge of *C. and C.* from the *Gunga* to another steamer, the *Mula*, which belonged to the same owners. Subsequently *C. and C.* gave up the receipt from the mate of the *Gunga*, and obtained in exchange a bill of lading signed by the agents for the captain of the *Mula*. The bill of lading stated the receipt of goods (in which were included those of *A.*) from *C. and C.*, and made them deliverable to order of *C. and C.* at Bombay, and receipt of freight for the whole at R15 per ton was admitted. *A.* knew that his goods had been put on board the *Mula*, and got his policy of insurance, which was against a total loss only, transferred. There were inserted in red ink in the bill of lading when given to *A.* the words, "Bags all more or less in bad order and torn; contents damaged and rotten; marks indistinct; not responsible for marks or condition of packages or contents." The *Mula* proceeded on her voyage, but returned to Calcutta with her cargo damaged by the perils of the sea: 260 of *A.'s* bags of sugar were condemned and sold in Calcutta, under the authority of the agents of the *Mula*, without notice to *C. and C.* or to *A.*, and neither were aware that the sale was about to take place. The remaining eight bags were sent to Bombay in another ship by the agents of the *Gunga* and *Mula*, and were received by *A. Held* (overruling PHEAR, *J.*) that *C. and C.* were agents only of the owners of the *Sir Jamsetjee Family*; but had *C. and C.* been liable as agents for *A*, they would not have been liable for the full value of the goods damaged by the perils of the sea. *Quære*,—If *C. and C.* had expressly, as agents of the owners of the *Sir Jamsetjee Family*, contracted to trans-ship and deliver at Bombay, according to the terms of the bill of lading, would they have been personally liable? *Semble*,—A contract made with express reference to a principal, though not by name, would not render the agent personally liable as the agent of an undisclosed principal. COWIE *v.* DHURMSEE POONJABHOY . . **2 Ind. Jur., N. S., 75**

86. ——————— *Agents of ship.*—*Liability of agents.*—Upon the following facts

PRINCIPAL AND AGENT—*continued.*

6. LIABILITY OF AGENTS—*continued.*

Undisclosed principal—*continued.*

referred, "Defendants contracted with plaintiffs as agents of the captain and owners of a certain ship then in the Madras Roads. The plaintiffs were aware of this at the time when the contract was made. The captain was at the time in charge of his ship. At the time of the contract nothing was said by either party as to the person or persons on whose credit the contract was made,—all that occurred being that defendants, known by plaintiffs to be acting as agents for the captain and owners of the ship, agreed with plaintiffs to carry certain of their goods on board the ship to Calcutta. The defendants did not at the time of the contract in terms say that they contracted only as agents. The plaintiffs did not know the names of the owners, nor of the captain; nor had they any further or other knowledge of the latter than that which his designation by his office of master of the ship conveyed." *Held* that, in the absence of anything more than knowledge that the defendants were acting as agents of the master and owners of a ship in the Roads, a decision declaring the agents liable was strictly in accordance with English law. PATER *v.* GORDON **[7 Mad., 82**

87. ——————— **Captain and officers of man-of-war.**—*Damage occasioned by treatment of stranded ship without consent of owner.*—*A.*, the captain of a man-of-war, gave written instructions to *B.*, his lieutenant, concerning a certain ship which was stranded. The official instructions contained the following passage: "You will in all emergencies act as your discretion and judgment direct." At the same time *A.* sent a demi-official letter to *B.*, in which, after several directions having reference to the disposal of the cargo, he added, "After getting all you can, I should think that the wreck ought to be burnt; but all is left to your discretion and judgment." In pursuance of these orders the wreck was burnt without the consent of the owner. *A.* subsequently ratified the act of his subordinate. *Held*, first, that *A.*, by the expressions used in the demi-official letter, rendered himself liable as principal; and second, that *B.*, as the agent directly concerned in causing the burning of the ship, was liable jointly with *A.* to the owner for the damage occasioned thereby. ABDOOLA BIN SHAIK ALLY *v.* STEPHENS **[2 Ind. Jur., O. S., 17**

88. ——————— **Fraud.**—*Fraudulent agreement between agent and contractors for work.*—The ex-King of Oudh ordered *M.*, one of his officers, to procure the erection of certain buildings. *M.* made over to *Y.* (also one of the King's officers) the contract for a portion of the work which the appellant undertook to execute. The contract for the work was signed by the appellant alone, and it provided (among other things) that *Y.* was to be allowed R20,000 out of every R1,00,000 paid to the appellant. By another agreement it was stipulated that the work should be examined and checked by *Y.* or his agents. The appellant was discharged before the completion of the

PRINCIPAL AND AGENT—*continued.*

6. LIABILITY OF AGENTS—*continued.*

Fraud—*continued.*

work, and he sued *Y.*, *M.*, and the ex-King jointly. *Held* that *Y.* did not render himself personally liable, and that the contract was of such a description that the appellant was not entitled to a decree against the other respondents in respect of it, as both *Y.* and the appellant were parties to a fraud on the ex-King. BHOGOBAN CHUNDER SEN *v.* BADSA ALLY SHA [1 Ind. Jur., O. S., 103

89. ——— **Payment of deposit as purchase-money with auctioneer.**—*Suit to recover deposit.*—The plaintiff purchased immoveable property at an auction sale and deposited a certain amount on account of the purchase-money with the auctioneer. The vendor refused to convey the property to the plaintiff. *Held* that the money having been deposited with the auctioneer as a stakeholder and not as an agent merely, and being in his hands, the action to recover it lay against the auctioneer, and not against the vendor. ESSAJI ADAMJI *v.* BHIMJI PURSHOTAM . 4 Bom., O. C., 125

90. ——— **Contract for municipality.**—*Repudiation of contract by municipality.—Want of authority.*—Plaintiff sued one *M. M.*, overseer for the municipal office, for the recovery of money due on a contract under which plaintiff had done certain work, defendant contracting for the municipality, and for the performance of work known by plaintiff to be municipal work. The municipality having ignored the contract, it was held that the contract being a *quasi* contract, defendant could not be held personally liable in the action. MODHOOSOODUN DEY *v.* MOHENDRONATH MOOKERJEE . 9 W. R., 206

91. ——— **Gratuitous agent.**—*Negligence.—Gross negligence.*—A gratuitous agent is liable for any loss sustained by his principal through the gross negligence of the agent. What is gross negligence is a question on the facts of each particular case. AGNEW *v.* INDIAN CARRYING COMPANY [2 Mad., 449

92. ——— **Negligence of agent.**—*Agent to buy indigo seed.—Exercise of judgment.*—Agents buying indigo seed in a rising market, under an order to purchase on the most favourable terms, cannot experiment by sowing a sample and waiting before they purchase to see whether it will germinate. They are only bound to act to the best of their judgment, and to use proper care and skill as agents in purchasing what they are ordered to purchase, and their action cannot be repudiated unless they are shown to have been guilty of negligence. BETTS *v.* ARBUTHNOT . . . . . 19 W. R., P. C., 65

Affirming decision of High Court in ARBUTHNOT *v.* BETTS . . . . . 6 B. L. R., 273

93. ——— *Liability of firm for acts of member of firm.—Contract Act, s. 192.*—The plaintiffs and defendants carried on business in the same place, and when a member of either firm was sent to Calcutta to make purchases, the other

PRINCIPAL AND AGENT—*continued.*

6. LIABILITY OF AGENTS—*continued.*

Negligence of agent—*continued.*

firm took advantage of the opportunity to get the same person to purchase goods on their behalf. A member of the defendants' firm who was sent to Calcutta, through his own negligence lost a sum of money given by the plaintiffs to the defendants' firm for the purchase of goods. The lower Courts found that the defendants acted as agents. *Held* that the defendants' firm, and not only the particular member of the firm by whose negligence the money was lost, was responsible. SEKUNDER MONDUL *v.* NOCOWRI BISWAS . . . . . 11 C. L. R., 547

94. ——— *Liability for loss sustained by company.—Held,* under the circumstances, that the company had suffered loss by the neglect of their agent, and that he was liable to make good the loss sustained in consequence of his negligence. CRAWLEY *v.* MALING . . 1 Agra, 63

PRINCIPAL AND SURETY.

	Col.
1. LIABILITY OF PRINCIPAL. . .	4610
2. LIABILITY OF SURETY . . .	4611
3. DISCHARGE OF SURETY . . .	4615

See BILL OF EXCHANGE. [I. L. R., 3 Calc., 174

See DEKKAN AGRICULTURISTS' RELIEF ACT, 1879, s. 72. [I. L. R., 5 Bom., 647

See EXECUTION OF DECREE—MODE OF EXECUTION—PRINCIPAL AND SURETY. [I. L. R., 4 Calc., 331

See HINDU LAW—CONTRACT—PRINCIPAL AND SURETY . . 4 Mad., 190

See CASES UNDER SURETY.

1. LIABILITY OF PRINCIPAL.

1. ——— **Joint and several liability.**—*Decrees against both parties.*—Where two parties are jointly and severally liable under the terms of a bond, the principal may be sued for the amount due with interest, notwithstanding that a decree has been obtained for the same sum against the other party. MAHOMED ROHEEMOODDEEN *v.* INDOOR CHUNDER JOWHUREE . . . . . 12 W. R., 192

2. ——— **Remedy between principal and surety.**—*Deficit in Collectorate treasury.—Attachment of property by Collector.*—When on the discovery of a deficit in the deposit accounts of certain zemindars a Collector attaches the property of the sureties for the Collectorate treasurer, the remedy open to the sureties is against the treasurer only. SADUT ALI KHAN *v.* MANIKARNIKA CHOWDHRAIN. NUND MOHUN CHOWDHRY *v.* MANIKARNIKA CHOWDHRAIN . . W. R., 1864, 119

3. ——— *Right of surety who has paid the debt to recover from principal.*—

PRINCIPAL AND SURETY—*continued.*

1. LIABILITY OF PRINCIPAL—*continued.*

Remedy between principal and surety—*continued.*

Applying the law of England and Scotland and the general law of Europe to this country, it was held that when a surety has paid off the debt of his principal, not only are all the collateral securities transferred to the surety, but by what is called subrogation the right is also transferred to him to stand in the place of the original creditor, and to use against the principal debtor every remedy which the principal creditor himself could have used. Accordingly the surety is not debarred from proceeding against the original debtor upon the instrument itself which created the debt, by reason of the debt having been paid by himself. HEERA LALL SAMANT *v.* OOZEER ALI . . . . . **21 W. R., 347**

2. LIABILITY OF SURETY.

4. ——— **Extent of liability.**—*Voluntary payments by principal.*—The liability of a surety will not extend beyond the precise limits of his undertaking; he is not liable for any sum voluntarily paid by his principal to a third party for any purpose of his own. KHETTER NATH SEAL *v.* SHIB NATH CHATTERJEE . . **W. R., 1864, 284**

5. ——— *Specific contract.*—*Liability of surety.*—*Costs of suing principal.*—*Held* that a surety's liability must be measured by the contract; and where the contract is specific, and not in general and indefinite terms, the surety cannot be held liable for costs and interest incurred in suing the principal debtor. DABEE CHURN *v.* JANKEE PERSHAD . . . . . **3 Agra, 141**

6. ——— **Liability on bond.**—*Running account.*—*Appropriation of payments.*—*Joint bond.*—*Notice to surety of default.*—A principal and two sureties executed in favour of a bank a joint bond to secure the payment of a sum placed to the cash credit loan account of the principal, together with interest, and the premia on a policy of life assurance, within one year from the date of the bond. At the end of the year a considerable sum remained unpaid, but the principal continued dealing with the bank, and the account was continued for three years after the date of the bond as a running account, during which time divers sums were paid in by the principal, more than sufficient to discharge the amount due at the end of the first year from the date of the bond, and divers sums were in like manner drawn out. In a suit brought by the bank against the sureties to recover the amount due at the end of the first year, it was held that, inasmuch as the whole account from the date of the bond to the end of the principal's dealing with the bank had been treated as a running account, all payments made by the principal to the bank were to be appropriated to the earliest items in the account; and inasmuch as all the moneys due on the bond at the end of the first year were thereby satisfied, no amount remained due on the bond. *Semble,*—That for the purpose of giving persons who appear on the face of an instrument to have executed it as principals the equitable rights of sureties, they may show by evidence, *dehors* the instrument, that they executed only as sureties. *Semble,*—That a surety is not entitled to notice of default made by the principal. *Semble,*—That there being no express stipulation to the contrary, the fact that the principal was allowed a greater credit than that secured would not have discharged the sureties. KOONDAN LALL *v.* JAHANS . . **1 Agra, 17**

7. ——— *Contract Act, s. 127, illustration (c).*—*Surety-bond.*—*Want of consideration.*—Where *N.* advanced money to *K.* on a bond hypothecating *K.'s* property and mentioning *M.* as surety for any balance that might remain due after realisation of *K.'s* property, *M.* being no party to *K.'s* bond, but having signed a separate surety-bond two days subsequent to the advance of the money,—*Held* that the subsequent surety-bond was void for want of consideration under section 127 of the Contract Act (IX of 1872). *Per* STUART, *C. J.*—The legal position of the surety considered and determined. NANAK RAM *v.* MEHIN LAL **[I. L. R., 1 All., 487**

8. ——— **Bond for faithful discharge of duty of overseer.**—*Carelessness of principal.*—By a bond given for the faithful discharge of the office of overseer to a ferry fund committee, the surety became bound "to make good any funds entrusted to the overseer which may be misused." *Held* that, under these words, the surety was liable for a loss of funds arising from the mere carelessness or indiscretion of the principal, independently of any dishonesty, as by his lending the money to contractors. SECRETARY OF THE FERRY FUND COMMITTEE *v.* WARD . **Marsh., 89: 1 Hay, 155**

9. ——— **Bond for performance of duties of office.**—*Clerk of Small Cause Court.*—*Subordinate Judge, Powers of.*—The defendant and *J. W. C.,* Clerk of the Small Cause Court at Allahabad, entered into a bond to the Judge of the Small Cause Court, as well as to his successors in office, in a certain sum as security for the true and faithful performance by *J. W. C.* of his duties as Clerk of the said Court, and for his well and truly accounting for all moneys entrusted to his keeping as such Clerk of the Court. *Held,* in a suit against the defendant as surety, that he was liable for misappropriation by *J. W. C.* of moneys arising from sales of moveable property held in execution of decrees passed by the Judge of the Small Cause Court in the exercise of his powers as Subordinate Judge, and that had the small Cause Court Judge not been invested at the time of the execution of the bond with the powers of a Subordinate Judge, the defendant's liability in respect of such moneys would not have been thereby affected. CROSTHWAITE *v.* HAMILTON . . . . **I. L. R., 1 All., 87**

10. ——— **Laches of creditor.**—*What amounts to laches.*—*Discharge of surety.*—Plaintiff

PRINCIPAL AND SURETY—*continued.*

2. LIABILITY OF SURETY—*continued.*

Liability on bond—*continued.*

PRINCIPAL AND SURETY—*continued.*

2. LIABILITY OF SURETY—*continued.*

Laches of creditor—*continued.*

advanced money to *K.* to enable him to complete a Government contract, and repayment was secured by an assignment of the expected profits. The official to whom the arrangement was notified declined to recognise it, and this was known to all parties. *K.* made default in payment, and the plaintiff, who had taken no further steps in applying to the Government for payment of profits according to the arrangement between himself and *K.*, found that *K.* had been drawing the profits. In a suit against the surety, who claimed to be exempt from liability at least to the extent of the profits which the plaintiff might by due diligence have received,—*Held* that the plaintiff had not neglected any imperative duty incumbent on him as a creditor, and that his conduct did not amount to laches so as to discharge the surety from any portion of his liability. DWARKANATH MITTER *v.* DENONATH BONNERJEE . **Bourke, O. C., 1**

11. ——— Mutual debts.—*Set-off.—Discharge of surety.—R.* borrowed money of the *D. B.* Corporation, payable by monthly instalments, and *G.* became security for him. *R.* failed to pay the *D. B.* Corporation, having then a considerable balance to his credit in their hands. A year after they sued *G.* as surety for the sum borrowed. *Held*, in giving a decree for the plaintiffs, that a banker need not set off against a debt a cash balance of the debtors in his hands, but may proceed against the surety. DELHI BANK CORPORATION *v.* GREENWAY **[Bourke, O. C., 227**

12. ——— Agreement to mortgage, Assignment of.—*Bond of indemnity.—Guarantee.—Interest.*—Liability of parties discussed and form of decree given in a case where, by an agreement in writing, one of the defendants, in consideration of money lent to him by *B.*, the other defendant, agreed to execute a mortgage to *B.* containing the usual covenants (in default the agreement to stand as a mortgage), and *B.* assigned the agreement to the plaintiff, guaranteeing by bond of even date the payment of the principal and interest specified in the agreement. MANICKYA MOYEE *v.* BARODA PROSAD MOOKERJEE **[I. L. R., 9 Calc., 355: 11 C. L. R., 430**

13. ——— Suit against surety.—*Acquittal of principal by Criminal Court.*—The acquittal of the principal in a Criminal Court is no bar to a civil action against the sureties. In a suit by the mutwalli of the Hooghly Imambarah against the treasurer of that endowment and his sureties, under a security bond executed on an optional stamp of R8 for a sum of R17,280-5-6 alleged to have been misappropriated by the treasurer, who had been committed to, but acquitted by, the Sessions Court,—*Held* that, although there was gross neglect on the part of the mutwalli in the supervision and examination of his cash balance, yet as there was no evidence of fraud or mutual connivance at the delinquency of the treasurer, the former was entitled to recover from the sureties the sum which the stamp

PRINCIPAL AND SURETY—*continued.*

2. LIABILITY OF SURETY—*continued.*

Suit against surety—*continued.*

used on the security bond would cover,—*viz.*, R1,000, with costs in proportion and interest. KERAMUT ALI *v.* ABDOOL WAHAB . . **17 W. R., 131**

14. ——— *Suit for breach of contract.—Performance by surety.*—Where the surety had begun to perform the duty which the principal had contracted to perform,—*Held* that this circumstance did not preclude the plaintiffs from suing the defendant as surety for breach of the contract. PIERCE *v.* OPENDRA SHETTI GANAPATHY **[7 Mad., 364**

15. ——— *Contract Act (Act IX of 1872), ss. 133, 139.—Surety still liable though remedy against principal barred.*—Where a plaintiff sued a principal and a surety for arrears of rent, and it appeared that the principal was dead at the time the suit was instituted, and where the representative of the principal was not made a party till after the right to recover the arrears as against him was barred by limitation,—*Held* that the surety was still liable, the suit as against him having been instituted within the period allowed. *Hajarimal* v. *Krishnarav, I. L. R., 5 Bom., 647*, cited and approved. KRISHTO KISHORI CHOWDHRAIN *v.* RADHA ROMUN MUNSHI . . **I. L. R., 12 Calc., 330**

16. ——— *Obligation to sue principal.*—*Held* that a creditor is not bound to exhaust his remedies against the principal debtor before suing the surety, and that when a decree is obtained against a surety it may be enforced in the same manner as a decree for any other debt. LACHMAN JOHARIMAL *v.* BAPU KHANDU. NANDRAM SARDARMAL *v.* BHAVANI HAIBATI **[6 Bom., A. C., 241**

17. ——— *Contract Act, ss. 134, 137.*—A surety's liability to pay the debt is not removed by reason of the creditor's omission to sue the principal. SANKANA KALANA *v.* VIRUPAKSHAPA GANESHAPA . . . **I. L. R., 7 Bom., 146**

18. ——— *Suit on hundi.—Accommodation acceptance.—Contract Act, s. 128.—Co-extensive liability of surety.*—In a suit against the acceptor of a hundi, the defendant contended that, as he had accepted the hundi for the accomodation only of a third person, he was liable only as surety, and the plaintiff therefore could not proceed against him until he had exhausted all his remedies against the principal. *Held* that the liability of a surety being under the Contract Act co-extensive, unless there is some contrary agreement, with that of his principal, it was not necessary for the plaintiff to have first exhausted his remedies against the principal. *Totakot Shangunni Menon* v. *Kurusingal Kaku Varid, 4 Mad., 190*; and *Lachman Joharimal* v. *Bapu Khandu, 6 Bom., A. C., 241*, cited. PANIOTY *v.* DWARKA MOHUN DASS **[4 C. L. R., 145**

PRINCIPAL AND SURETY—*continued.*

2. LIABILITY OF SURETY—*continued.*

19. ——— Execution of decree against surety.—*Right to execute decree against property forming security for payment of debt where principals have been released.*—Where a judgment-creditor or decree-holder releases his deceased judgment-debtor's representatives, into whose hands that debtor's assets have come, and exempts the property in question from execution, he cannot go against property which only became liable by way of security for the due payment of the debt by the principal debtor. VILLAYET ALI KHAN *v.* AMEENOODDEEN AHMED . . . . . **23 W. R., 19**

3. DISCHARGE OF SURETY.

20. ——— Death of principal.—*Execution of decree.*—A decree was obtained against a surety only, the principal debtor being dead, and his property having been attached as of an intestate, and proclamation made. *Held* that the property could not be taken in execution of the decree against the surety. KALI CHARAN *v.* SRIRAM **[2 A. C., 192: 11 W. R., 60**

21. ——— *Beng. Reg. II of 1806, s. 4.*—The liability of a surety or his heir under section 4, Regulation II of 1806, ceased after the death of the principal. DHURM CHAND SREEMUL *v.* HURRISH CHUNDER DOOBEY . **2 Hay, 115**

22. ——— Indulgence granted to principal.—*Absence of injury to surety.—Semble,*—An indulgence granted to a principal debtor does not absolve a surety who is not injured thereby. DELHI BANK CORPORATION *v.* GREENWAY **[Bourke, O. C., 227**

23. ——— Relinquishment of portion of claim by creditor.—*Act prejudicial to surety.*—Where a creditor sued his principal debtor and two sureties upon a mortgage-bond, and in his plaint formally relinquished his claim against part of the mortgaged property, it was held that after such relinquishment the sureties were no longer bound, their position being altered for the worse by reason of such relinquishment. NARAYAN GOVIND OK *v.* GANESH ATMARAM PADKE . **7 Bom., A. C., 118**

24. ——— Right of surety to disclosure of material facts.—*Absence of fraud.*—There is no rule of law entitling a surety, without question asked, to a disclosure of all material facts known to the creditor, which it may be material for him to know. Without proof of fraudulent misrepresentation or concealment on the part of the creditor or his agent, a surety is not entitled to be discharged from his suretyship. DELHI AND LONDON BANK *v.* HUNTER . . . **3 N. W., 264**

25. ——— Subsequent arrangement.—*Obtaining fresh acknowledgment from debtor.*—Money was lent on the security of a third party who died before the loan was repaid. The lender then took a fresh acknowledgment from the borrower for the sum due. *Held* that the subsequent arrangement, which did not contemplate the continuance of the third party's security, cancelled his liability. SEETARAM SAHOO *v.* DACOSTA . **12 W. R., 294**

PRINCIPAL AND SURETY—*continued.*

3. DISCHARGE OF SURETY—*continued.*

Subsequent arrangement—*continued.*

26. ——— Variance in terms of contract.—*Contract Act, s. 133.*—A kabuliat whereby a lessee agrees, without the consent of the person guaranteeing the payment of the rent agreed to be paid under a former kabuliat, that he will pay rent at a higher rate than that agreed to be paid in such former kabuliat, amounts to a variance of the terms of the contract of guarantee, and discharges the lessee's surety in respect of arrears of rent accruing subsequent to such variance. KHATUN BIBI *v.* ABDULLAH . . . . **I. L. R., 3 All., 9**

27. ——— Neglect to register bond.—*Suit for money lent against principal.*—In a suit against a principal and two sureties, to recover the amount advanced on a bond by which certain immoveable property was mortgaged, one of the sureties appeared, and contended that he was discharged from his liability in consequence of the plaintiff's neglect to have the bond registered. *Held* that the surety was discharged, as he could only be liable by virtue of the mortgage-bond, which, being invalid for want of registration, could not be used against him. The principal, however, might be sued as for money lent, if the loan could be proved by the other evidence. SHANKAR BAPU *v.* VISHNU NARAYAN **[4 Bom., A. C., 79**

28. ——— Bills of exchange.—*Deposit of goods as collateral security for repayment.—Sale by creditor of goods deposited as security.*—*A.* drew five bills in favour of *B.* on *F. & Co.*, who accepted them and got them discounted by the Bank of Bengal, and on their becoming due procured their renewal. *F. & Co.* subsequently drew three bills on the Bank; and for securing as well the repayment of the principal sum due on these bills and interest, as of all sums which the Bank had already advanced or should advance on account of the drawers, deposited as collateral security various quantities of Chili copper of a larger amount in value than the advances then made. By a condition in these bills, the Bank was authorised, in default of payment within the time stipulated, to dispose of the copper by public or private sale, and to reimburse themselves the principal and interest due thereon. Shortly afterwards *F. & Co.* failed, and assignees of their estate and effects were appointed under the Insolvent Act. On presentation to *A.* of the first of the renewed bills, he served notice on the Bank not to part with the securities deposited with them, alleging that the bills drawn and renewed by him were accommodation bills, for which he had not received any consideration, and were renewed on the faith of the securities being applicable to their discharge. The assignees of *F. & Co.* redeemed the copper by paying to the Bank the amount of the principal and interest due on the bills, drawn by *F. & Co.*, all the bills drawn by *A.* were dishonoured, and the Bank of Bengal brought an

PRINCIPAL AND SURETY—*continued.*

3. DISCHARGE OF SURETY—*continued.*

Bills of exchange—*continued.*

action against *A.* for their amount. On a bill filed by *A.*, the Bank was restrained by injunction from proceeding with the action at law. *Held* on appeal by the Judicial Committee, discharging the injunction and reversing the decree of the Supreme Court, that, under the circumstances, the redemption of the securities was a sale within the meaning of the condition contained in the deposit bills, and that such sale was not a release to *A.* as surety for the previous bills, the condition not being that the copper or the proceeds thereof should be applied preferentially or *pari passu* with the other debts, but simply in reimbursement to the Bank of the principal and interest due on the bills. BANK OF BENGAL *v.* RADHAKISSEN MITTER . . . . **3 Moore's I. A., 19**

29. ——— Agreement for payment of decree, or in default to execute it.—*Failure to execute it on default.—Act IX of 1872, ss. 134, 137, 139, and 141.*—A decree-holder, in execution proceedings, agreed to accept payment of the decretal amount by the judgment-debtors in annual instalments. He also accepted from certain other persons a surety-bond in the following terms: "In case of default of paying the instalments, the whole decretal money, with costs and interest at 8 annas per cent., shall be executed after one month; and for the satisfaction of the decree-holder we, the executants, stand as sureties of the judgment-debtors." The judgment-debtors paid five instalments and then made default. The decree-holder omitted to apply for execution, and the decree became time-barred. He then sued the sureties to recover the amount of the decree. *Held* that the terms of the bond requiring the creditor to execute his decree within one month were peremptory, and imported much more than the usual agreement under such circumstances; that the decree-holder might execute his decree, if he pleased, on a default; that the legal consequence of his omission to execute the decree being the discharge of the principal debtors, the sureties would, under section 134 of the Contract Act, stand discharged likewise; that his action was much more serious than "mere forbearance" in favour of his debtors, in the sense of section 137; that he had done an act inconsistent with the equities of the sureties, and omitted to do an act which his duty to them (under the agreement) required, whereby their eventual remedy against the principal debtors was impaired (section 139); that he had deprived the sureties of the benefit of the security constituted by the decree; that they were therefore discharged to the extent of the value of that security (section 141); and that the suit must consequently be dismissed. HAZARI *v.* CHUNNI LAL **[I. L. R., 8 All., 259**

30. ——— Giving time to principal.—*Execution of subsequent agreement unknown to surety.*—*A.* and his surety *B.* executed a bond to *C.* for the faithful discharge of *A.'s* duties as a gomastah. In September 1866, upon accounts being rendered, *A.* was found indebted to *C.* in a certain sum of money. *A.* thereupon executed an ikrar to *C.*, which was accepted by *C.* agreeing thereby to pay the amount due in February following. On default being made, *C.* sued *A.* and *B.* for the amount due. *Held* that the acceptance of the ikrar, without the knowledge or consent of *B.* giving time for payment, was a discharge to the surety. PURI SUNDARI DEBI *v.* DROBOMAYI DEBI . . . **7 B. L. R., Ap., 10**

S. C. PUREE SOONDURER DABEE *v.* CHUNDER SHEKHUR GHOSSAL . . **15 W. R., 252**

PRINCIPAL AND SURETY—*continued.*

3. DISCHARGE OF SURETY—*continued.*

Giving time to principal—*continued.*

31. ——— *Liability of surety.—Acceptance of promissory notes.*—*A.* entered into a bond to *C.* as surety for *B.'s* good conduct, &c., as *C.'s* servant. *C.* subsequently, on *A.'s* request, retained *B.* in his service. *B.* became a defaulter, and with *A.'s* concurrence gave *C.* promissory notes to satisfy the defalcations. *Held* that *C.* could sue *A.* on the bond, although he had sued and recovered against *B.* on one of the promissory notes and had received payment on another. WISEMAN *v.* GOPAUL DOSS SEN **[1 Ind. Jur., N. S., 277**

32. ——— *Sureties of naib.—Acceptance of bonds from naib.*—The sureties of a naib are absolved from liability if the principal takes bonds from the naib in acknowledgment of the debts, giving him different periods of time for payment, without the knowledge and consent of the sureties. POGOSE *v.* ANUND CHUNDER GOHOO **[1 W. R., 81**

33. ——— *Proof of fact of person being surety.*—In a suit against *D.* and *K.* on a promissory note, where *K.* raised the defence that he was only a surety for *D.*, and that the plaintiff having given time, *D.* was released from liability,—*Held* that it was necessary to show that the fact that *K.* signed the note only as surety for *D.* was known to the plaintiff at the time when the note was made. *Held*, also, that a binding contract to give time to the principal cannot be inferred from the mere receipt by the creditor of interest in advance on the note. PUNCHANUN GHOSE *v.* DALY **[15 B. L. R., 331**

34. ——— *Acceptance of interest in excess or advance.—Discharge of surety.*—In an action against a surety for principal and interest payable on a promissory note,—*Held*, overruling the decision of the Court below (MACPHERSON, *J.*), that the creditor, by the mere acceptance, without the knowledge or consent of the surety, of interest in excess of what was due on the note, bound himself to give time to the principal debtor, and thereby discharged the surety. KALI PRASANNA ROY *v.* AMBICA CHARAN BOSE **[9 B. L. R., 261 : 18 W. R., 416**

35. ——— *Acceptance of interest in advance.*—The mere taking by the holder of a promissory note of interest in advance from the principal debtor, does not operate as an agreement

PRINCIPAL AND SURETY—*continued.*

3. DISCHARGE OF SURETY—*continued.*

Giving time to principal—*continued.*

not to sue during the time covered by the interest, and therefore does not constitute such a giving of time to the principal as would release the surety. DWARKANATH MITTER *v.* DALY. DWARKANATH MITTER *v.* BIRCH . . . . **15 B. L. R., 338, note**

36. ——————— *Interest paid in advance.—Discharge of surety.—Accommodation acceptor.—Contract Act (IX of 1872), s. 135.*—The drawer of hundis paid advance interest to the holder to obtain time, which he did obtain, for payment after due date. *Held* by the Privy Council that the liability of an accommodation acceptor of the hundis depended on whether he knew of and consented to this arrangement. *Held* also, on the merits, that he knew of, and consented to, advanced interest being taken. GOURCHANDRA RAI *v.* PROTAPCHANDRA DASS . **I. L. R., 6 Calc., 241: 6 C. L. R., 591**

Affirming on appeal, PROTAP CHUNDER DAS *v.* GOUR CHUNDER ROY

[I. L. R., 4 Calc., 132: 2 C. L. R., 455

37. ——————— *Suit on hundi.—Accommodation.—Acceptance.*—The defendant, in the course of dealings with *S. A.* of Patna, used to draw hundis at Patna on himself at Calcutta, and sell them to *S. A.* at Patna; *S. A.* sometimes only paying part of the consideration for the hundi. On 13th September 1867 the defendant drew a hundi for R2,500, payable forty-one days after date, in the usual way, and it was stipulated between him and *S. A.* that the value should be paid by *S. A.* in three days. On 15th September, the plaintiff in Calcutta discounted the hundi in the ordinary course of business, paying for it R2,468, or thereabouts. It then purported to be accepted by the defendant in favour of *S. A.* Before the hundi fell due, *S. A.* failed, and the plaintiff took the hundi to the defendant in Calcutta, and informing him of *S. A.'s* failure, asked him to pay the hundi. The defendant admitted he had drawn the hundi, denied he had accepted it, and refused to pay, saying (he alleged) that he had received no consideration for it. Before the failure of *S. A.*, who had not paid the consideration as stipulated, the defendant pressed him for payment of the consideration for the hundi, and *S. A.* wrote and delivered to the defendant the following letter, dated September 16th, 1867, from himself to his firm in Calcutta: "Further, I sent you a chitti (hundi) for R2,500, drawn by Bhugwan Das (the defendant) upon Bhugwan Das upon (us), Calcutta; value deposited by me on September 13th, 1867, payable forty-one days after date in Company's rupees. I have taken a hundi of this description, which you will pay on its due date. The money has not been paid, for which I give this puja in writing, which you will know." After *S. A.'s* failure, and after the defendant's refusal to pay on the due date, the plaintiff made the arrangement with *S. A.*, which is embodied in the following letter from *S. A.* to the plaintiff, dated November 3rd, 1867: "Further, I discounted with you at Calcutta hundis for R5,000, which one Pitam Das coming to Calcutta were paid

PRINCIPAL AND SURETY—*continued.*

3. DISCHARGE OF SURETY—*continued.*

Giving time to principal—*continued.*

off in the following manner: a hundi for R2,500 drawn by Bhugwan Das on Bhugwan Das, value deposited by me on the 15th day of the light side of the moon in Bhadra, payable forty-one days after date in Company's rupees; and a hundi for R2,590 by Gapi Shaw, Debi Shaw, Radha Shaw, Ram Sahayi Roy, value deposited by me on 14th day of the light side of the moon in Bhadra, payable forty-one days after date in Company's rupees. I discounted hundis of this description, and out of them I paid R2,200 in cash through Syad Mahomed Hossein Khan Sahib. The balance, R2,800, is due, the condition for payment of which is as follows (here follows the manner in which payment was to be made): I made an agreement of this sort, and I will pay the whole of the amount, inclusive of interest at 8 annas and will take the two hundis from Bhai Ram Kissen Futteh Chund, with whom they are kept. Should I not pay the money according to this condition, then you have the authority." For the defendant it was contended that the effect of the letter of 16th September was to make the defendant a surety only for *S. A.*; that the plaintiff had notice of this at the time of entering into the agreement giving time to *S. A.*; which therefore operated as a release to the defendant. In a suit by the plaintiff to recover the amount of the hundi from the defendant, the Court found that it was not proved that the hundi had been accepted by the defendant, but held that, whether the effect of the agreement contained in the letter of September 16th was to make the defendant a surety only or not, the defendant was liable. *Per* NORMAN, *J.*—Notice of the defendant's position in regard to the hundi was not communicated to the plaintiff. *Per* MACPHERSON, *J.*—The agreement contained in the letter of 16th September did not alter the position of the parties so as to make *S. A.* the principal debtor, and the defendant his surety. HARJIBAN DAS *v.* BHUGWAN DAS

[7 B. L. R., 535: 16 W. R., O. C., 16

PRIORITY.

See CASES UNDER MORTGAGE—MARSHALLING.

See CASES UNDER MORTGAGE—SALE OF MORTGAGED PROPERTY—PURCHASERS.

See CASES UNDER MORTGAGE—SALE OF MORTGAGED PROPERTY—RIGHTS OF MORTGAGEES.

See CASES UNDER VENDOR AND PURCHASER—LIEN.

See CASES UNDER VENDOR AND PURCHASER—NOTICE.

See CASES UNDER VENDOR AND PURCHASER—PURCHASE OF MORTGAGED PROPERTY.

——————— **of Official Assignee.**

See CASES UNDER INSOLVENCY—CLAIMS OF ATTACHING CREDITORS AND OFFICIAL ASSIGNEE.

PRIORITY—*continued.*

——— **of registered over unregistered deed.**

See CASES UNDER REGISTRATION ACT, 1877, ss. 49 AND 50.

PRISONER.

See CASES UNDER PARDON.

——— **Examination of—**

See EVIDENCE—CRIMINAL CASES—EXAMINATION AND STATEMENTS OF ACCUSED.

See CASES UNDER EXAMINATION OF ACCUSED PERSON.

——— **Rights and privileges of—**

1. ——— Preparation of petition of appeal.—Every facility should be allowed to prisoners to enable them to prepare their petition of appeal. QUEEN *v.* NITTO GOPAL PAULIT [13 W. R., Cr., 69

2. ——— Presentation of petition of appeal.—*Right to present petition to Court without intervention of vakil.*—A prisoner in jail under a civil warrant is entitled to present a petition of appeal to the Court having power to hear appeals without the intervention of a vakil. IN THE MATTER OF THE PETITION OF KRISTNAPPAH . 6 Mad., 38

3. ——— Employment of pleaders.—*Vakalatnama, Opportunity for giving.*—Prisoners should have the fullest opportunity of giving vakalatnamas to any persons they please. IN THE MATTER OF THE PETITION OF DADABHAI . 1 Bom., 16

4. ——— Conversing with and instructing pleaders.—*Private instructions.*—Prisoners should be allowed to have free converse with their vakils out of the hearing of the police officers in charge of such prisoners. REG. *v.* KASHINATH DINKAR . . . . 8 Bom., Cr., 126

5. ——— Right of freedom from fetters on trial.—A Judge should not refuse to try a prisoner brought up in chains to stand his trial, but the Judge may direct the removal of the fetters, unless satisfied by a representation from the proper officer that they are necessary. ANONYMOUS [4 Mad., Ap., 69

6. ——— Nature of charge.—*Accused, Right of, to know exact nature of charge made against him.—Criminal Procedure Code (Act X of 1882), s. 221.*—An accused is entitled to know with certainty and accuracy the exact nature of the charge brought against him, and unless he has this knowledge he must be seriously prejudiced in his defence. This is true in all cases, but it is more especially true in cases where it is sought to implicate him for acts not committed by himself, but by others with whom he was in company. BEHARI MAHTON *v.* QUEEN-EMPRESS . . . I. L. R., 11 Calc., 106

7. ——— *Right of accused to have charge read and to appear by mooktear.*—The Magistrate, when he has prepared the charge, is

PRISONER.—Nature of charge—*continued.*

bound to read it to the accused, and to ask him if he wishes to have any witnesses summoned to give evidence on his behalf at the sessions. The Magistrate cannot refuse to permit an accused person to attend at the sessions by mooktear. QUEEN *v.* HURNATH ROY . . . 2 W. R., Cr., 50

8. ——— Right to copies of documents.—*Right of, on trial.—Evidence.*—A prisoner applied for copies of certain documents filed in Court for the purpose of his defence. *Held*, the Magistrate had erred in refusing his application. *Per* LOCH, *J.*—A prisoner is entitled to have copies of all documents for which he asks, and which he thinks necessary for his defence, and it is for the officer trying the case, whether Magistrate or Judge, to determine at the hearing whether the documents filed by the prisoner are or are not admissible as evidence. IN THE MATTER OF THE PETITION OF SHIB PRASAD PANDA' [6 B. L. R., Ap., 59: 14 W. R., Cr., 77

9. ——— Right to inspect books in case of theft.—*Right to make statement.*—So far as it may be necessary for the purposes of the trial, when books are the subject of a charge of theft, the accused is entitled to inspection of the books. It is not competent to the Court in a criminal trial to refuse to allow the accused to make a statement. IN THE MATTER OF ABDUL GUFFOOR . 10 C. L. R., 54

10. ——— Right of accused to hear sentence.—*Criminal Procedure Code, 1861, 1869, s. 277.*—When the proceedings in a case tried by a Subordinate Magistrate are submitted, under section 277 of the Code of Criminal Procedure, to a District Magistrate to pass sentence upon the accused, the accused is entitled to be present at the passing of such sentence before the District Magistrate. REG. *v.* RAGHA NARANJI . . . . 7 Bom., Cr., 31

QUEEN *v.* GUNESH SIRCAR . 7 W. R., Cr., 38

PRISONERS' TESTIMONY ACT, 1869.

See CIVIL PROCEDURE CODE, 1882, s. 87 (1859, s. 78) . [4 B. L. R., O. C., 51

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—PRISONER'S TESTIMONY ACT . 5 B. L. R., 215 : 13 W. R., 278

PRISONS ACT (XXVI OF 1870).

——— *Power of superintendent of jail.—Abetting escape of prisoner.—Beng. Reg. XIV of 1816.*—A superintendent of a jail has no power under Act XXVI of 1870 to imprison for one year a night-watchman convicted before him on a charge of aiding and abetting the escape of a prisoner. Neither had he power under Regulation XIV of 1816. QUEEN *v.* SHROUMBER LAL . . 4 N. W., 4

——— **s. 45.**—*Entering a havalat with intent to convey food to prisoner.—Rules made by Local Government for the management and discipline of prisons.—House-trespass.—Offence in relation to prison.—Penal Code, s. 442.—Previous acquittal.—Per* SPANKIE, *J.*, and OLDFIELD, *J.* (STUART

PRISONS ACT (XXVI OF 1870), s. 45— *continued.*

C. J., doubting), that a havalat (lock-up) is a prison within the meaning of the Prisons Act. *Per* STUART, *C. J.*, that food is not an "article" within the meaning of section 45 of that Act. *Per* STUART, *C. J.*, and OLDFIELD, *J.*, that the conveyance of food into a havalat, not being expressly prohibited by the rules made by the Local Government under section 54 of that Act for the management and discipline of prisons, is not "contrary to the regulations of the prisons" within the meaning of section 45 of that Act, and is therefore not an offence punishable under that section. *Held*, therefore, *per* STUART, *C. J.*, and OLDFIELD, *J.*, that, where a person entered into a havalat with intent to convey or attempt to convey food to an under-trial prisoner, such act on his part did not amount to house trespass within the meaning of section 442 of the Penal Code, and it was not an act punishable under section 45 of the Prisons Act. *Per* SPANKIE, *J*, *contra*. *Per* STUART, *C. J.*, that the fact that such person had been tried for house trespass and acquitted was no bar to his being tried subsequently for an offence under section 45 of the Prisons Act. EMPRESS *v.* LALAI

[I. L. R., 2 All., 301

PRIVATE DEFENCE, RIGHT OF—

See CULPABLE HOMICIDE.

[12 W. R., Cr., 15
I. L. R., 3 All., 253

1. ——— **Commencement and restrictions on right.**—*Penal Code, ss. 97, 99.*—The right of private defence as described in section 97 of the Penal Code is subject to the restrictions mentioned in section 99,—that is, it should be exercised only in the defence of one's own body or that of another person against an offence affecting the human body. Under section 102 the right commences only on a reasonable apprehension of danger to the body caused by an attempt or threat to commit an offence, and by section 99, clause 4, the right is restricted to not inflicting more harm than it is necessary to inflict for the purpose of defence. QUEEN *v.* GOBARDHAN BHUYAN

[4 B. L. R., Ap., 101: 13 W. R. Cr., 55

2. ——— **Extent of right.**—*Penal Code, s. 103 and s. 99.*—The right of private defence under section 103 of the Penal Code is restricted by section 99 of that Code, and does not extend to the inflicting of more harm that it is necessary to inflict for the purpose of defence. QUEEN *v.* DHUNUNJAI POLY

[14 W. R., Cr., 68

3. ——— **Pleading right.**—*Persons inviting attack.*—The right of private defence cannot be pleaded by persons who, believing they will be attacked, court the attack. QUEEN *v.* NOWABDEE

[W. R., 1864, Cr., 11

4. ——— *Onus probandi.*—*Alternative plea.*—It is for those who raise the plea of private defence to prove it. The act charged cannot be denied, and the plea of private defence raised as an alternative. If raised, a full account of the

PRIVATE DEFENCE, RIGHT OF.—Pleading right—*continued.*

occurrence must be given in evidence. IN THE MATTER OF THE PETITION OF JAMES SIRDAR

[1 C. L. R., 62

5. ——— *Onus probandi.*—*Evidence Act, s. 105.*—Where the accused had been convicted of riot under section 148 and of grevious hurt under section 325 of the Penal Code, the Sessions Judge on appeal held that the complainants had themselves been the aggressors, and that the accused had merely exercised the right of private defence; but inasmuch as they had not set up the plea of private defence, he considered it was not competent to him to set aside the conviction. *Held* that, though the onus was on the accused, the finding of the Judge amounted to one that they had discharged that onus, and on that finding the accused were entitled to an acquittal. IN THE MATTER OF KALI CHURN MOOKERJEE . . 11 C. L. R., 232

6. ——— **Exercise of right.**—*Possession.*—A party in possession of land is legally entitled to defend his possession against another party seeking to eject him by force. QUEEN *v.* TULSI SINGH

[2 B. L. R., A. Cr., 16 : 10 W. R., Cr., 64

QUEEN *v.* MOKEE . . 12 W. R., Cr., 15

7. ——— *Dispute as to possession of land.*—Where *A.* is in actual peaceable possession of land, *B.'s* attempt to recover possession of it by force is an illegal act which *A.* has a right to resist. If *B.* uses force in carrying out his attempt, *A.* has a right to oppose force to force, and to inflict upon *B* such injury as is necessary to compel him to desist. QUEEN *v.* SACHEE *alias* SACHEE BOLER

[7 W. R., Cr., 112

8. ——— *Criminal trespass.*—*Penal Code, ss. 99 and 104*—Where the offence which occasions the right of private defence of property is criminal trespass, the right of defence under section 104 of the Penal Code only extends (subject to the restrictions of section 99) to the voluntarily causing to the wrong-doers some harm other than death. QUEEN *v.* GOBURDHUN PARI

[14 W. R., Cr., 74

9. ——— *Culpable homicide.*—The legal right of private defence of the body and property is not exceeded by a person who is attacked by another with a spear, and who strikes a blow with a latee, which results in the death of the party attacking, and such right of private defence of the body extends, under section 100 of the Penal Code, to the taking of life where grievous hurt is reasonably apprehended. QUEEN *v* MOIZUDIN

[11 W. R., Cr., 41

10 ——— *Penal Code, ss. 148, 304.*—*Culpable homicide.*—The prisoners, who in resisting a sudden attack made upon them by certain persons for the purpose of cutting their crop, and when they had no time to complain to the police, inflicted a wound on one of them with a bamboo, from the effects of which the man died, were convicted

PRIVATE DEFENCE, RIGHT OF.—Exercise of right—*continued.*

by the Sessions Judge under sections 148 and 304 of the Penal Code. The High Court acquitted the prisoners, holding that the force used, or the injuries inflicted, were not such as to exceed their rights of private defence of property. QUEEN *v.* GOOROO CHURN CHANG

[6 B. L. R., Ap., 9 : 14 W. R., Cr., 69

11. ——————— *Penal Code, s. 100, cl. 2, and s. 103, cl. 4.*—Under the facts of this case, a person was held to have rightly exercised the right of private defence as contemplated in clause 2, section 100, and clause 4, section 103, Penal Code, though in the exercise of such right he killed one of his aggressors. QUEEN *v.* RAM LALL SINGH

[22 W. R., Cr., 51

12. ——————— *House-breaking.—Limits of right of defence.*—The right of private defence of property against house-breaking does not extend to causing the death of the house-breaker when he has made his escape from the premises empty-handed, and is at some distance from the place. No more harm should be done than is necessary to effect his capture. QUEEN *v.* BOLAKI JOLAHAD

[1 B. L. R., S. N., 8 : 10 W. R., Cr., 9

13. ——————— *Attacking man found in house at night.*—The accused was attacked by a man whom he found by a hole cut in his house for the purpose of committing a burglary, and struck the man a blow which caused his death. *Held* that the accused simply exercised his right of private defence, and had committed no crime. QUEEN *v.* PELKOO NUSHYO . . . 2 W. R. Cr., 42

14. ——————— *House-trespass with intent to commit adultery.—Penal Code, ss. 96, 104.*—Where a person assisted by a friend retaliated severely on another who trespassed into his house with the object of having intercourse with his wife, he was held to have committed no offence; sections 96 and 104 of the Penal Code justifying him in causing any harm short of death to the trespasser; and his friend was also acquitted as having aided him to commit no offence. QUEEN *v.* DHAUMUN TELI

[20 W. R., Cr., 36

15. ——————— *Resisting police officer making search without warrant.—Obstruction of public servant.—Penal Code, s. 99.—Criminal Procedure Code, 1861, s. 135*—An officer, subordinate to an officer in charge of a police station, who was deputed by the latter to make an inquiry under section 135 of the Code of Criminal Procedure, attempted without a search-warrant to enter a house in search of property alleged to have been stolen, and was obstructed and resisted. *Held* (applying section 99 of the Penal Code) that, even though the police officer was not strictly justified in searching the house without a warrant, the person obstructing and resisting could not set up the illegality of the officer's proceeding as a justification of his obstruction, and it was not shown that that officer was acting otherwise than in good faith and without malice. REG. *v.* VYANKATRAV SHRINIVAS . 7 Bom., Cr., 50

PRIVATE DEFENCE, RIGHT OF.—Exercise of right—*continued.*

16. ——————— *Penal Code, s. 99.—Resistance to warrant of arrest in execution of a decree.—Assault on officer.*—A warrant issued for the arrest of a debtor under the provisions of section 251 of the Civil Procedure Code was initialled by the Munsarim of the Court, sealed with the seal of the Court, and delivered to the proper officer for execution. The debtor forcibly resisted the officer, and was tried and convicted, under section 353 of the Penal Code, of assaulting a public servant in the execution of his duty as such. *Held*, with reference to section 99 of the Penal Code, that the act of the accused did not cease to be an offence on the ground that it was done in the exercise of the right of private defence. QUEEN-EMPRESS *v.* JANKI PRASAD

[I. L. R., 8 All., 293

17. ——————— *Premeditated riot.*—There can be no right of private defence, either on one side or the other, in a case of premeditated riot. QUEEN *v.* JEOLALL . 7 W. R., Cr., 34

18. ——————— *Penal Code, s. 104.—Persons acquitted of culpable homicide but convicted of rioting.*—In an affray respecting land one of the aggressive party was killed. The prisoners, who were exercising the right of private defence of property, were acquitted by the jury of culpable homicide, but convicted of rioting. *Held* that, not being legally guilty of any offence coupled with rioting, and not being rioters or members of an unlawful assembly, they could claim the benefit of section 104, Penal Code: they were therefore released. QUEEN *v.* MITTO SINGH . . . 3 W. R., Cr., 41

19. ——————— *Trespass.—Penal Code, ss. 97, 104, 105.*—Where *A.* trespassed on the lands of *B.*, whose servants seized and confined *A.* till the following day, when *B.* gave information to the police, it was held that the conduct of *B.* and his servants in confining *A.* could not be supported on the ground that they were exercising the right of private defence of property, under sections 97, 104, and 105 of the Penal Code. SHURUFOODDIN *v.* KASSINATH . . . . 13 W. R., Cr., 64

20. ——————— *Trespass.—Demand for payment of rent.*—Mere persistence in demand for rent does not amount to trespass justifying the exercise of the right of private defence. MAHOMED JAN *v.* KHADI SHEIKH. HURNATH DE *v.* JOYGOPAL DE. HURIS CHUNDRA DAS *v.* BOLAI AUDHICAREE. AHMUDDY *v.* ANUND MOHUN MOZOOMDAR . . . . 16 W. R., Cr., 75

21. ——————— *Penal Code. ss. 97, 99.—Wrongful distraint of crops.*—Where a zemindar's servants enter on land with the intention of distraining the crops without proper notice, the ryot-owners are justified in considering such actions as trespass. *Quære,*—Would the ryots in such a case be protected by the provisions of the Penal Code, sections 97 and 99, in preventing the distraint and confining the men employed to make it? QUEEN *v.* KANHAI SHAHU . . . 23 W. R., Cr., 40

PRIVATE PROSECUTOR.

——— *Criminal Procedure Code (Act XXV of 1861), s. 434.—Right to appear.*—Private prosecutor not allowed to appear on a reference to the High Court under section 434 of the Criminal Procedure Code. QUEEN *v.* RAMJAI MOZUMDAR [6 B. L. R., Ap., 46

S. C. SUDDURUDDEEN SIRCAR *v.* RAM JOY MOJOOMDAR . . . 14 W. R., Cr., 51

PRIVILEGE.

See LIBEL . I. L. R., 1 Bom., 477

——— from arrest.

See CASES UNDER ARREST—CIVIL ARREST.

See CONTEMPT OF COURT—EFFECT OF CONTEMPT . 4 B. L. R., O. C., 90

See PARDANASHIN WOMEN.
[8 W. R., 282
1 B. L. R., F. B., 31
I. L. R., 4 Calc., 583
I. L. R., 7 Calc., 19

——— from attendance in Court.

See PARDANASHIN WOMEN.
[1 B. L. R., S. N., 5
2 Hyde, 88
18 W. R., 230
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See PARTIES—PRIVILEGES OF PARTIES.
[Marsh., 627
15 W. R., 129

——— from suit.

See CASES UNDER JURISDICTION OF CIVIL COURT—SOVEREIGN PRINCES.

PRIVILEGED COMMUNICATION.

See ARBITRATION — AWARDS — VALIDITY OF AWARDS AND GROUND FOR SETTING THEM ASIDE . I. L. R., 4 Calc., 231

See CASES UNDER DEFAMATION.

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I. L. R., 12 Calc., 265

See LIBEL . . Bourke, O. C., 18
[I. L. R., 3 Calc., 13
I. L. R., 1 Bom., 477
Cor., 134: Hyde, 274
1 B. L. R., S. N., 12
6 N. W., 38

1. ——— **Professional communication.**—*Attorney and client.—Privilege.—Act I of 1872, s. 126.*—To be privileged under section 126 of the Evidence Act (I of 1872), a communication by a party to his attorney must be of a confidential or private nature. Where defendants at an interview, at which the plaintiff was present, admitted their partnership to their attorney, who was then also acting as attorney for the plaintiff,—*Held* that the attorney was not precluded by section 126 of the

PRIVILEGED COMMUNICATION.—Professional communication—*continued.*

Evidence Act (I of 1872) from giving evidence of this admission to him: 1st, because the defendants' statements, having been made in presence and hearing of the plaintiff, could not be regarded as confidential or private; 2nd, because those statements did not appear to have been made to the attorney exclusively in his character of attorney for the defendants, but to have been addressed to him also as attorney for the plaintiff. MEMON HAJEE HAROON MAHOMED *v.* ABDUL KARIM . I. L. R., 3 Bom., 91

2. ——— *Act II of 1855, s. 24.—Vakil and client.*—Section 24, Act II of 1855, does not warrant a vakil's exclusion from the witness-box, though it may excuse his answering certain questions relating to communications between him and his client. DOOLAR JHA *v.* RUNJEET ROY [15 W. R., 340

3. ——— *Act II of 1855, s. 24.—Mooktear and client.*—The question whether a communication between the accused and a witness is privileged, is a question of law for the Judge to decide. Communications between mooktears and their clients are not privileged within section 24 of Act II of 1855. QUEEN *v.* CHANDRAKANT CHUCKERBUTTY
[1 B. L. R., A. Cr., 8 : 10 W. R., Cr., 14

4. ——— *Prosecutor in criminal case and his attorney and clerk.—Semble,*—Communications between a prosecutor in a criminal case and his attorney, and between the attorney and his clerk with respect to the case, are not privileged. IN THE MATTER OF THE PETITION OF BELILIOS
[12 B. L. R., 249

S. C. QUEEN *v.* BELILIOS . 20 W. R., Cr., 61

5. ——— **Statements laid before counsel.**—*Legal advice.*—Statements laid by clients before counsel for the purpose of obtaining legal advice are privileged. MUNCHERSHAW BEZONJI *v.* NEW DHURUMSEY SPINNING AND WEAVING COMPANY
[I. L. R., 4 Bom., 576

6. ——— **Letters between Government servants.**—*Discovery.—Production of documents.—Solicitor and client.—Act XIV of 1882, s. 133.*—Letters written by one of the defendant's servants to another, for the purpose of obtaining information with a view to possible future litigation, are not privileged, even though they might, under the circumstances, be required for the use of the defendant's solicitor. In order that privilege may be claimed, it must be shown on the face of the affidavit that the documents were prepared or written merely for the use of the solicitor. BIPRO DOSS DEY *v.* SECRETARY OF STATE FOR INDIA IN COUNCIL
[I. L. R., 11 Calc., 655

7. ——— **Letters between solicitors for various plaintiffs.**—*Attorney and client.—Inspection.—Production.—Waiver of privilege.*—The plaintiffs resided in England, and sued the defendant in Bombay for specific performance of an agree-

PRIVILEGED COMMUNICATION.—Letters between solicitors for various plaintiffs—*continued.*

ment to purchase certain premises. This agreement had been made on behalf of the plaintiffs by *S.*, their agent in Bombay. The defendant pleaded that by the terms of the agreement it was provided that the deed of assignment should contain a covenant by the three plaintiffs to indemnify the defendant against any claims upon the premises that might be made at any time by or on behalf of the representatives of one *N.* The defendant's solicitor prepared a draft assignment which contained this covenant, and sent it to the plaintiffs' solicitors (Messrs. *P.* and *W.*) for approval. On the 19th March 1880, *W.* called upon *B.*, the defendant's solicitor, and informed him that *M.*, the third plaintiff, refused to sign any deed which contained the above covenant. At this interview *W.* read to *B.* portions of a letter written with reference to the proposed deed by *McG. & Co.* (solicitors for the first two plaintiffs) to *V.*, the solicitor of the third plaintiff, and of another letter written by *V.* to his client, the third plaintiff. The defendant called upon the plaintiff to produce these letters for inspection. *Held* that the letters were privileged, and that the fact that portions of them had been read to the defendant's solicitor was no waiver of the privilege as regarded the parts which were not read. KAY *v.* POORUNCHAND POONALAL . **I. L. R., 4 Bom., 631**

8. ——— Letters by client to solicitor.—*Discovery.—Affidavit of documents.—Sufficiency of affidavit.—Further affidavit.—Inspection of documents.—Practice.*—Where in an affidavit of documents privilege is claimed for a correspondence on the ground that it contains instructions and confidential communications from the client (the plaintiff) to his solicitor, it must appear not merely that the correspondence generally contains instructions, &c, but that each letter contains instructions or confidential communications to the attorneys with reference to the conduct of the suit. *Bewicke* v. *Graham, 7 Q. B. D, 400,* followed. ORIENTAL BANK CORPORATION *v.* BROWN & CO. . **I. L. R., 12 Calc., 265**

9. ——— Statement in petition to Magistrate.—*Defamation.—Held* that, under the circumstances of the case, the allegations contained in a petition presented by respondent to the Magistrate acting in his administrative capacity cannot be regarded as a privileged communication made in the course of judicial proceedings; and it being proved that the allegations so made were made with sinister motive and malicious intention, and that they were irrelevant to the occasion, the appellant was entitled to some substantial damages. CHOWDHRY GOORDUTT SINGH *v.* GOPAL DASS . . . **1 Agra, 33**

10. ——— Statement to punchayet.—*Illegal conviction for defamation.*—Where a person called upon by a punchayet, convened by the complainant's relatives, to explain why he had made a defamatory remark concerning the complainant, made a statement by way of explanation,—*Held* that such statement being privileged, a conviction for defamation for making such tatement was illegal. IN RE GOVINDAPPA NAYAK . **I. L. R., 7 Mad., 36**

PRIVY COUNCIL.

——— Declaration or order of—

See EXECUTION OF DECREE—ORDERS AND DECREES OF PRIVY COUNCIL **[18 W. R., 175**

——— Decree of—

See CASES UNDER EXECUTION OF DECREE—ORDERS AND DECREES OF PRIVY COUNCIL.

——— Execution of decree of—

See CASES UNDER EXECUTION OF DECREE—ORDERS AND DECREES OF PRIVY COUNCIL.

See CASES UNDER LIMITATION ACT, 1877, ART. 180 (1859 s. 19).

See MESNE PROFITS—ASSESSMENT IN EXECUTION AND SUITS FOR MESNE PROFITS. **[5 B. L. R., P. C., 605 16 W. R., 30 23 W. R., 449**

PRIVY COUNCIL APPEALS ACT.

See CASES UNDER APPEAL TO PRIVY COUNCIL.

PRIVY COUNCIL, PRACTICE OF—

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1. APPEALS FROM INTERLOCUTORY ORDERS	4630
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See CASES UNDER APPEAL TO PRIVY COUNCIL—PRACTICE AND PROCEDURE.

1. APPEALS FROM INTERLOCUTORY ORDERS.

1. ——— There is no law which requires a suit or to appeal from interlocutory orders under penalty of forfeiting for ever the benefit of the consideration of the Appellate Court. The Privy Council have, in many cases, corrected erroneous interlocutory orders on the appeal of the whole cause coming before them. MOHESHUR SINGH *v.* GOVERNMENT OF INDIA **[3 W. R., P. C., 45; 7 Moore's I. A., 283**

PRIVY COUNCIL, PRACTICE OF—*continued.*

1. APPEALS FROM INTERLOCUTORY ORDERS—*continued.*

SHRONATH *alias* BURRAY KAKA *v.* RAMNATH *alias* CHOTAY KAKA
[1 Ind. Jur., N. S., 161 : 5 W R., P. C., 21: 10 Moore's I. A., 413

FORBES *v.* AMEEROONISSA BEGUM
[1 Ind. Jur., N. S., 117
5 W. R., P. C., 47
10 Moore's I. A., 340

2. ENLARGING TIME FOR APPEAL.

2. ——— *Jurisdiction of Judicial Committee as to application to enlarge time for appeal.*—The Judicial Committee have no jurisdiction to entertain an application for extension of time to appeal until the petition of appeal is lodged. Where it appeared that an inquiry was pending before the Master in the Court below, arising out of the decree which was the subject of the appeal, the result of which might render the prosecution of the appeal unnecessary, the Judicial Committee enlarged the time prescribed by Rule 5 of the Order in Council of 13th June 1853 for prosecution thereof, until further order. GUNGADHUR SEAL *v.* RADDAMONEY DOSSEE
[6 Moore's I. A., 209

3. SPECIAL LEAVE TO APPEAL.

3. ——— **Form of petition.**—*Amendment of a petition too general and vague.*—It is incumbent upon a party applying for special leave to appeal to set out in the petition a full statement of the facts and legal grounds, to show that there is a substantial case on the merits, and a point of law involved, proper to be determined by the Appellate Court. A petition for special leave to appeal contained a general statement of the proceedings in India, and an averment that they were irregular and contrary to law. Such petition ordered to be dimissed or to stand over for amendment as being too general and vague. On the amended petition, stating in detail the facts, and specifically showing legal grounds of objection to the decrees and order of the Court below refusing leave to appeal, special leave to appeal was granted. GOREE MONEE DOSSEE *v.* JUGGUT INDRO NARAIN CHOWDRY . 11 Moore's I. A., 1

4. ——— **Application for special leave.**—*Omission of material facts.—Costs.*—A petition for special leave to appeal being *ex parte*, it is a universal and most important rule of the Court that every fact which is material to the determination of the question raised upon the petition should be truly and fairly stated, and where there is an omission of material facts, whether it arises from improper intention on the part of the petitioner, or whether it arises from accident or negligence, still the effect is the same, if the Court has been induced to make an order which, if the facts had been fully before it, it would not, or might not, have been induced to make. Where the Court was of opinion that there had been no intentional misrepresentation, and that there had been

PRIVY COUNCIL, PRACTICE OF—*continued.*

3. SPECIAL LEAVE TO APPEAL—*continued.*

Application for special leave—*continued.*

delay on the other side, it discharged an order giving special leave to appeal where an important fact had been kept from the Court, without costs, remarking that it would have thought it right, whether the mistake was intentional or not, to have given costs, had it not been for the delay. MOHUN LALL SOOKUL *v.* BEBEE DOSS . . 8 Moore's I. A., 193

5. ——— *Incorrect statement of facts.—Incorrect statement as to valuation.*—In this case the Privy Council originally gave leave to appeal, provided satisfactory evidence were supplied by the appellants to the Registrar of the Sudder Court that the real or market value of the land in dispute exceeded R10,000. This order was subsequently discharged as obtained upon an incorrect statement of the facts, it appearing afterwards that the appellants had satisfied the Registrar that the real or market value of the land exceeded R10,000. The appeal was restored, with a general suggestion that the terms of the Bengal Stamp Regulation, X of 1829, upon the subject of value should be carefully attended to. MOHUN LOLL SOOKUL *v.* DEBEE DOSS DUTT . . . . 2 W. R., P. C., 9
[8 Moore's I. A., 492

6. ——— **Counter-petition to dismiss appeal.**—*Leave to appeal granted ex parte.*—If leave to appeal be granted *ex parte*, the respondent may, as a matter of course, present a counter-petition to dismiss the appeal. SIBNARAIN GHOSE *v.* HULLODHUR DOSS . . . 6 Moore's I. A., 207

7. ——— **Appeal in matter not strictly appealable.**—*Stat. 3 & 4 Will. IV., c. 41.*—Where a matter has been referred by Her Majesty to the Judicial Committee which is not strictly an appealable grievance their Lordships may, under the reservations contained in 3 and 4 William IV., Cap. 41, advise Her Majesty to grant the petitioner leave to appeal. MORGAN *v.* LEECH
[2 Moore's I. A., 428

8. ——— **Special leave where no application made in India.**—*Case under appealable value.*—The Judicial Committee will not entertain an application for special leave to appeal to Her Majesty in Council from a decree of the High Court where the subject-matter in suit is under the appealable value prescribed by sections 39 and 40 of the Bombay Charter of 1862, unless the petitioner has applied to the High Court for such leave and has been refused. GUNGOWA KOME MALUPA *v.* ERAWA KOME JOGAPA . . 13 Moore's I. A., 433

9. ——— **Special leave where application in India not made within time.**—*Order giving interest on amount of decree.*—Leave to appeal was granted on payment of costs from an order of the Sudder Court at Bombay decreeing interest upon the amount awarded by the judgment of the Court, the appellant having failed to apply to the Court in India within six months as required by

PRIVY COUNCIL, PRACTICE OF—*continued.*

3. SPECIAL LEAVE TO APPEAL—*continued.*

Special leave where application in India not made within time—*continued.*

the Order in Council of 10th April 1838. KIRKLAND *v.* MODEE PESTONJEE KHOORSHEDJEE [3 Moore's I. A., 220

10. ——— *Alteration of practice by High Court.—Appeal from original decree and order refusing review.*—Pending proceedings before the High Court on an application for a review of judgment, that Court altered the then prevailing practice of permitting an appeal within six months from the date of the judgment allowing or refusing a review. In such circumstances, the six months prescribed by the Order in Council of the 16th April 1838 from the date of the decree having expired, special leave to appeal from the original decree and the order refusing a review was allowed. NOGENDRO CHUNDER GHOSE *v.* MAHOMED EUSUFF [12 Moore's I. A., 107

11. ——— **Case under appealable value.**—*Subject-matter at issue exceeding appealable value.*—Special leave to appeal granted notwithstanding that no application had been made for such leave to the Court below, upon the allegation that, though the amount decreed was much under the appealable value, the original demand being necessarily limited by the jurisdiction of the Court in which the suit was originally instituted, yet the subject-matter at issue exceeded in value the appealable amount. MUTUSAWMY JAGAVERA YETTAPA NAIKER *v.* VENKATASWARA YETTIA . . 10 Moore's I. A., 313 [1 Ind. Jur., N. S., 205

12. ——— *Leave granted on terms.—Provision for payment of compensation agreed on.*—Where the Court grants leave to appeal under the general jurisdiction of the Queen in Council, it will impose such terms upon the party applying as the special circumstances of the case require. Appeal admitted from an order confirming the report of the Commissioners in a partition suit, although the appealable value was under R10,000, the amount prescribed by the Order in Council of the 10th April 1838. The petitioner (the plaintiff) had offered to compensate the defendant if the report of the Commissioners was varied. The Judicial Committee, in granting leave to appeal, put the petitioner upon terms of lodging in the Council office, within four months, a certificate of recognisance to the Queen in the sum of £1,500 for such compensation and costs as might be awarded. IN RE SIBNARAIN GHOSE . 5 Moore's I. A., 322

13. ——— *Value of the subject-matter disputed.*—The value of the subject-matter in dispute, though laid in the plaint at a sum exceeding the minimum amount, R10,000, was reduced on calculation by the Zillah Judge to an amount under that sum, and the finding on the merits was for the plaintiff for such reduced sum. In a cross-appeal the Sudder Court dismissed the entire claim, and, on the ground that the matter in dispute was

PRIVY COUNCIL, PRACTICE OF—*continued.*

3. SPECIAL LEAVE TO APPEAL—*continued.*

Case under appealable value—*continued.*

under the appealable value, refused leave to appeal to England. On special petition, leave to appeal was granted, the appellant claiming to open the question of the value of the subject-matter in question calculated by the Zillah Judge. PRANATH ROY CHOWDHRY *v.* SURNOMOYEE [7 Moore's I. A., 553

14. ——— *Important principle of law involved.*—Where an important principle of law was involved in the decision, special leave to appeal was granted though the amount of damages recovered was under the appealable value. ROGERS *v.* RAJENDRO DUTT [2 W. R., P. C., 51: 8 Moore's I. A., 103

KERAKOOSE *v.* BROOKS [8 Moore's I. A., 339: 4 W. R., P. C., 61

15. ——— *Question of public importance.*—Where a question of great public importance arose, special leave was granted though the subject-matter in dispute was under R10,000. SUMBHOOLALL GIRDHURLALL v. COLLECTOR OF SURAT . . . . 8 Moore's I. A., 1 [4 W. R., P. C., 55

16. ——— *Question on which the decision of many suits depended.*—Special leave to appeal given in a case involving a question of tenure service, called chakeran, although the subject-matter in dispute was below the appealable value; there being many other suits depending on the decision of the case. JOYKISSEN MOOKERJEE *v.* COLLECTOR OF EAST BURDWAN [8 Moore's I. A., 265

17. ——— *Leave granted on terms as to payment of costs.—Question of jurisdiction.*—The Supreme Court, in overruling the objections to the jurisdiction of the Court, refused leave to appeal, the subject-matter of the action being trifling and under the amount required by the rules of the Privy Council. On petition, the Judicial Committee granted leave to appeal, but upon terms of the East India Company paying the respondent's costs of the appeal, to enable him to appear, to prevent the question being argued *ex parte.* SPOONER *v.* JUDDOW . . . 4 Moore's I. A., 353

18. ——— **Leave in suits consolidated by consent.**—*Valuation.*—Special leave to appeal granted in a suit which had been consolidated by consent of both parties. A defendant to a suit having adopted a certain valuation, cannot in the same suit object to that valuation. KRISTO INDRO SAHA *v.* HUROMONEE DOSSEE . . L. R., 1 I. A., 84

19. ——— **Leave on appeal from a decree not final.**—*Practice on erroneous construction of Charter.*—On a special application to the King in Council, founded on the fact that the previous uniform practice of the Supreme Court at Madras, though upon an erroneous construction of

PRIVY COUNCIL, PRACTICE OF—*continued.*

3. SPECIAL LEAVE TO APPEAL—*continued.*

Leave on appeal from a decree not final —*continued.*

the Charter, was to admit only appeals upon a final decree, leave to appeal was granted by the Privy Council. EAST INDIA COMPANY *v.* ALLY [7 Moore's I. A., 555

20. ——— Order as to custody of child.—*Child with Christian father and Mahomedan mother.*—Special leave to appeal allowed from an order of the High Court of Judicature for the North-West Provinces of India, by which order an infant daughter was taken from the custody of her mother, a Mahomedan, on the ground that the minor's deceased father had been a professed Christian, and her mother, who was, as the Court held, living in adultery, was inducing her daughter to adopt the faith and habits of a Mahomedan. Liberty given, pending the hearing of the appeal, to the petitioner to apply to the High Court to have access at suitable times to her daughter. IN THE MATTER OF SKINNER *alias* NAWSHABA BEGUM [13 Moore's I. A., 532

21. ——— Order as to important question of law.—Special leave to appeal was granted to try the question whether, under the Registration Act, 1871, a Zillah Judge can review an order of his own Court refusing to register a document. BEASUT HOSSEIN *v.* ABDOOLLAH . L. R., 1 I. A., 72

22. ——— Appeal from Non-Regulation Provinces.—*Stat. 3 & 4 Will. IV., c. 41.*—No provision by Statute or Charter being made for appeal to Her Majesty in Council from judgments of the Court of the Judicial Commissioner of Oudh, created on the annexation of that kingdom in the year 1858, the Judicial Committee, to prevent the denial of justice, admitted an appeal under Statute 3 and 4, William IV., Cap. 41. SALIK RAM *v.* AZIM ALI BEG [1 Ind. Jur., O. S., 117: 8 Moore's I. A., 270

23. ——— Order suspending pleader for misconduct.—*Act XX of 1865.*—The High Court, acting regularly within its jurisdiction, suspended a pleader from practice for misconduct. The Judicial Committee, not being prepared to say, from the materials before it, that the High Court's conclusion on a pure question of fact was wrong, refused to grant special leave to appeal. It would not have followed, even if more doubt had been entertained on such a question, that an appeal would have been granted against Judges so acting. IN THE MATTER OF QUARRY [I. L. R., 2 All., 511: L. R., 7 I. A., 6

24. ——— Leave to appeal on terms.—*Counter-petition to revoke leave.*—Leave to appeal on an *ex parte* application was, under the special circumstances, granted on terms of the appellant prosecuting the appeal and giving security for £500. No step was, however, taken by the appellant to perfect the security or prosecute the appeal. The respondents, on being served with the order admitting the appeal, filed a counter-petition to revoke the leave granted to appeal. The Judicial Committee under the circumstances, there having been great delay, made an order putting the appellant upon terms of lodging his petition of appeal within six weeks, or the appeal to stand dismissed, and enlarged the amount of the recognisance to £1,000 to cover the expenses occasioned by proceedings which, owing to appellant's delay in appealing, had taken place in the Master's office, reserving the costs of the application to revoke the leave to appeal until the hearing. MCKELLAR *v.* WALLACE . . . 5 Moore's I. A., 372

PRIVY COUNCIL, PRACTICE OF—*continued.*

3. SPECIAL LEAVE TO APPEAL—*continued.*

Leave to appeal on terms—*continued.*

25. ——— Time for making application.—*Application nunc pro tunc.—Special appeal, Appeal from order on.—Judgments of lower Court on facts.*—Where a case has been heard by the High Court on special appeal, and on appeal to the Privy Council it is desired to include in the appeal the decisions of the lower Courts on the facts, an application for special leave to do so should be made previous to the hearing. The Judicial Committee will not, as a rule, allow a petition of appeal from those decisions to be put in at the hearing, *nunc pro tunc.* GOLAM ALI *v.* KALLY KISHEN THAKOOR [12 B. L. R., P. C., 107: 18 W. R., 299

26. ——— *Application nunc pro tunc.—Leave to appeal granted without authority.—Preliminary objection.*—An objection that an appeal has come before the Judicial Committee without proper authority ought to be taken at the earliest moment, but may be entertained at any stage of the appeal, and is not unfrequently heard when the appeal is called on and before the arguments on the merits have commenced. An appeal being called on, and before the case was gone into on the merits, the objection was taken by the respondent and appeared to be well founded. The appellant thereupon applied to the Judicial Committee to grant him special leave to appeal *nunc pro tunc. Held* that it was competent to the Judicial Committee to grant such special leave, but leave was refused under the particular circumstances of the case. GAJADHAR PERSAD *v.* WIDOWS OF EMAM ALI BEG [15 B. L. R., P. C., 221 S. C. L. R., 2 I. A., 205

4. LEAVE TO DEFEND APPEAL.

27. ——— Appeal by one of two defendants severed in defence.—*Alternative liability.*—Two sets of defendants severed in their defence (their interests involving an alternative as to which was responsible to the plaintiff), and the Court below fixed one set of the defendants with liability. On an appeal in which the plaintiff was made sole respondent, the other defendants were held entitled to appear, and to lodge a separate case. EAST INDIA COMPANY *v.* ROBERTSON . 7 Moore's I. A., 361

PRIVY COUNCIL, PRACTICE OF—*continued.*

4. LEAVE TO DEFEND APPEAL—*continued.*

28. ——— Allowing respondent to defend after great delay in appearing.—*Leave on terms.*—Where the respondent did not appear, the appeal was after two years set down for hearing *ex parte.* Before the hearing the respondent appeared, and moved under special circumstances to postpone the hearing for six months to enable him to lodge his case. The Judicial Committee put him upon terms of having the appeal heard at the next sittings, restraining him from doing any thing in the interval to the prejudice of the fund in the Court below, and with payment of the costs of the application. WATSON *v.* SEREMUNT LALL KHAN

[5 Moore's I. A., 447

29. ——— Delay of respondents in entering appearence.—*Service of peremptory notice on respondent.*—No appearence having been entered by the respondents to an appeal from India, and the appellants being ready with their case for hearing, their Lordships, on the application of the appellant, made an order that the respondents should be served with notice that unless they brought in their case without delay, the appeal would be heard *ex parte;* giving the appellant liberty to proceed in the Court below, to render such service effectual, and the Court was ordered to certify to the Judicial Committee what had been done with respect to the same. WISE v. KISHEN COOMAR BOSE . **4 Moore's I. A., 201**

5. CROSS-APPEAL.

30. ——— Admission of cross-appeal after time.—*Admission on conditions.*—A cross-appeal from a decree of the Sudder Court in India, although not interposed within the proper time, admitted upon conditions (1) of the principal appeal being prosecuted, and (2) that the principal and cross-appeals be consolidated and heard on one printed case. OMANATH CHOWDHRY *v.* NUJEEB CHOWDHRY

[8 Moore's I. A., 498

31. ——— *Mistake of respondents as to practice.*—Cross-appeal allowed from part of a decree of the Sudder Court appealed from to England, although the respondents had not applied in India for leave to appeal within the proper time; the respondents being mistaken in the practice of the Judicial Committee upon a cross-appeal. Such cross-appeal directed to be prosecuted and heard upon one printed case if the principal appeal was proceeded with; but in the event of the principal appeal being dismissed for want of prosecution, liberty was reserved to the respondents to prosecute the cross-appeal as a separate appeal. NANA NARAIN RAO *v.* HURREE PUNT BHAO . **6 Moore's I. A., 464**

32. ——— Leave given at hearing to bring cross-appeal in order to open out whole decree.—*Appeal from part of decree.*—In an appeal from part of a decree, the whole decree is not open to the respondents. Under the peculiar circumstances of this case, however, leave was given to present a cross-appeal, and the appellants not objecting, the

PRIVY COUNCIL, PRACTICE OF—*continued.*

5. CROSS-APPEAL—*continued.*

Leave given at hearing to bring cross-appeal in order to open out whole decree—*continued.*

appeal was heard from the whole decree. MYNA BOYEE *v.* OOTTORAM

[2 W. R., P. C., 4: 8 Moore's I. A., 400

6. VALUATION OF APPEAL.

33. ——— Mode of valuation.—*Appeal to Privy Council.—Appealable value.—Stamp on plaint.—Beng. Reg. X of 1829, s. 17.*—In estimating the appealable value for an appeal to the Privy Council by order of 10th April 1838, *viz.,* R10,000, regard should be had to the whole matter involved in the suit, and not to the value of a fractional part of the property sought to be recovered. A suit was brought to recover a zemindari in the possession of different persons under deeds of sale in execution of a decree. The value of the property was, by Bengal Regulation X of 1829, stated in the plaint to be R14,325. The Sudder Court upheld the sales so far as related to the claim of some of the defendants. The other defendants applied for leave to appeal to England, which the Sudder Court refused, on the ground that, as the value of their portion was only R8,215, it was not within the appealable value; but this construction was overruled by the Judicial Committee, and leave was granted to appeal. *Quære,*—Whether the stamp on the plaint required by Regulation X of 1829, section 17, being for fiscal purposes only, is conclusive of the value of the property sued for. AMEENA KHATOON v. RADHABENOD MISSER

[7 Moore's I. A., 261

34. ——— Test of value of property.—*Market value.—Appeal to Privy Council.*—By Bengal Regulation X of 1829, the test of the value of the property in suit is the selling or market value. MOHUN LALL SOOKUL *v.* BEBEE DOSS

[8 Moore's I. A., 193

35. ——— Case under appealable value unless by addition of interest after decree.—*Discretion of Judicial Committee.*—Leave to appeal to the Privy Council is to be given in cases where the petition is presented within the prescribed period, and the value of the matter in dispute in the appeal amounts to R10,000, including interest up to the decree. The grant of leave to appeal in cases where the specified amount of R10,000 can only be reached by the addition of interest subsequent to the decree, is in the discretion of the Privy Council. SUTERSCHUNDER ROY *v.* GUNES CHUNDER. SURNOMOYEE *v.* SUTERSCHUNDER ROY. GOOROOPERSAD KHOOND *v.* JUGGUT CHUNDER

[3 W. R., P. C., 14: 8 Moore's I. A., 164, 165, 166

36. ——— Addition of costs of suit to principal sum.—*Appealable value.—Appeal to Privy Council.*—Costs of suit cannot be added to the principal sum and interest in calculating the appeal

PRIVY COUNCIL, PRACTICE OF—*continued.*

6. VALUATION OF APPEAL—*continued.*

Addition of costs of suit to principal sum—*continued.*

able value of R10,000, the amount restricted by the Order in Council of the 10th April 1838. DOORGA DOSS CHOWDRY *v.* RAMANAUTH CHOWDRY [8 Moore's I. A., 262

37. ——— **Actual value of property in suit.**—*Valuation in plaint.—Evidence.*—Appeal admitted from the Sudder Court at Calcutta in a case where the land sued for was laid in the plaint as under R10,000, upon evidence stating the value of the property much to exceed that sum. GOURMONEY DEBIA *v.* ABDOOL GUNNY . 8 Moore's I. A., 268

38. ——— *Valuation in plaint.—Evidence.*—The amount of the stamp upon the plaint is not conclusive of the value of the subject-matter of the suit. By the procedure of the Native Courts the value of the suit for the purpose of the stamp duty is assessed at three times the annual rent payable to Government in respect of the property sued for. *Held*, on an *ex parte* petition for leave to appeal in a case in which the value was laid in the plaint as being under R10,000, that as the calculation was estimated with reference to the stamp duty only, leave to appeal would be granted conditionally upon the production of satisfactory evidence in India by the petitioner, and transmitted with the transcript, that the real or market value of the property exceeded R10,000, otherwise the leave granted to be null and of no effect. MOHUN LALL SOOKUL *v.* BEBEE DOSS . . 7 Moore's I. A., 428

39. ——— **Consolidation of suits under appealable value.**—*Stat. 21 Geo. III., c. 70, s. 21.*—Upon the construction of the Statute 21 George III, Cap. 70, section 21, it was held that two suits (each for less than R50,000, but both for more than that amount), in which separate judgments were given, could not be consolidated for the purpose of permitting an appeal to the Privy Council; each judgment, when pronounced, having been final and conclusive. MAHOMED UBDOOLLAH *v.* MOTECHUND [5 W. R., P. C., 34: 1 Moore's I. A., 363

40. ——— **Several suits each under appealable value.**—*Suits as to same question of law.—Leave to appeal granted on condition.*—Five separate suits were brought by the same plaintiff against the same defendants in which the same question of law was raised. The amount involved in each suit was under R10,000, the appealable value, although in the aggregate the amounts claimed exceeded that sum. Leave to appeal in the suits was granted upon the undertaking that the parties consented within two months, by a proceeding before the Sudder Court, to abide by the decision of the Privy Council in the first appeal, as governing the four other appeals, when the Registrar of the Sudder Court was to transmit only the transcript of the first suit: otherwise the five transcripts to be remitted in the ordinary course. GOPAL LALL THAKOOR *v.* TELUK CHUNDER RAI . 7 Moore's I. A., 548

PRIVY COUNCIL, PRACTICE OF—*continued.*

7. STAY OF PROCEEDINGS IN INDIA PENDING APPEAL.

41. ——— **Refusal to stay proceedings.**—*Appeal specially admitted by Privy Council.*—By a decree of the Sudder Court at Calcutta a suit was remanded to the Zillah Court to be tried *de novo*. An appeal to England from this decree was refused, but, upon special application, was admitted by the Judicial Committee of the Privy Council; whereupon the appellant applied to the High Court at Calcutta to stay proceedings pending the appeal to England, on the ground that the decision of the Appellate Court would govern the question at issue, which application that Court refused. The appellant then presented a petition to Her Majesty in Council, and applied *ex parte* for the same relief, but the Judicial Committee, in the respondent's absence, refused to make any order, though without prejudice to the petitioner's further application when he had served the respondent. PERLADH SEIN *v.* BHOODOO SINGH . . 10 Moore's I. A., 78

42. ——— **Application to stay proceedings without appealing from order refusing to stay them.**—*Appeal from order of remand.—Delay in applying.*—Application to stay proceedings in a cause in which an appeal from an order in the nature of an interlocutory order is pending before Her Majesty in Council, ought satisfactorily to show that a serious injury will be the result to the party applying unless the delay asked for be granted, and that the party applying has come promptly to make the application. Where, therefore, an appellant from an order of the High Court of Judicature which remitted back a cause appealed to that Court from the Zillah Court, for the trial of issues framed in accordance with the provisions of Act XIII of 1859, section 139, having failed in obtaining an order from the High Court to stay proceedings in the Zillah Court pending the appeal, but not having appealed from that decision, presented a petition to Her Majesty in Council praying that all proceedings in the remanded suit might be stayed till the pending appeal had been heard, the Judicial Committee, without determining the question of their right to interfere in such circumstances, held that the petitioner had not shown any such injury, or used such expedition as entitled him to ask for a stay of proceedings. *Quære,*—Whether, where an order has been made by the superior Court below, refusing to stay proceedings, and such order is not specially appealed from, the Judicial Committee have any authority to interfere, though an appeal is pending before them from a previous order of the superior Court made in the same suit, remitting the cause back to the inferior Court before which it is pending. SIDHEE NUZUB ALLY KHAN *v.* OOJOODHYARAM KHAN [10 Moore's I. A., 322: 1 Ind. Jur., N. S., 185

43. ——— **Stay of execution.**—*Application to set aside order of Court in India for execution pending appeal.*—An application to rescind an order of the Sudder Court at Madras for the execution of a decree pending an appeal, and for an order to stay

PRIVY COUNCIL, PRACTICE OF—*continued.*

7. STAY OF PROCEEDINGS IN INDIA PENDING APPEAL—*continued.*

Stay of execution—*continued.*

execution, refused on the ground of the length of time that had elapsed from the making of the order, and the probability of its having been acted on in India. IN RE BOMMARANJEE BAHADUR

[5 Moore's I. A., 298

44. ——— Stay of proceedings on recognizances.—*Abandonment of appeal.—Vacation of recognisance pending appeal.*—Recognisance entered into to abide the determination of an appeal vacated upon petition of the appellant upon the abandonment of the appeal. REED *v.* GOURMONEY DABEE . . . . **6 Moore's I. A., 490**

8. WITHDRAWAL OF APPEAL.

45. ——— Application for dismissal of appeal by agreement.—*Arrangement between parties.*—A petition to dismiss an appeal from the Sudder Court in India, and for an order directing that Court to carry into execution the terms of a deed of compromise, upon which the withdrawal of the appeal was founded, refused. All that the Privy Council will do in such circumstances is to make an order of dismissal, reserving to the parties leave to apply to the Court in India to take further proceedings in pursuance of such agreement. SUTTI CHURN GHOSAL *v.* MUDDEN KISHORE INDOO

[5 Moore's I. A., 107

9. INSOLVENCY OF APPELLANT.

46. ——— Effect of insolvency of appellant on appeal.—*Procedure.—Adjournment to allow Official Assignee to appear.*—After an appeal from Calcutta had been set down for hearing, intelligence was received shortly before the day appointed for hearing that the appellant had been adjudged an insolvent under the Indian Insolvent Act, 11 and 12 Vict., Cap. 21. On the appeal being opened, the Court postponed the hearing for six months, to enable the Official Assignee in insolvency in Calcutta to revive the appeal and prosecute the same, and in default the appeal to be dismissed; and directed the respondents to serve the Official Assignee in India with such notice. No steps having been taken by the Official Assignee within the time limited for prosecution, their Lordships refused a further extension of time and dismissed the appeal. GOOROO CHURN SEIN *v.* RADHANAUTH SEIN . **7 Moore's I. A., 1**

10. DISMISSAL OF APPEAL FOR WANT OF PROSECUTION.

47. ——— Delay in taking proceedings after admission of appeal.—An appeal was allowed in October 1854 by the Supreme Court at Calcutta to England. After the allowance of the appeal no further steps were taken by the appellant. In March 1856 the Judicial Committee, upon a cer-

PRIVY COUNCIL, PRACTICE OF—*continued.*

10. DISMISSAL OF APPEAL FOR WANT OF PROSECUTION—*continued.*

Delay in taking proceedings after admission of appeal—*continued.*

tificate of the Registrar of the Supreme Court that no further proceedings had been taken after the order allowing the appeal, dismissed the appeal at the instance of the respondents for want of prosecution. RABUTTY DOSSEE *v.* RADHANAUTH SEIN

6 Moore's I. A., 346

48. ——— On special application, permission to appeal was granted in December 1860, on the condition of the appellant depositing with the Registrar of the Judicial Committee of the Privy Council the sum of £300 for costs. The record was transmitted from India and the respondent brought in his printed case, but the appellant, though served with a peremptory notice, did not lodge his case or take any other step in the matter. In such circumstances, on application by the respondent, the appeal was dismissed, and the respondent's costs directed to be paid out of the sum deposited in the Council office, the balance to be returned to the appellant. GOURMONEE DEBIA *v.* ABDOOL GUNNEE

[10 Moore's I. A., 59

49. ——— *Failure to deposit security.*—Six months having elapsed without the appellant having lodged the required security, the respondent applied to dismiss the appeal for non-performance of that condition. As it appeared that the appellant's agent was in daily expectation of funds from India, the case was, on the appellant paying the costs of the day, ordered to stand over for three months, for the appellant to perform the condition; in failure thereof the appeal to stand dismissed. HURROSOONDREE DIBIAH *v.* PRAN KISHEN SINGH

[7 Moore's I. A., 16

50. ——— Application to the Court in India by infant on coming of age to withdraw from the suit.—*Guardian and ward.*—An infant appellant, in an appeal pending in the Privy Council, having come of age, and having petitioned the High Court in India to be allowed to withdraw from the suit,—*Held* that it was competent to the respondent in England to have the appeal dismissed for want of prosecution, although the guardian had given security for the costs and paid the expenses of the appeal, and although the (former) infant was not served with notice of the motion, the Council being satisfied that he had in the High Court petitioned for leave to withdraw. BISTUPRYA PATMADAYI *v.* BASUDEB DHALL BEWARTI PATNAIK . **6 B. L. R., 190 : 15 W. R., P. C., 19**

S. C. BISTOOPRIA PUTMADAYE *v.* NUND DHUL

[13 Moore's I. A., 602

11. RESTORATION OF APPEAL.

51. ——— Appeal dismissed through "unavoidable accident."—*Acts XVI of 1845, XXIX of 1841, and XV of 1853, s. 6.—Costs.*—Act

PRIVY COUNCIL, PRACTICE OF—*continued.*

11. RESTORATION OF APPEAL—*continued.*

Appeal dismissed through "unavoidable accident"—*continued.*

XVI of 1845, amending Act XXIX of 1841, enacts that it is competent to the Sudder Court in the case of the dismissal of an appeal for want of prosecution, upon the application of the appellant within three months after the appeal has been dismissed, to re-admit the appeal, if the appellant satisfies the Court that the dismissal was "occasioned by the default of his vakil or by unavoidable accident." An appeal was made to the Sudder Court at Calcutta, but in consequence of the absence from illness of the appellant's mooktear the written reasons of appeal were not lodged within six weeks, the time prescribed by Act XV of 1853, section 6, and the appeal was dismissed. Upon application for re-admission of the appeal, the evidence showed that there had been no wilful delay, and that the appellant was in ignorance of the fact of the reasons of appeal not having been filed. *Held*, reversing the decree of the Sudder Court, that such circumstances constituted a case of "unavoidable accident" within the meaning of Act XVI of 1845, and the appeal was ordered to be re-admitted on the file of pending causes. In reversing the decree of the Sudder Court, the order of that Court that the costs of the application to re-admit the appeal should be paid by the appellants, was confirmed; but as the appellants were successful in obtaining a reversal of the decree of the Court below, the costs of the appeal in England against such decree were ordered to be paid by the respondents. ANUNDMOYEE DOSSEE *v.* POORNO CHUNDER ROY . **9 Moore's I. A., 26**

53. ——— **Appeal dismissed by reason of guardian absconding and abandoning case.**—*Power to rectify mistakes in orders.*—By the Common Law the Judicial Committee possesses the same power as the Courts of Record and Statute have, of rectifying mistakes which have crept in by misprision or otherwise in embodying its judgments. Where, therefore, an order had been made *ex parte* upon the appearance of the respondents alone for the dismissal of an appeal, and affirmance of the judgment of the Court below which purported to be upon the hearing of the cause, the Judicial Committee held that such order must be taken simply as a dismissal; and it appearing that the appellants were infants under the protection of the Court of Wards in India, and that the agent appointed by the Court to act as their guardian *ad litem* in the matter of the appeal had absconded and abandoned the cause, their Lordships rescinded the order of dismissal, and restored the appeal on the terms of the appellant's paying the costs and giving access to the transcript of the proceedings in the Court below, in their hands, and undertaking to lodge the case within five months. RAJUNDER NARAIN RAE *v.* BIJAI GOVIND SINGH **[2 Moore's I. A., 181**

54. ——— **Appeal dismissed for want of prosecution.**—*Ignorance of necessary proceedings.*—Where an appeal had been dismissed for want of prosecution, no step having been taken in it for ten years, the appeal was, on petition to the King in Council, restored, the appellant paying the costs of dismissal and restoration; it appearing that the appellant was ignorant of the proceedings necessary to be taken in England, and that he had, though after the lapse of some years, instructed a commercial house in Calcutta to prosecute the appeal, but whose agent in England becoming insolvent, no proceedings were taken to bring the case to a hearing. DEEDAR HOSSEIN *v.* ZUHOOROONNISSA . **2 Moore's I. A., 441**

PRIVY COUNCIL, PRACTICE OF—*continued.*

11. RESTORATION OF APPEAL—*continued.*

Appeal dismissed for want of prosecution—*continued.*

55. ——— *Delay in receipt by agent of appellant of the transcript.*—Leave given to restore an appeal dismissed for want of prosecution, the appellant's agent, though instructed to prevent the dismissal of the appeal, not having received the transcript until after the expiration of a year and a day from the time of the allowance of the appeal, and the respondent having in consequence thereof obtained an order of dismissal. BISSNOSOONDERY DABEE *v.* BURRODACAUNT ROY **[2 Moore's I. A., 127**

56. ——— *Ignorance of existence of new rules.*—Appeal restored after being dismissed for want of effectual prosecution within the time limited by the 5th rule of the Order in Council of 13th June 1853, the new rules having been only recently adopted by the Sudder Court at Calcutta, and the appellant, in ignorance of their existence, being engaged in taking steps to prosecute the appeal within the time and according to the practice previously existing. GUDADHUR PURSHAD TEWAREE *v.* SOONDEREOOMAREE . **6 Moore's I. A., 201**

SETO LUCHMEECHUND *v.* SETO ZORAWUR MULL. **[6 Moore's I. A., 204**

57. ——— *Abandonment of appeal.*—*Statute 8 and 9 Vict., cap. 30, s. 2.*—In circumstances showing conflicting and opposite decisions by the Sudder Court upon the same question at issue between the same parties, an appeal treated under Statute 8 and 9 Victoria, Cap. 30, section 2, as abandoned for non-prosecution, was restored upon terms of paying costs and undertaking to lodge cases forthwith and to lodge security or a bond in England to the amount of £500. Where an appeal has been treated as abandoned under 8 and 9 Victoria, Cap. 30, section 2, their Lordships have no power to grant leave to institute a new appeal; only a discretion to allow the original appeal to be restored. HURROSOONDREE DEBIAH *v.* PRAN KISHEN SINGH **[6 Moore's I. A., 491**

58. ——— *Consolidation of dismissed appeal with another pending.*—Leave given to restore an appeal dismissed for want of prosecution, the Court below having consolidated it with another appeal in the same cause which was still pending. SURROOP CHUNDER SIRCAR CHOWDRY *v.* RAMRUTTON MULLICK . . **1 Moore's I. A., 358**

PRIVY COUNCIL, PRACTICE OF—*continued.*

11. RESTORATION OF APPEAL—*continued.*

Appeal dismissed for want of prosecution—*continued.*

59. ——————— *Application for restoration of case.—Security for costs of appeal.*—Application for restoration of appeal acceded to in consideration of the interests of infants being involved in the case, and of the state of that part of India when the matter arose in and after 1857, on the condition of deposit of further security, and of the prosecution of the appeal within a certain time. The security in India was held to have gone by the dismissal of the appeal for default of prosecution. BIRJOBUTTEE *v.* PERTAB SINGH

[3 W. R., P. C. 36: 8 Moore's I. A., 168

60. ——— **Security on restoration of appeal.**—*Deposit of costs.*—Where Government securities for the due prosecution of the appeal and costs were deposited in the registry of the Sudder Court, the Judicial Committee in restoring the appeal dispensed with the usual recognisance in England. SETO LUCHMEECHUND *v.* SETO ZORAWUR MULL

[6 Moore's I., A. 204

12. REMISSION OF CASE TO INDIA.

61. ——— **Refusal to consider documentary evidence not sent with record.**—The Privy Council will not act as a Court of Original Jurisdiction: therefore, where the Judge of the Court below improperly suppressed documents which were not discovered until after the transmission of appeal to Her Majesty in Council, their Lordships refused to give an opinion on the merits and remitted the case to India for reconsideration. JUVERDHAEE *v.* VURUJBHAEE . . **3 Moore's I. A., 324**

62. ——— **Remand to take fresh evidence.**—*Refusal of Court below to consider evidence.*—Where the lower Courts, on the ground that the defendant's title under a sanad was absolute, declined to consider evidence which the plaintiff relied on as showing that the defendant really held for him as a trustee, the case was remanded by the Judicial Committee in order that such evidence might be received and considered. SHERE BAHADUR SING *v.* THAKURAIN DARIAO KUAR

[I. L. R., 3 Calc., 645

63. ——— **Reversal in former analogous case.**—*Case decided by High Court as involving question already decided.*—The High Court dismissed an appeal from the Zillah Court on the ground that it involved the same question as had been decided by them in another suit brought by the plaintiff in respect of the validity of a zur-i-peshgi deed. The decision in the prior suit was on appeal reversed by the Judicial Committee. In such circumstances, on the appeal from the later decision coming on for hearing *ex parte*, their Lordships, with the consent of the appellant, remitted the case to the High Court, with a declaration that the deed was valid; and with directions that if the respondent did not appear

PRIVY COUNCIL, PRACTICE OF—*continued.*

12. REMISSION OF CASE TO INDIA—*continued.*

Reversal in former analogous case—*continued.*

within a reasonable time, to be fixed by the High Court, to dismiss the appeal from the Zillah Court, and in the event of the respondent appearing, then to hear the case on the merits. KAJEEPERSHAD TEWAREE *v.* LALLA BINDA LALL

[12 Moore's I. A., 343

64. ——— **Form of decree of High Court.**—*General decree affirming Court below without details where lower Court merely reverses first Court.*—A suit for possession and redemption in which a third party intervened on the claim that the plaintiff had conveyed to him half of the property in dispute, was dismissed. On appeal by the plaintiff in which the intervenor did not appear, the lower Appellate Court merely reversed the decree of the first Court, and the High Court affirmed the decree of the lower Appellate Court. The Privy Council, while affirming the decree of the High Court, observed that the question as to the form of the decree ought to have been raised before the High Court, if it was thought that the decree was not sufficient to found execution upon, so that the details of the decree might have been stated; and they remanded the case to the High Court to amend their decree in conformity with their judgment by declaring affirmatively what the plaintiff was entitled to recover. LALA SHAM SOONDUR LAL *v.* SOORAJ LAL

[26 W. R., P. C., 48

13. PRACTICE AS TO OBJECTIONS.

65. ——— **Formal objections.**—The practice of the Privy Council has been never to favour objections merely of form. MOKUDDIMS OF MOUZA KUNKUNWADY *v.* ENAMDAR BRAHMINS OF MOUZA SOORPAL

[7 W. R., P. C., 8: 3 Moore's I. A., 383

66. ——————— *Pleadings.—Matters of form, Refusal to insist upon.*—In reviewing proceedings of the Courts in India, where the Hindu and Mahomedan laws are the rule, and where the forms of pleadings are wholly different from those in use in Courts where the law of England prevails, the Privy Council will look to the essential justice of the case, not considering whether matters of form have been strictly attended to. GHRIDHAREE SINGH *v.* KOOLAHUL SINGH

[6 W. R., P. C., 1: 2 Moore's I. A., 344

67. ——— **Technical objections.**—*Fresh grounds.—Question of disputed consent to arbitration.*—In the examination of such questions as whether, as alleged, the consent of one of the parties to an arbitration was obtained by threats, the Privy Council will look to the broad principles of justice and equity, and discourage mere technical objections, and the invention of new grounds of dispute which were not even mentioned at the commencement of

PRIVY COUNCIL, PRACTICE OF—*continued.*

13. PRACTICE AS TO OBJECTIONS—*continued.*

Technical objections—*continued.*

the suit. PURVATHA VURDHAY NAUCHIAR *v.* JAYAVERA RAMAKOMARA ETTYAPA NAICKER
[4 W. R., P. C., 31

S. C. ZEMINDAR OF RAURNAD *v.* ZEMINDAR OF YELTIAPOORAM . . 7 Moore's I. A., 441

68. ——— Objections on matters of practice.—*Immaterial irregularities.*—The Privy Council will not interfere in a case in which objections are taken to matters of practice, unless they see very clearly that justice has not been done. ABDOOL ALI *v.* MOZUFFER HOSSEIN CHOWDRY
[16 W. R., P. C., 22

69. ——— Pleadings, Rule of.—*Presumption as to averments not traversed.*—The strict rule that averments not traversed must be taken to be admitted, will not be applied by the Privy Council to the Indian Courts. ANUNDOMOYEE CHOWDHRAIN *v.* SHEEB CHUNDER ROY
[2 W. R., P. C., 19 : 9 Moore's I. A., 287
Marsh., 455

70. ——— Ground for varying decree.—*Duty of Appellate Court.—Suits heard together, Evidence in.*—It is objectionable to disturb or vary a decree properly made by the lower Court for the mere purpose of guarding against the possible error of some other tribunal in some future suit. Two suits were heard together. On objection made in appeal that the evidence taken in one suit (to which the objector was not a party) had been irregularly read in the other,—*Held* that, having regard to all the circumstances, the suits having been tried together, and the evidence objected to having been commented on by the objector, or on his behalf, it sufficiently appeared that the evidence had been substantially taken in both suits. A Court of Appeal has to determine whether the decision of the lower Court when pronounced was a correct decision of the issues then pending before it between the then parties to the suit. ANUNDOMOYEE CHOWDHRAIN *v.* SHEEB CHUNDER ROY
[Marsh., 455 : 2 W. R., P. C., 19 :
9 Moore's I. A., 287

71. ——— Objection as to suit being merely declaratory.—*Special leave to appeal.—Technical nature of grounds of appeal.*—A defendant obtained special leave to appeal to Her Majesty in Council, on the ground that the case involved questions of law of great importance to the Jain sect, of which he was a member. On the appeal coming on for hearing he contended that the suit should have been dismissed by the Courts below as a claim for a declaration of right in respect of which no consequential relief was sought or could be given. *Held* that, considering the special grounds on which the defendants had obtained leave to appeal, the somewhat technical character of the defence he now put forward, and the general circumstances of the

PRIVY COUNCIL, PRACTICE OF—*continued.*

13. PRACTICE AS TO OBJECTIONS—*continued.*

Objection as to suit being merely declaratory—*continued.*

case, he ought not to be allowed to insist on this objection. SHEO SINGH RAI *v.* DAKHO
[I. L. R., 1 All., 688 : 2 C. L. R., 193
L. R., 5 I. A., 87

72. ——— Objection not taken before High Court.—*Grounds of appeal.*—The Judicial Committee refused to entertain an objection taken in the grounds of appeal, which had not been taken on appeal to the High Court. FORBES *v.* MEER MAHOMED HOSSEIN
[12 B. L. R., P. C., 210 : 20 W. R., 44

73. ——— *Objection as to validity of deeds.*—A plaintiff sued to set aside certain documents which he alleged to have been forged by the defendant. At the trial of the case in the Court of first instance the only issue directed to these documents was—"Are the three written agreements said to have been given by the plaintiff to the defendant genuine and valid deeds?" It was not contended by the plaintiff in that Court that the agreements had been obtained from him while he was a minor by undue influence, nor was that objection taken in the grounds of appeal against the judgment of the Court. *Held* that it was too late to take the objection for the first time in the Court of Appeal. AMEEROONISSA KHATOON *v.* ADADOONISSA KHATOON
[15 B. L. R., 67 : 23 W. R., 208
L. R., 2 I. A., 87

74. ——— *Objection to right of action.*—The Privy Council will not entertain a purely technical objection to a party's right of action which has not been made in the Court below. BANK OF BENGAL *v.* MACLEOD . 5 Moore's I. A., 1

75. ——— *Right to sue.*—*Semble,*—The right of a party to institute a suit as heir of an original grantee, not having been disputed in the Courts below, cannot be questioned before the Judicial Committee. MILLS *v.* MODEE PESTONJEE KHOORSHEDJEE . . 2 Moore's I. A., 37

76. ——— *Objection of limitation.*—*Beng. Regs. II of 1805, II of 1819, III of 1828.*—An objection raised for the first time at the hearing of the appeal before the Privy Council, that the Government's right to sue was barred by Regulation II of 1805 from lapse of time, sustained, the proceedings in India before the Revenue Collector and special Commissioner under Regulations II of 1819 and III of 1828 not being in the nature of a regular suit. DHEERAJ RAJA MAHATAB CHUND BAHADOOR *v.* GOVERNMENT OF BENGAL
[4 Moore's I. A., 466

77. ——— *Objection to order of Court in India substituting respondent for appellant on death of sole appellant.*—Pending the appeal to England the sole appellant died, and the Sudder Court made an order substituting one of the

PRIVY COUNCIL, PRACTICE OF—*continued.*

13. PRACTICE AS TO OBJECTIONS—*continued.*

Objection not taken before High Court —*continued.*

respondents in his stead as appellant. *Semble,*—It is not competent to the other respondents to object to such order at the hearing of the appeal, the proper course being to move the Sudder Court to discharge such order. KASI PERSAD NARAIN *v.* KAWALBASI KOOER . . . . **5 Moore's I. A., 146**

78. ——— *Objections to report of Commissioner under Civil Procedure Code, 1859, s. 181.*—Where a report, or supplemental report, had been made by Commissioners to whom accounts had been referred for investigation under Act VIII of 1859, section 181, the Privy Council refused to entertain any objections thereto which had neither been brought to the notice of the first Court nor made in any of the grounds of appeal in the Courts in India. SETH GUJMULL *v.* CHAHEE KOWAR **[L. R. 2 I. A., 34**

79. ——— **Question of law referred to Full Bench.**—*Objection by respondent without cross-appeal to answer of Full Bench.*—Where a Division Bench of a High Court refers a question of law for the consideration of the Full Bench, and the answer of the Full Bench is not framed as a decree or as an interlocutory order, and an appeal is brought to Her Majesty in Council, it is open to the respondent without a cross-appeal to object to the correctness of the answer given by the Full Bench on the question of law referred. PHOOLBAS KOONWAR *v.* LALLA JOGESHUR SAHOY . **I. L. R., 1 Calc., 226 [L. R., 3 I. A., 7 : 25 W. R., 285**

14. QUESTIONS OF FACT.

80. ——— **Unanimous judgment on facts.**—*Onus of proof.*—The rule of the Appellate Court is that it will not, on a question of fact, reverse an unanimous judgment of the Courts in India unless the very clearest proof is shown that such decision is erroneous. TAREENY CHURN BONNERJEE *v.* MAITLAND . . **11 Moore's I. A., 317**

81. ——— **Credibility of witnesses.**—*Effect of evidence.*—It is not the habit of the Privy Council, unless in very extraordinary cases, to advise the reversal of a decision of the Courts of India merely on the effect of evidence, or the credit due to witnesses. NABAGUNTY LUCHMEDAVAMAH *v.* VENGAMA NAIDOO **[1 W. R., P. C., 30 : 9 Moore's I. A., 66**

JARUITOOL BUTOOL *v.* HOSSEINEE BEGUM **[10 W. R., P. C., 10 : 10 Moore's I. A., 196**

82. ——— *Issues of fact.*—*Miscarriage in reception or appreciation of evidence.*—It is not the practice of the Privy Council to disturb the finding of the Court below upon mere issues of fact, unless it is clearly satisfied that there has been some miscarriage either in the reception or in

PRIVY COUNCIL, PRACTICE OF—*continued.*

14. QUESTIONS OF FACT—*continued.*

Credibility of witnesses—*continued.*

the appreciation of evidence. In cases that turn upon the credibility of the testimony given, it is disposed to defer to the judgment of those who, with the advantage of local experience, have had the means of seeing the witnesses under examination and of inspecting the original documents. RICHARDSON *v.* GOVERNMENT . . . **1 W. R., P. C., 47**

CHEYT RAM *v.* CHOWDHRY NOWBUT RAM **[5 W. R., P. C., 3 : 7 Moore's I. A., 207**

KRIPAMOYEE DEBIA *v.* ROMANATH CHOWDHRY **[2 W. R., P. C., 1**

S. C. KRIPOMOYEE DEBIA *v.* GRISH CHUNDER LAHOREE . . **8 Moore's I. A., 467**

GHOOLAM MOORTOOZAH KHAN *v.* GOVERNMENT **[9 Moore's I. A., 456**

DWARKA DOSS *v.* SITA RAM **[5 C. L. R., P. C., 430**

83. ——— *Consideration of vivâ voce evidence.*—Considering the advantages which the Judges in India generally possess of forming a correct opinion of the probability of a transaction and in some cases of the credit due to the witnesses, the fact that the Courts below have decided against the validity of an instrument affords a strong presumption of the correctness of their decisions, but does not and ought not to relieve the Privy Council, as the Court of last resort, from the duty of examining the whole evidence, and forming for itself an opinion upon the whole case. With reference to the lamentable disregard of truth prevailing amongst the natives of India, the Privy Council held that it would be very dangerous for the Court altogether to discredit witnessess deposing *vivâ voce* by reason of the necessity imposed on the Court to sift the evidence of such witnesses with great minuteness and care. MODHOOSOODUN SANDIAL *v.* SOROOP CHUNDER SIRCAR CHOWDHRY **[7 W. R., P. C., 73 : 4 Moore's I. A., 431**

84. ——— *Documentary evidence.*—*Decision on facts.*—Their Lordships refused to reverse a decision of the High Court upon a question of fact in which that Court had before it the documents and the evidence of the witnesses, and had an opportunity of judging of the demeanour of the witnesses. JUGOJEEBUN LALL DHUBAL DEB *v.* KARTICK CHUNDER BONDOPADHYA **[25 W. R., P. C., 1**

85. ——— *Erroneous conclusions from evidence.*—*Semble,*—The Privy Council will not disturb a judgment of a Court in India upon a question of the credibility of witnesses, unless it is manifestly clear from the probabilities attached to certain circumstances in the case that the Court below was wrong in the conclusion drawn from such evidence. MUSADEE MAHOMED CAZUM SHERAZEE *v.* ALLY MAHOMED KHAN **[6 Moore's I. A., 27**

PRIVY COUNCIL, PRACTICE OF—*continued.*

14. QUESTIONS OF FACT—*continued.*

86. ——— Disputed facts.—*Presumption of correctness in cases of disputed fact.*—It is the practice of the Judicial Committee in a case of disputed fact, when the Courts in India appear to have diligently investigated the evidence, and no palpable mistake is apparent in the appreciation by the Court below of such evidence, to affirm the decree appealed from with costs. CHUNDER MONEE DEBIA CHOWDHOORAYAN *v.* MUN MOHINEE DEBIA
[8 Moore's I. A., 477

87. ——— Judgment on facts.—*Appeals from Non-Regulation Provinces.*—In cases from Non-Regulation Provinces, wherein the procedure is somewhat loose, and where the merits depend much on local custon and local inquiry, it is even more necessary than it is on appeals from the Civil Courts in the Regulation Provinces to act on the principle of not disturbing the judgment under appeal, unless it is substantially wrong. HYDER HOSSEIN *v.* MAHOMED HOSSEIN
[14 Moore's I. A., 401: 17 W. R., 185

88. ——— Improper admission of evidence.—*Sufficiency of evidence.*—Where evidence, such as hearsay, is improperly admitted, the question for the Judicial Committee is whether, rejecting that evidence, enough remains to support the finding. Disapproval was expressed by their Lordships of the reception by the lower Court of evidence which ought not to have been admitted. MOHUN SING *v.* GHURIBA
[6 B. L. R., 495: 15 W. R., P. C., 8

89. ——— Erroneous conclusion from evidence.—*Hearsay evidence.*—Where the High Court founded their judgment upon evidence which did not justify the conclusion, the Judicial Committee reviewed the whole evidence, in order to ascertain whether the decree could be supported. AJODHYA PRASAD SING *v.* UMRAO SING
[6 B. L. R., 509: 15 W. R., P. C., 1
13 Moore's I. A., 519

90. ——— Evidence wrongly admitted.—*Sufficiency of evidence.*—Where the Courts below had admitted evidence not properly admissible, the Judicial Committee examined the whole evidence, and being satisfied that there was, independent of that inadmissible evidence, sufficient to justify the decision of those Courts, dismissed the appeal. LALA BANSIDHAR *v.* GOVERNMENT OF BENGAL
[9 B. L. R., 264: 16 W. R., P. C., 11
S. C. 14 Moore's I. A., 86

91. ——— Direct evidence as opposed to suspicion.—*Adoption.*—The Sudder Ameen having held an adoption proved, the Principal Sudder Ameen on appeal reversed that decision on the facts. The case came before the High Court on special appeal, and the decision then given was appealed to England, and special leave was given by Her Majesty to appeal against the decision of the Principal Sudder Ameen. The decision of the High Court on the law was admitted to be good, but the

PRIVY COUNCIL, PRACTICE OF—*continued.*

14. QUESTIONS OF FACT—*continued.*

Direct evidence as opposed to suspicion—*continued.*

Judicial Committee reversed the finding of the Principal Sudder Ameen on the facts. KALI CHANDRA CHOWDHRY *v.* SHIB CHANDRA BHADURI
[6 B. L. R., 501: 15 W. R., P. C., 12

92. ——— Failure to produce evidence at hearing.—*Omission of Judge to call for record.*—At the hearing of a suit a party, though he had sufficient warning of what was necessary, did not take the proper steps to cause the production of the documentary and only admissible evidence of a material fact which had to be proved by him, and the decision was against him. The record of another proceeding would, it was said, have supplied this evidence; and an application had been previously made on which the order of the Judge was that "the matter would be decided when the case was tried, and the record would be sent for, if necessary." No further application to the Court was made, and no attempt to supply this evidence. *Held* that if there had been, as there might have been, an oversight by the party in not calling the attention of the Judge to the above order, and in not tendering the evidence, there had been no omission on the Judge's part affording ground for appeal, and the Judicial Committee refused to interfere. CHANDICHURN SHASHMAL *v.* DURGA CHURN MIRDUA
[I. L. R., 9 Calc., 260: 12 C. L. R., 81

93. ——— Questions of boundary.—*Miscarriage in conduct of decision.*—The Privy Council will never interfere with the finding of an Indian Court on a question of boundary, unless they are clearly satisfied that there has been some plain miscarriage in the conduct or decision of the case upon which they can put their hands and make the grounds for an order reversing or varying the decree. RAM GOPAL ROY *v.* GORDON, STUART, & CO.
[14 Moore's I. A., 453: 17 W. R., 285

94. ——— *Reversal on evidence.*—In a question relating to boundaries of land, the Judicial Committee on a review of the evidence reversed the concurrent decrees of the Court of first instance and the Sudder Court, but without costs. RAM CHUNDER DUTT *v.* CHUNDER COOMAR MUNDUL . . . . **13 Moore's I. A., 181**

15. CONCURRENT JUDGMENTS ON FACTS.

95. ——— Presumption as to correctness of facts.—Where the lower Courts have proceeded upon the evidence and have come to the same conclusion, it is an established rule of practice that the Judicial Committee of the Privy Council will not on appeal enter into the question whether the decisions of the Courts below are or are not correct on matters of fact. JAIMUNGAL KOERI *v.* MOKHUN KORI . . . . . **10 C. L. R., 611**

96. ——— The Privy Council, in cases depending upon facts which have received

PRIVY COUNCIL, PRACTICE OF—*continued.*

15. CONCURRENT JUDGMENTS ON FACTS—*continued.*

Presumption as to correctness of facts—*continued.*

the concurring judgments of two Courts in India, will not set aside the last judgment, unless it can see very clearly that that judgment was wrong. PETAMBER MANIKJEE *v.* MOTEECHUND MANIKJEE
[5 W. R., P. C., 53 : 1 Moore's I. A., 420

KHORSHEDJEE MANIKJEE *v.* MEHRWANJEE KHOORSHEDJEE
[5 W. R., P. C., 57 : 1 Moore's I. A., 431

VENCATA NILADRY ROW *v.* ENOOGOONTY SOORIAH
[5 W. R., P. C., 79

CHELLAYAMAL *v.* MUTTIALAMAL
[15 W. R., P. C., 1

RAMRUDEEGOWDA *v.* DESSAI SAHEB
[17 W. R., P. C., 8

JOY NARAIN GIRI *v.* SHEEB PROSHAD GIRI
[19 W. R., P. C., 275

PORESH NARAIN ROY *v.* WATSON & CO.
[23 W. R., P. C., 451

97. ——————— This case did not come strictly within the above rule, but the Privy Council observed that, whereas in this case the question of fact had been tried upon evidence fairly warranting the conclusion to which the High Court had come, and there had been no adverse findings of facts, their Lordships would require a strong case to be made out before they would recommend Her Majesty to reverse such a decision. HUMEEDA *alias* KHAJOO *v.* AMATOOL MEHDEE BEGUM . 17 W. R., P. C., 106

98. ——————— The Lords of the Privy Council do not, as a rule, disturb the concurrent decision of both the Courts below upon a question of fact, unless it very clearly appears there has been some miscarriage of justice, some mistrial, or that the conclusion is very plainly erroneous. GOSAIN TOTA RAM *v.* RUKINIBALLAB
[3 B. L. R., P. C., 34
S. C. 12 W. R., P. C., 32 : 13 Moore's I. A., 77

LALA SHAM SOONDUR LAL *v.* SOORAJ LAL
[26 W. R., P. C., 48

DEVAJI GAYAJI *v.* GODABHAI GODBHAI
[2 B. L. R., P. C., 85 : 11 W. R., P. C., 35

99. ——————— Where the Court of appeal in India concurs in the finding of the Court of first instance on a question of fact, the Privy Council will not disturb that finding, unless satisfied, beyond all reasonable question, that there was some miscarriage in respect of the principle on which the decision rested, of a presumption to which too much weight was given, or of something as to which the Judicial Committee could see there was a principle involved which ought to be set right for the guidance of the Court in other cases. GABINDSUNDUARI DEBI *v.* JAGADAMBA DEBI
[6 B. L. R., 168 : 15 W. R., P. C., 5

PRIVY COUNCIL, PRACTICE OF—*continued.*

15. CONCURRENT JUDGMENTS ON FACTS—*continued.*

Presumption as to correctness of facts—*continued.*

100. ——————— *Weight of evidence, Question as to.*—Where both the lower Courts had agreed as to the facts, the Privy Council refused to examine the evidence, the controversy being merely as to the weight to be attributed to it. LALJI SAHU *v.* COLLECTOR OF TIRHOOT
[6 B. L. R., 648 : 15 W. R., P. C., 23

101. ——————— *Omission of reasons for affirmance of judgment on facts.*—Where the High Court affirmed the judgment of the Court below on the facts, without giving reasons for such affirmance, the Judicial Committee reviewed the facts and reversed the decree. GUTHRIE *v.* ABUL MAZAFFAR
[7 B. L. R., 630 : 15 W. R., P. C., 50
14 Moore's I. A., 53

102. ——————— *Question of boundary.*—Where there are concurrent decisions on a question of fact, the Judicial Committee will not (especially on a question of fact as to boundaries) reverse the decision, unless there was no evidence, or there has been in the conduct of the trial, or in the mode in which evidence was adduced, or in the course of deciding the case, a clear departure from the ordinary principles which regulate judicial proceedings. GANESWAR SING *v.* DURGA DUTT
[7 B. L. R., 651

S. C. GUNESHUR SINGH *v.* DOORGA DUTT
[15 W. R., P. C., 37

103. ——————— *Balance of testimony.*—Where the decision of the first Court upon a question of fact has been affirmed on appeal, their Lordships will not reverse such finding on a mere balance of testimony: there must be so strong a preponderance of testimony that they can confidently pronounce it to be wrong. SARAT SUNDARI DEBI *v.* PARESNARAIN ROY
[8 B. L. R., 113 : 16 W. R., P. C., 9

104. ——— Question as to compromise.—*Failure to show fraud or collusion.*—The Judicial Committee, reversing the finding of the Courts below, refused to set aside a compromise (confirmed by a decree of Court) by the former guardian of the plaintiff of a claim against his estate for debt after sixteen years, the plaintiff having failed to prove that the suit was fictitious, and the compromise fraudulent and collusive. LEKRAJ ROY *v.* MAHTABCHUND
[10 B. L. R., 35 : 17 W. R., 117 :
14 Moore's I. A., 393

105. ——— Question as to amount of dower.—*Refusal to ascertain amount.*—The Courts below, without ascertaining the amount of the widow's dower, decreed possession of the estates to the heirs. Such decree was reversed on appeal, and the amount of dower was ascertained. BACHUN *v.* HAMID HOSSEIN . . 10 B. L. R., 45 : 17 W. R., 113 :
[14 Moore's I. A., 377

PRIVY COUNCIL, PRACTICE OF—*continued.*

15. CONCURRENT JUDGMENTS ON FACTS —*continued.*

106. ——— Question of dissolution of marriage.—A decree of a High Court, confirming the decree of a District Judge for dissolution of marriage, reversed so far as it affected the co-respondent and condemned him in costs. The circumstances of the case took it out of the general rule not to reverse the concurrent findings of two Courts on a question of fact. HAY *v.* GORDON

[10 B. L. R., 301: 18 W. R., 480: L. R., I. A., Sup. Vol., 106

107. ——— Mixed question of law and fact.—The rule of the Judicial Committee of the Privy Council not to permit the concurrent judgments of two Courts on a question of fact to be disputed may be relaxed in a case where the question of fact is closely mixed up with questions of law. VALOO CHETTY *v.* SOORAYAH CHETTY

[I. L. R., 1 Mad., 252 : L. R., 4 I. A., 109

108. ——— Question as to property belonging to endowment.—*Admissibility of evidence.—Sthanam lands.*—A raja having made a perpetual lease of sthanam lands appertaining to the raj, one of his successors sought to set it aside on the ground that the property was devaswam, or the endowment of temples. That it was devaswam was denied; and after questions of the admissibility of evidence, the construction of documents, and the effect to be given to judgments had arisen, the fact was found in the affirmative by two Courts concurrently. Upon an examination of the evidence by the Judicial Committee it was, however, found that the plaintiff had not proved his case. VENKATESWARA IYAN *v.* SHEKHARI VARMA

[I. L. R., 3 Mad., 384 : L. R., 8 I. A., 143

109. ——— Question as to disputed adoption.—*Reversal of concurrent Courts on fact.*—In a suit which involved a disputed question of fact as to an alleged adoption and the due execution of a will, the Courts in India, disregarding other evidence, relied solely upon the evidence of a witness examined at the instance of the first Court itself. The effect of the evidence of this witness was to show that, at the time of the adoption and execution of the will, the alleged testator was in a dying state, and although at times roused to consciousness was, from his enfeebled mind, incapable of understanding the acts he was represented to have performed; the Courts below, however, on the evidence of this witness as to his testamentary capacity, corroborated, as they thought, by a letter of the widow of the alleged testator recognising the adoption, and by her acquiescing in the performance of certain funeral rights of her deceased husband by the supposed adopted son, pronounced both the adoption and the will to be valid. Upon appeal, held that, although as a general rule in a question of fact the Judical Committee were unwilling to disturb the judgment of the Court below, yet that, as it was the duty of the Appellate Court to weigh the evidence and probabilities, and form an independent judgment, and taking into consideration the evidence regarding the state and capacity of the alleged adopter and testator, they were of opinion that the evidence relied upon was so unsatisfactory that neither of the decrees of the Courts below could be supported, and reversed the same, with costs. TAYAMMAUL *v.* SASHACHALLA NAIKER

[10 Moore's I. A., 429

PRIVY COUNCIL, PRACTICE OF—*continued.*

15. CONCURRENT JUDGMENTS ON FACTS —*continued.*

Questions as to disputed adoption—*continued.*

110. ——— Question as to authority of agent.—*Document signed by agent—Objection not raised below.*—Where the sole question raised in both Courts in India was whether or not certain documents purporting to be an allowance of plaintiff's accounts by the defendant's agent were signed by the agent, as to which fact both Courts below were concurrent, the Privy Council declined to relax their rule as to concurrent judgments on facts, and to allow the defendant to raise before them the question as to the authority of the agent to bind his principal. BABOO LALL *v.* LUTTOO RAM . . . . **18 W. R., P. C., 233**

111. ——— Concurrent judgments as to failure to prove title.—Where in a suit for confirmation of possession the Indian Courts agree in holding that the plaintiff has not made out his title, the Judicial Committee will not, even though the High Court may not have attended to the deposition of material witnesses, disturb the decision of the Court below. TORAB ALLY *v.* MAHOMED TUKKEE

[19 W. R., P. C., 1

112. ——— Question as to evidence of custom.—*Question of fact.*—It having been alleged that an estate, by custom, descended to a single heir in the male line, the High Court, concurring with the Court of first instance, found that this custom had not been proved to prevail in the family. On an appeal contesting this finding, it was argued, among other objections, that the High Court had not given sufficient effect to an entry in the wajib-ul-urz of a zemindari village, the principal one comprised in the family estate now in dispute; the last owner of that estate, who held all the shares in the village, having caused an entry to be made to the effect that his eldest son should be his sole heir, the others of the family being maintained. The appeal was not taken out of the rule as to the concurrent findings of two Courts, primary and appellate, on a question of fact. MUHAMMAD ISMAIL KHAN *v.* FIDAYAT-UN-NISSA

[I. L. R., 8 All., 516

16. RE-HEARING.

113. ——— Grounds for re-hearing.—An order passed by the Judicial Committee of the Privy Council after hearing an appeal is final; and an application for a re-hearing will not be granted except upon the ground that the applicant has by

PRIVY COUNCIL, PRACTICE OF—*continued.*

16. RE-HEARING—*continued.*

Grounds for re-hearing—*continued.*

some accident, without blame or default on his own part, not been heard, and the order has inadvertently been made as if he had been heard. PETITION OF TRILOKINATH IN THE MATTER OF THE APPEAL OF PERTAB NARAIN SINGH *v.* SUBHAO KOOER

[I. L. R., 4 Calc., 184: L. R., 5 I. A., 171

114. ——————— *Irregularity in trial.*—An irregularity in a trial is no ground of complaint to the party at whose instance it was caused. The suspicion that a party who has failed to prove his case may prove more successful on a second and fuller investigation is no sufficient ground for directing a new trial. NITRASUR SINGH *v.* NUND LALL SINGH

[1 W. R., P. C., 51: 8 Moore's I. A., 199

115. ——————— *Laches of petitioner.*—There were four respondents in an appeal to the Privy Council. At the hearing, the appeal was allowed *ex parte* against all the respondents. One respondent afterwards petitioned for a rehearing, on the ground that neither he nor his agents had notice that the appeal had been entered or fixed for hearing until after it had been decided. On inquiry, it appeared that the petitioner had inaccurately described the suit to his agents as an appeal against himself only, without mentioning the names of the other respondents; and the agents, on being told at the Privy Council office that no appeal so entitled was pending, had taken no further steps. *Held* that there had been omission and neglect on the petitioner's part and on the part of his agents such as to prevent the Judicial Committee from recommending a re-hearing of the case. SWARNAMAYI *v.* SHASHI MUKHI BARMANI

[2 B. L. R., P. C., 10: 11 W. R., P. C., 5 12 Moore's I. A., 244

116. ——————— *Party accidentally prevented from being heard.*—In a petition for re-hearing of two appeals which had been fully heard upon their merits, and in which judgment had been given and reported to Her Majesty, and confirmed by regular orders in Council,—*Held* that, assuming a relevant case of new matter had been made out, the decision was final, and the petition must be refused. There may be exceptional circumstances which will warrant this Board, even after an order of Her Majesty in Council has been made, in allowing a re-hearing at the instance of one of the parties; but this is an indulgence with a view mainly to doing justice when by some accident, without blame, the party has not been heard, and an order has been made inadvertently as if the party had been heard. *Rajunder Narain Rae v. Bijai Govind Sing, 2 Moore's I. A., 181,* referred to. VENKATA NARASIMHA APPA ROW *v.* COURT OF WARDS. VENKATA RAMALAKSHMI GARU *v.* GOPALA APPA ROW. EX PARTE GOPALA APPA ROW

[L. R., 13 I. A., 155: I. L. R., 10 Mad., 73

PRIVY COUNCIL, PRACTICE OF—*continued.*

17. LEAVE TO BRING FRESH SUIT.

117. ——————— **Suit brought under misapprehension of law.**—The parties having acted under a misapprehension of the law, leave was given to bring a new suit within three years. GOOROO SWAMY PERRIA WOODIA TAVER *v.* ANGA MOOTOO NATCHAIR

[6 W. R., P. C., 50: 3 Moore's I. A., 278

18. ENFORCING EXECUTION OF ORDER.

118. ——————— **Application to enforce execution of order.**—*Order for possession.—Issue of peremptory order of enforcement.*—Where the Court in India having decided a suit for land in favour of *A.*, put him into possession of the estate without taking security as required by Madras Regulation VIII of 1818, section 4, and on appeal by *B.* the decision was reversed and *B.* ordered to be put in possession, and in the meantime the Madras Board of Revenue had got into possession as purchasers of a portion of the estate at a sale for arrears of its revenue; and the Court in India refused to carry into execution the order of the Privy Council, the Judicial Committee, on the application of *B.*, issued a peremptory order to the Madras Court to carry it into execution and put *B.* into possession. IN RE VASSAREDDY LUTCHMEPUTTY NAIDOO

[5 Moore's I. A., 300

19. COSTS.

119. ——————— **Discretion as to costs.**—*Appeal.—Bom. Reg. II of 1800, s. 7.*—When a discretion is vested in a Court as to costs, the Privy Council will not allow any appeal against the exercise of that discretion, because no appeal lies against a mere decree as to costs. But when a Court has no discretion to exercise in the matter (as when a suit was instituted by parties who had no right to institute it, as the person in whose name and on whose behalf they instituted it was dead at the time), costs must follow the decree according to section 7, Regulation II of 1800 of the Bombay Code. KEEMEE BAEE *v.* LUCHMUN DAS NARAIN DAS

[5 W. R., P. C., 59: 1 Moore's I. A., 470

120. ——————— **Improper admission of evidence.**—*Penalty on parties to appeal.*—The Privy Council, whilst lamenting the great latitude with which documentary evidence was received in India, held that it would be contrary to justice in any particular case to visit upon an individual penal consequences by way of costs, because the administration of justice was not more strictly conducted with reference to the admission of evidence. BUNWAREE LALL *v.* HETNARAIN SINGH

[4 W. R., P. C., 128: 7 Moore's I. A., 148

121. ——————— **Respondent's right to uphold judgment.**—*Reversal of decision.*—Appeal by defendant against whom the suit was decreed in

PRIVY COUNCIL, PRACTICE OF—*continued.*

19. COSTS—*continued.*

Respondent's right to uphold judgment —*continued.*

the Court of first instance, which decree was confirmed on appeal by the Sudder Adawlut. The Privy Council held that the plaintiff had not made out his case below, and reversed the judgment, but awarded to the defendant costs in the first Court only, and not in either of the Appellate Courts, on the ground that the plaintiff, as respondent, was defending the judgment. MADHO ROW CHINTO PUNT GOLAY *v.* BHOOKUN DAS BOOLAKI DAS
[5 W. R., P. C., 33: 1 Moore's I. A., 351

122. ——— Respondents in same interest.—Where respondents were in the same interest but severed in their defences, only one set of costs was allowed, and that to the respondent who first entered appearance. WOOMATARA DEBIA *v.* UNNOPOORNA DEBIA . **11 B. L. R., P. C., 158**
[18 W. R., 163

123. ——— Delay in suing.—*Disallowance of costs.*—Case in which the Privy Council affirmed the decision of the Sudder Court; but as there had been delay in suing, and as the case was attended with a considerable degree of suspicion, refused to the respondent before it all costs, and decreed further that the cost of the appeal to the Sudder Court should be disallowed. ULRUK SINGH *v.* BENY PERSAD . . . **5 W. R., P. C., 77**

124. ——— Delay in appealing by which costs were incurred.—*Set-off of costs.*—Where, in a suit to have accounts reopened, the Court at Calcutta found that the accounts ought to be opened, and referred the suit to the Master, and the defendant did not appeal at once from this interlocutory order, but proceeded in the Master's office in respect of the matters included in the accounts, but before the general report was made by the Master he appealed to England from such interlocutory decree,—the Judicial Committee, in reversing the decree, ordered him to pay the costs of the proceedings in the Master's office, and remitted the cause to the Court below, with directions that the costs payable to the defendant on the dismissal of the bill, and the costs payable by him consequent on his proceedings in the Master's office, should be set off one against the other, and the balance paid to the party entitled to the same. MCKELLAR *v.* WALLACE . . . **5 Moore's I. A., 372**

125. ——— Slight modification of decree.—*Alteration in rate of interest.*—Where, in lieu of interest at five per cent. on a loan made to a guardian of a minor in a transaction which was set aside, the Privy Council made an order for six per cent. interest,—*Held* not to be such a modification of the decree of the Court below as was sufficient to deprive the respondent of the costs of appeal. LALLA BUNSEEDHUR *v.* BINDESEREE DUTT SINGH
[10 Moore's I. A., 454

PRIVY COUNCIL, PRACTICE OF—*continued.*

19. COSTS—*continued.*

126. ——— Appeal dismissed on grounds different from the reasons given by lower Court.—*Dismissal without costs.*—Where an appeal was dismissed on wholly different grounds than those which the lower Court had given for its decision, it was dismissed without costs. FISCHER *v.* KAMALA NAICKER
[3 W. R., P. C., 33; 8 Moore's I. A., 170

127. ——— Misstatement in petition. —Where special leave to appeal to the Privy Council is granted upon a petition in which material misstatements are made, objection should be taken by the respondent by a preliminary motion to rescind the leave to appeal, or at any rate before the hearing of the appeal, when called on, has been entered on. Where it was not clear that the material misstatements in the petition had been made with an intention to deceive, and the objection to the appeal was only taken at a late stage of the hearing, the Judicial Committee declined to dismiss the appeal, but refused the appellant the costs of the appeal. RAM SABUK BOSE v. KAMINEE KOOMAREE DOSSEE
[14 B. L. R., 394

S. C. RAM SABUK BOSE *v.* MONMOHINI DOSSEE
[L. R., 2 I. A., 71: 23 W. R., 113

128. ——— *Petition for special leave to appeal.*—An order in Council granting leave to appeal is liable at any time to be rescinded with costs, on its appearing that the petition upon which the order has been granted contains any misstatement, or any concealment of facts which ought to have been disclosed. Even if there has been no intention to mislead, a material misstatement having been made, the order is still liable to be rescinded; and, to maintain it, to clear the case of bad faith is not sufficient. *Mohan Lall Sukul* v. *Bebee Dass, 8 Moore's I. A., 193,* referred to and followed. Of three grounds on which special leave to appeal had been obtained, two had been correctly stated, but with the third was connected an error in the petition, to which objection was taken at the hearing. On its appearing that there had been no intention to mislead, the appeal was heard and allowed; but, in regard to the above, without costs. *Ram Sabuk Bose* v. *Monmohini Dossee, L. R., 2 I. A., 71,* referred to. MUSSOORIE BANK *v.* RAYNOR
[I. L. R., 4 All., 500: L. R., 9 I. A., 70

129. ——— Appeal brought contrary to agreement not to appeal.—A fixed sum *nomine expensarum* was given to each respondent in lieu of costs, where an appeal was preferred contrary to an agreement not to appeal, and the proceedings had been stayed. AMIR ALI *v.* INDURJIT KOER
[9 B. L. R., 460
14 Moore's I. A., 203

130. ——— Suit for damages valued unnecessarily high.—*Decree for smaller amount.* —There being no grounds for a claim for damages amounting to the appealable sum of R10,000, and

PRIVY COUNCIL, PRACTICE OF—*continued.*

19. COSTS—*continued.*

Suit for damages valued unnecessarily high—*continued.*

the amount actually recovered falling far short of that sum, the Court directed the costs below to be apportioned according to the ordinary course in those Courts, and gave neither party costs of the appeal. MUDHUN MOHUN DOSS *v.* GOKUL DOSS

[10 Moore's I. A., 563 : 5 W. R., P. C., 91

131. ——— Charges by respondent of fraud, forgery, and perjury.—*Reversal of decree.*—Charges of fraud, forgery, and perjury having been made by the respondents against the appellant, the party who propounded the will, costs of the Courts in India and upon appeal to England were, upon the reversal of the decree of the Sudder Court, ordered to be paid by the respondents. NANA NARAIN RAO *v.* HUREE PUNTH BHAO . **9 Moore's I. A., 96**

132. ——— Taxation of costs.—*Costs of appeal from India.—Unnecessary expenses.*—In taxing the costs of an appeal from India, the Privy Council will disallow all such costs and expenses as may have been unnecessarily occasioned by the inclusion, in the transcript sent from India, of matters which have been improperly introduced therein. TARAKANT BANNERJEE *v.* PUDDMONEY DOSSEE

[5 W. R., P. C., 63 : 10 Moore's I. A., 476

133. ——— *Irrelevant matter.—Directions as to taxation of costs.*—Where irrelevant matter had been introduced into the record, the Registrar was directed to tax the costs as if the record had not contained what he might consider to have been inserted unnecessarily. PITTAPUR RAJA *v.* BUCHI SITAYYA

[I. L. R., 8 Mad., 219

S. C. RAJA OF PITTAPUR *v.* ROW BUCHI SITTAYA GARU . . . **L. R., 12 I. A., 16**

BISHENMUN SINGH *v.* LAND MORTGAGE BANK OF INDIA

[I. L. R., 11 Calc., 244 : L. R., 12 I. A., 7

PROBATE.

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1. POWER OF HIGH COURT TO GRANT, AND FORM OF—	4662
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PROBATE—*continued.*

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[2 B. L. R., A. C., 79 : 10 W. R., 417
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See COURT FEES ACT, SCH. I, CL. 11.

[I. L. R., 3 Calc., 733

1. POWER OF HIGH COURT TO GRANT, AND FORM OF—

1. ——— Power of High Court.—*Testator having no assets within jurisdiction.—British European-born subject.*—The High Court granted probate of a will of a British European-born subject who had no assets within the local limit of the ordinary civil jurisdiction of the Court. IN THE GOODS OF REED . . **1 Ind. Jur., N. S., 20**

2. ——— *Testator dying out of jurisdiction with effects within it.—Act XXVII of 1860.*—Where a Hindu testator died out of the jurisdiction of the Court, but left effects within it, it was competent to the Court to grant probate, there having been no certificate applied for in the Zillah Court under Act XXVII of 1860. IN THE GOODS OF TARACHAND COONDOO CHOWDHRY

[I Ind. Jur., N. S., 10 : Bourke, Test., 3

3. ——— *Act XIII of 1875.—Rule 4 of Rules of High Court, 22nd June 1875.*—Act XIII of 1875 does not empower the High Court to grant probate limited to property in any province or presidency, in cases where an unlimited grant had been made extending only to property in another province or presidency before the passing of the Act. *Per* MACPHERSON, *J.*—Rule 4 of the Rules of 22nd June 1875, as to grants of probate, only applies to grants of the class mentioned in Rule 1,—*i. e.*, only to cases in which the application for probate is made after 1st April 1875, and not to cases in which the application was made before that date. IN THE GOODS OF SHAMACHURN MULLICK. IN THE MATTER OF THE PETITION OF RAJRANEE DOSSEE

[I. L. R., 1 Calc., 52 : 24 W. R., 206

PROBATE—*continued.*

1. POWER OF HIGH COURT TO GRANT, AND FORM OF—*continued.*

Power of High Court—*continued.*

4. ——————— *Form of probate.—Limited probate.—Succession Act, X of 1865, ss. 179, 226.*—Probate limited to part of the estate cannot be granted in cases where, under section 179 of the Succession Act (X of 1865), the whole estate is vested in the executor. IN RE THAKER MADHAVJI [I. L. R., 6 Bom., 460

5. ——————— *Form of probate.—Probate in cases not governed by the Succession Act.—Probate to take effect throughout India.—Limited probate.—Probate duty.—Cutchi Memon Mahomedan.—Succession Act, X of 1865, s. 331.—Hindu Wills Act, s. 2—Act XXVII of 1860, s. 18.*—In cases not governed by the Indian Succession Act (X of 1865), probates and letters of administration granted by the High Court of Bombay in respect of Hindus, Mahomedans, and other persons not usually designated as British subjects, take effect only and can only be granted for the purpose of recovering debts and securing debtors paying the same, except so far as is otherwise provided in Act XXVII of 1860; and probate duty is only payable on the amount of such debts. Cutchi Memons are not Hindus within the meaning of section 2 of the Hindu Wills Act (XXI of 1870), and, therefore, probate to take effect throughout India cannot be granted in the case of a will of a Cutchi Memon testator. Cutchi Memons are Mahomedans to whom Mahomedan law is to be applied, except when an ancient and invariable special custom to the contrary is established. IN RE ISMAIL . . I. L. R., 6 Bom., 452

See AHMEDBHOY HURIBHOY *v.* VULLEEBHOY CASSUMBHOY . . I. L. R., 6 Bom., 703

2. JURISDICTION OF DISTRICT COURTS.

6. ——— **Facts giving jurisdiction.**—*Succession Act, s. 244.—Property in possession of testator at his death.—District Judge, Power of.*—In an application for probate of a will, it is sufficient for the purpose of giving jurisdiction under section 244 of Act X of 1865, that the property alleged by the petition to have been situate within the jurisdiction of the Judge should have been in the possession of the testator at the time of his death. RUN BAHADUR SINGH *v.* RAJ RUP KOOER . 4 C. L. R., 498

7. ——— **Will made before Hindu Wills Act.**—*Hindu Wills Act (XXI of 1870), s. 2.—District Judge, Power of.*—The only powers conferred on mofussil Courts being in respect of wills made on or after the 1st day of September 1870, probate of a will made by a Hindu prior to that date cannot be granted by a mofussil District Court. LUCHMAN BHARTI *v.* DUKHARAN BHARTI . 6 C. L. R., 138

8. ——— **Will of Mahomedan.**—*District Judge, Power of.*—A District Court has no jurisdiction to admit the will of a Mahomedan to probate. FATIMUNISSA BEJUM *v.* HAMZA ALI [6 C. L. R., 391

PROBATE—*continued.*

2. JURISDICTION OF DISTRICT COURTS—*continued.*

9. ——— **Will of Hindu woman of immoveable property in mofussil.**—*District Judge, Power of.—Execution in Bombay.—Property in mofussil.—Hindu Wills Act, XXI of 1870, s. 2.—Probate Act, V of 1881, ss. 2 and 83.—Code of Civil Procedure (Act XIV of 1882), s. 177.—Held* that the District Judge of Thana had jurisdiction to grant probate of a will executed on 28th October 1881 by a Hindu woman in the town of Bombay devising immoveable property situated in Thana. Where the caveator refuses to answer a question, section 177 of the Code of Civil Procedure (XIV of 1882), the provisions of which are extended to proceedings before the District Judge by section 83 of Act V of 1881, will not justify the Judge in dispensing with the proof of the will set up, and passing a decree in favour of the petitioner. The Court of Appeal will reverse such a decree if passed. RAVJI RANCHOD NAIK *v.* VISHNU RANCHOD NAIK [I. L. R., 9 Bom., 241

3. OF WHAT DOCUMENTS GRANTED.

10. ——— **Document partly testamentary.**—*Gift, Deed of.*—If one part of a document is testamentary in its character, it may be presumed that the remainder, if the language is capable of that construction, is also intended to be testamentary. Under such circumstances, where there is nothing inconsistent with the supposition that the arrangements made therein are to take effect from the death of the person executing it, the document ought to be admitted to probate as a will. IN THE MATTER OF KOMOLA KANT BISWAS . . . . 4 C. L. R., 401

4. TO WHOM GRANTED.

11. ——— **Nephew.**—*Brother.—Hindu will.*—In this case the High Court directed probate of a will executed by a Hindu in favour of a nephew (the son of an elder brother) to be granted to the nephew, instead of to a brother; the property being of small value, and consisting of several small holdings, and the widow of the deceased being a girl of very immature age, whereas the nephew had been brought up by him and was the object of his special affection. CHUNDER SHIKUR MULLICK *v.* SHAM CHAND MULLICK . . . 18 W. R., 395

12. ——— **Executor by implication.**—*Direction in will to get in and distribute estate.*—Where *A.*, under the terms of a will, although not expressly appointed an executor, was directed to receive and pay the testator's debts and to get in and distribute his personal estate,—*Held* that *A.* must be taken to have been appointed under the will an executor by implication, and therefore was entitled to probate. IN THE MATTER OF MONOHUR MOOKERJEE [I. L. R., 5 Calc., 756 : 6 C. L. R., 228

13. ——————— *Succession Act, s. 182.—Hindu Wills Act (XXI of 1870).*—Probate granted of the will of a Hindu to his widow and

PROBATE—*continued.*

4. TO WHOM GRANTED—*continued.*

Executor by implication—*continued.*

heiress, who was universal legatee under the will, as executor by necessary implication, there being no executor mentioned in the will. IN THE GOODS OF RADHIKA MOHAN SETT . . 7 B. L. R., 563

14. ———— *Appointment of wife as manager of all property and guardian of children.*—The testator by his will appointed *H.*, his wife, guardian of his infant children, "in order that of all his property she should carry on the management (until his youngest son should attain twenty-two years of age), and in the testator's name the management of his firm." He appointed his brothers, *R.* and *M.*, his vakils to settle any quarrel that might arise, and directed them not to give unjust advice; but should the vakils give unjust advice, *H.* was not to act upon it. Upon certain contingencies *H.* and the vakils were to separate and make over to the sons their shares. *Held* that *H.* was by implication appointed sole executrix, and that she alone, to the exclusion of the testator's brothers, was entitled to probate. HAMABAI *v.* BAMANJI NASARVANJI [7 Bom., A. C., 64

5. PROOF OF WILL.

15. ———— **Evidence of execution of will.**—*Hindu Wills Act, 1870.—Procedure.*—It is incumbent on persons propounding a will for the purpose of obtaining probate or letters of administration under the Hindu Wills Act, to produce all the evidence which the circumstances of the case indicate as proper and necessary to prove the execution of the will. TARA CHAND CHUCKERBUTTY *v.* DEB NATH ROY . . . . . 10 C. L. R., 550

16. ———— **Sufficiency of proof of will.**—*Proof of execution of will.*—Having regard to the fact that a grant of probate is not irrevocable, and to the importance of a deceased testator's estate being represented as speedily as possible, *primâ facie* proof of the execution of his will is sufficient to warrant the grant of a probate when the application for such probate is unopposed. IN THE MATTER OF THE PETITION OF NOBODOORGA . . . 7 C. L. R., 387

17. ———— **Proof of inofficious will.**—*Knowledge of testator as to nature of his acts in making will.*—Where a will is inofficious in character, it is incumbent on the parties propounding it to prove it not only affirmatively but completely, and by circumstances showing not only that the testator signed the will, but that he knew what he was doing, that he was making a will, and that he did all that he did with his eyes open. SARODA SOONDUREE DOSSIA *v.* MUDDUN MOHUN SHAHA . . 24 W. R., 162

18. ———— **Internal evidence in will.**—*Grant of probate unopposed.—Ground for refusal of probate.*—Where an application for probate was unopposed, although a notice in the nature of a citation had been issued to the testator's widow, the Judge was held not to have been justified in rejecting

PROBATE—*continued.*

5. PROOF OF WILL—*continued.*

Internal evidence in will—*continued.*

the application merely upon internal evidence contained in the will. SHUSTEE CHURN PATUCK *v.* AUKHIL CHUNDER SEN . . 23 W. R., 103

19. ———— **Evidence of acknowledgment by testator.**—*Ground for granting probate.*—The fact that a contested will bears an endorsement stating that it was acknowledged by the testator before the Registrar, does not warrant a Judge in granting probate without any other evidence in support of the will, even, though the caveator does not produce any evidence to impeach the will. OBHOY CHURUN MUSTAFI *v.* UMA CHURUN MUSTAFI [1 C. L. R., 362

And *see* cases under PROBATE—OPPOSITION TO, AND REVOCATION OF, GRANT.

6. ADMINISTRATION BONDS.

20. ———— **Practice as to taking bond.**—*Succession Act, s. 256.—Bond when probate is granted.*—A bond is not to be taken from a person to whom probate is granted under the Succession Act. ANONYMOUS . . . . 3 Mad., Ap., 10

21. ———— *Succession Act, ss. 3 and 256.*—It having been the uniform practice of the Court to grant probate without taking a bond from executors named in the will,—*Held* that it was unnecessary to depart from the practice, notwithstanding the words of sections 3 and 256 of Act X of 1865. RUN BAHADUR SINGH *v.* RAJ RUP KOER [4 C. L. R., 498

Contra, IN THE MATTER OF THE PETITION OF JUGGODISHARI DEBI [I. L. R., 7 Calc., 84: 8 C. L. R., 397

7. AMENDMENT OF ERROR IN PROBATE.

22. ———— **Amendment allowed.**—*Will.—Succession Act (X of 1865), s. 232.*—Amendment of error in probate allowed. IN THE GOODS OF WHITE . . . I. L. R., 4 Calc., 582

8. OPPOSITION TO, AND REVOCATION OF, GRANT.

23. ———— **Opposition to grant.**—*Succession Act, s. 261.—Civil Procedure Code, 1859, s. 172.—Proof of will.*—Where a will is contested, the proceedings should take, as nearly as may be, the form of a regular suit, as if brought by the party propounding the will; and where a Judge granted a probate, it was held to be a serious defect, with reference to Act XXIII of 1861, section 38, and Act VIII of 1859, section 172, that he took down only memoranda of the evidence, and not their testimony in the language in ordinary use in proceedings before the Court. SARODA SOONDUREE DOSSIA *v.* MUDDUN MOHUN SHAHA . . . . 24 W. R., 162

PROBATE—*continued.*

8. OPPOSITION TO, AND REVOCATION OF, GRANT—*continued.*

Opposition to grant—*continued.*

24. ——————— *Probate Act, 1881, s. 50.—Hindu widow.—Interest.—Revocation of probate.—Locus standi.*—Where a will has been proved summarily, proof in solemn form *per testes* will not, as a rule, be required on the application of a person who had had notice, or had been aware of the previous proceedings before the grant of probate issued, and had then abstained from coming forward. The widow of a Hindu testator who has died leaving sons has sufficient interest to call upon the executor to prove the will in solemn form *per testes.* BRINDA CHOWDHRAIN *v.* RADHICA CHOWDHRAIN
[I L. R., 11 Calc., 492

25. ——————— *Succession Act, s. 261.—Procedure.—Contested cases of application for probate of will.*—In cases where a will is contested, the Court is bound to consider, not only whether the alleged will was executed by the testator, but whether the will is valid or invalid, and whether probate of the will ought to be granted. Every consideration which ought to induce the Court to refuse probate of the will must be taken into account. *Saroda Soonduree Dossia v. Muddun Mohun Shaha, 24 W. R., 162,* cited. ANNODA SUNDARI DABI *v.* JUGUT MONI DABI . . . 6 C. L. R., 176

26. ——————— *Procedure.—Question as to power of disposition.—Succession Act, s. 254.*—Upon a *bonâ fide* application for probate of a will, it is not the province of the Court to which the application is made to go into questions with reference to the power of the testator to make a disposition of the property of which the will purports to dispose. *Behary Lall Sandyal v. Juggo Mohun Gossain, I. L. R., 4 Calc., 1 : 2 C. L. R., 422,* followed. *Komul Lochun Dutt v. Nilrutton Mundle, I. L. R., 4 Calc., 360 : 4 C. L R., 175,* commented on. NANHU KOER *v.* SOMIRUN THAKUR . 8 C. L. R., 287

27. ——————— *Question of title.—Rights of persons claiming under will.*—Upon a *bonâ fide* application for probate of a will, it is not the province of the Court to which the application is made to go into questions of title with reference to the property of which the will purports to dispose. The grant of probate does not prejudice the rights of any person who claims any such property. BEHARY LALL SANDYAL *v.* JUGGO MOHUN GOSSAIN
[I. L. R., 4 Calc., 1 : 2 C. L. R., 422

See TEEN COWREE DOSSEE *v.* HUREEHUR MOOKERJEE . . . . . 8 W. R., 308

28. ——————— *Application to revoke probate.—Jurisdiction of Civil Court.—Right of suit to revoke probate.*—A grant of probate of a will is not in the nature of a summary proceeding to be contested by a regular suit in the Civil Court. The grant must be contested by a suit in the Court out of which such grant issued, and it must be contested before the Court sitting as a Court of Probate, and not in the exercise of its ordinary civil jurisdiction.

PROBATE—*continued.*

8. OPPOSITION TO, AND REVOCATION OF, GRANT—*continued.*

Opposition to grant—*continued.*

Persons who seek to contest a will must prove an interest to entitle them to a *locus standi* in Court, but the want of interest is an objection which should be taken at the earliest stage of the proceedings. There is nothing in the Indian Succession Act to deprive a District Court, as a Court of Probate, of jurisdiction to hear and determine an application to revoke grant of probate of a will on the ground of the execution of such will having been obtained by force and coercion. *Semble,*—That a legatee under a will has "an interest" sufficient to maintain a suit for the revocation of probate. MAYHO *v.* WILLIAMS
[2 N. W., 268

29. ——————— *Succession Act, s. 261.—Procedure.*—As to procedure in opposing grants of probate, *see* section 261 of the Succession Act, and KALEE TARA DOSSIA *v.* NOBIN CHUNDER KUR . . . . . 21 W. R., 84

30. ——————— *Right to oppose grant of probate.*—A person who is not the next of kin, and who has no interest in the estate of a testator, has no right to oppose the grant of the probate or dispute the validity of the will. IN THE MATTER OF MEE TSEE . . . . 15 W. R., 351

31. ——————— *Application for revocation of probate.—Jurisdiction.—Interest of applicant in the estate.—Reversioner.—Special citation.—Succession Act (X of 1865), ss. 235, 244, 250.*—The test of jurisdiction made use of in applications for grant of probate may be also applied to cases in which a revocation of probate is demanded,—*viz.,* whether or no the deceased, at the time of his death, had his fixed place of abode, or had some property, moveable or immoveable, situate within the jurisdiction of the particular District Judge to whom the application is made. A presumptive reversioner to property with which a will deals has a sufficient interest in the property to entitle him to maintain a suit in respect of such property; and on the authority of *Nobeen Chundra Sil* v. *Bhobo Soonduri Dabee, I. L. R., 6 Calc., 460,* he is entitled to maintain a case for the revocation of probate. In every case in which probate of a Hindu's will is applied for, a special citation should be served upon those persons whose interests are directly affected by the will. IN THE MATTER OF THE PETITION OF HURRO LALL SHAHA. KAMONA SOONDURY DASSEE *v.* HURRO LALL SHAHA
[I. L. R., 8 Calc., 570 : 10 C. L. R., 409

32. ——————— *Creditors of alleged heir.—Hindu testator.—Succession Act, s. 250.—Caveat.*—A Hindu testator died, leaving *B.,* alleged to be his adopted son, and *C.,* who would be his heir in default of adoption. On application made by *B.* for probate of the will after the usual notices, the creditors of *C.* came in and opposed the grant of probate. *Held,* under the Succession Act, as made applicable by the Hindu Wills Act, that the creditors were not parties having any interest in the estate of

PROBATE—*continued.*

8. OPPOSITION TO, AND REVOCATION OF, GRANT—*continued.*

Opposition to grant—*continued.*

the deceased, and therefore were not entitled to oppose the grant of probate. IN THE MATTER OF THE PETITION OF DESPUTTY SINGH. BAIJNATH SAHAI *v.* DESPUTTY SINGH

[I. L. R., 2 Calc., 208 : 25 W. R., 489

33. ——————— *Proceedings to revoke probate.—Purchaser or assignee of next of kin.—Succession Act, ss. 188, 242.*—The grant of probate is the decree of a Court which no other Court can set aside, except for fraud or want of jurisdiction. Where it has been alleged that probate has been wrongly granted, the proper course to be pursued is to apply to the Court which granted the probate to revoke the same. Procedure upon such application discussed. *Semble,*—A person interested by assignment in the estate of the deceased may, where a will has been set up and proved at variance to his interests, apply for the revocation of probate of the will so set up. KOMOLLOCHUN DUTT *v.* NILRUTTUN MUNDLE

[I. L. R., 4 Calc., 360 : 4 C. L. R., 175

34. ——————— *Caveat.—Interest of attaching creditor.—Next of kin.—Mortgagee.—Succession Act (X of 1865), s. 234, illus. (b), s. 242.—20 and 21 Vict., c. 77, s. 61.—A.*, a judgment-creditor, attached certain property as belonging to *B.*, his debtor. *B.* was the next of kin of *C.*, deceased. The widow of *C.* applied for probate of an alleged will of her husband. On caveat entered by *A.*,—*Held* that he had such an interest as entitled him to oppose the grant. *D.* held a mortgage from *B.*, executed subsequently to *C.'s* death, of other property, which the widow also alleged formed part of her husband's estate. On caveat entered by *D.*,—*Held*, also, that he had such an interest as entitled him to oppose the grant. *Per* FIELD, *J.*—Under section 242 of the Succession Act, any person who can show that he is entitled to maintain a suit in respect of property over which probate would have effect, possesses a sufficient interest to entitle him to enter a caveat and oppose the grant. IN THE MATTER OF THE PETITION OF BHOBOSOONDURI DABEE. NOBEEN CHUNDER SIL *v.* BHOBOSOONDURI DABEE

[I. L. R., 6 Calc., 460

35. ——————— *Application for order revoking probate.—Succession Act (X of 1865), s. 243.—Locus standi of attaching creditor of next of kin to apply for revocation.*—A will, on the evidence, was held duly proved. An application for revocation of probate was made by a judgment-creditor who had attached his debtor's right, title, and interest in family estate, whereof a one-fourth share would, but for this will, which made other dispositions, have been inherited by such debtor. Whether such attaching creditor can oppose the grant of probate, or apply to have it revoked, is a matter of grave doubt; at least, in a case which is not founded on the ground that the probate has been obtained in fraud of creditors. *Baijnath Sahai* v. *Desputty Singh, I. L. R., 2 Calc., 208,* referred to; and *Komollochun Dutt* v. *Nilruttun Mundle, I. L. R., 4 Calc., 360,* distinguished. NILMONI SINGH DEO *v.* UMANATH MOOKERJEE. NILMONI SINGH *v.* BHOYHARINI DEBI

[I. L. R., 10 Calc., 19 : 13 C. L. R., 314
L. R., 10 I. A., 80

Affirming the decision of the High Court, which held that a judgment-creditor, who has attached property of his debtor, which purports to have been inherited by such debtor from his deceased father, may, where the will of such deceased is set up and proved at variance to his interests, apply for a revocation of the order granting probate of the will so set up. IN THE MATTER OF THE PETITION OF NILMONEY SING. UMANATH MOOKHOPADHYA *v.* NILMONEY SING . . I. L. R., 6 Calc., 429

36. ——————— *Caveat.—Mortgagee.—Attaching creditor.—Fraud.—A.* mortgaged certain property to *B.*, who obtained a decree on his mortgage on the 20th of August 1881. In execution of this decree *B.*, on the 5th of September 1881, attached the mortgaged property and obtained an order for sale. On the 14th of September 1881 the wife of the mortgagor applied for probate of the will of one *T. D.*, the mother of the mortgagor, who had died on the 16th of May 1881. The testatrix, by her will, left all her property to the mortgagor's wife. The mortgaged property was included in the property dealt with by the will. *B.*, the mortgagee, entered a caveat against the grant of probate, alleging that the will was a forgery, got up by the mortgagor for the purpose of saving the mortgaged property from being sold in execution of a decree against himself. *Held* that *B.* was entitled to enter a caveat. SURBOMONGALA DASSI *v.* SHASHIBHOOSHUN BISWAS

[I. L. R., 10 Calc., 413

37. ——— **Revocation of grant.**—*Succession Act (X of 1865), s. 234.—Practice.—Review in testamentary matters.*—Section 234 of the Succession Act (X of 1865) applies to Hindus, and an application to revoke probate of the will of a Hindu may be made under that section. When once probate in solemn form has been granted, no one who has been cited or has taken part in the proceedings, or who was cognisant of them, can afterwards seek to have it cancelled. *Quære,*—Whether a review may not be granted. The practice in India in testamentary matters previously to Act V of 1881 was the same as that of the Ecclesiastical Court in England, except so far as that practice might be inconsistent with the Civil Procedure Code. IN THE MATTER OF PITAMBER GIRDHAR . . . I. L. R., 5 Bom., 638

38. ——————— *Removal of mohunt claiming under a will.—Succession Act, s. 234.*—By his will the mohunt of an akra, or religious endowment, appointed *A.* to be the malik of the properties comprised in the endowment, and to receive the dues and pay the debts, and to do everything necessary connected therewith; and provided that

PROBATE—*continued.*

8. OPPOSITION TO, AND REVOCATION OF, GRANT—*continued.*

Revocation of grant—*continued.*

if any act was done prejudicial to any of those purposes, or to any property set apart therefor, or contrary to the Hindu practice and religion or usages, the property should vest in such disciple of his who should be competent and virtuous. *A.* obtained probate of the will, and entered upon the properties mentioned therein. *Held* that the Court had not power, under section 234 of the Succession Act, to revoke the probate upon the ground that *A.* had, since he took charge of the office, taken to an immoral course of conduct, and in consequence had been excluded from the community of mohunts. The proper course to take for depriving such a person of his office would be to bring a suit under the Religious Endowment Act, or any other suit, for a declaration that he had disqualified himself, and if in that suit a decree was obtained and duly certified to the Court which granted probate, that Court would, no doubt, direct the revocation of the probate. IN THE MATTER OF THE PETITION OF MOHUN DASS. MOHUN DASS *v.* LUTCHMUN DASS

[I. L. R., 6 Calc., 11 : 6 C. L. R., 265

39. ——————— *Procedure.—Succession Act (X of 1865), s. 234.—Onus probandi.*—Upon a petition under section 234 of the Succession Act, praying that the probate of a will alleged to have been made by the petitioner's husband should be revoked upon the grounds that no citation was duly published, that the petitioner was a minor, living under the care of the person to whom probate had been granted, and had no opportunity of understanding his *mala fides* and improper acts, and that the will was a forgery,—the District Judge held that the burden of proof in respect of the whole case was on the petitioner, and dismissed her petition. *Held* that the District Judge ought to have given the petitioner an opportunity of proving that she had no knowledge of the previous proceedings. If satified that she had no such knowledge, then he should have ordered a new trial as to the *factum* of the will, when the person propounding it would have to prove it in the ordinary way. IN THE MATTER OF THE PETITION OF DINTARINI DEBI. DINTARINI DEBI *v.* DOIBO CHUNDER ROY

[I. L. R., 8 Calc., 880 : 11 C. L. R., 190

9. EFFECT OF PROBATE.

40. ——— **Executor, Position of.**—*Will of Hindu.—Evidence of title.*—Grant of probate of the will of a Hindu confers no title upon the executor, but he derives his title from the will itself. Probate is evidence of his title only so far as a decree of the Court granting it would be,—namely, between the parties and those privy to the suit in which the decree is made. SHARO BIBI *v.* BALDEO DAS . . . . . 1 B. L. R., O. C., 24

41. ——————— *Liability of person acting as executor of forged will.*—Government promissory notes belonging to the estate of a

PROBATE—*continued.*

9. EFFECT OF PROBATE—*continued.*

Executor, Position of—*continued.*

deceased Hindu were endorsed over, without consideration, by *A.* (who had taken out probate of a forged will, and was acting under the same as executor) to *B.*, who received the same *bonâ fide*, but without due inquiry; and on obtaining a renewal of the same, endorsed the renewed paper back to *A.* for the purpose of enabling him to raise money thereon, believing that *A.* had a right to do so. *Held* that *A.* was liable to account to the representatives of the deceased for the value of the said promissory notes as assets of the deceased come into his hands. The property in the moveable estate of a Hindu does not pass to his executor as such. JAYKALI DEBI *v.* SHIBNATH CHATTERJEE . . 2 B. L. R., O. C., 1

42. ——— **Evidence of will.**—*Will.—Evidence.—Hindu Wills Act (XXI of 1870).—Succession Act (X of 1865), ss. 180, 242.*—The effect of the Hindu Wills Act, which makes (among others) section 180 and 242 of the Succession Act applicable to Hindus, is to make the probate of the will evidence of the will against all persons interested under the will. BRAJANATH DEY SIRKAR *v.* ANANDAMAYI DASI . . . . . 8 B. L. R., 208

43. ——— **Probate as giving person right to sue under will.**—*Succession Act, s. 187.—Suit for land claimed under will.*—Where the first Court decreed a suit for possession of land claimed under a will, the lower Appellate Court was held to have done right in reversing the decision on the ground that the plaintiff had not taken out probate under Act X of 1865, section 187. The "probate" intended by section 187 is a copy of the will, certified and sealed by a Court of competent jurisdiction, and it may be taken out by a legatee. MUN MOHUN GHOSSAL *v.* PURESHNATH ROY

[22 W. R., 174

45. ——— **Probate as giving right to sue under will.**—*Probate Act, V of 1881, ss. 92, 154.—Probate when necessary in cases of Hindu and Mahomedan will.—Executor.—Act XXVII of 1860.—Right of one out of three executors to carry on a suit.—Succession Act, X of 1865, s. 187.—Hindu Wills Act (XXI of 1870).*—Previously to the passing of the Probate Act (V of 1881), executors appointed by such wills as fell within the Hindu Wills Act (XXI of 1870) acquired the same estate and interest in the property of their deceased testator, with the same restrictions in representing the estate in a Court of Justice, as obtained under English law. All the sections of the Succession Act (X of 1865) relating to grants of probate and letters of administration which were formerly incorporated in the Hindu Wills Act (XXI of 1870) are now (with the exception of section 187) removed from that Act by section 154 of Act V of 1881, but are, with the exception of section 187, re-enacted *verbatim* in Act V of 1881. Section 187, however, still remains incorporated by reference with the Hindu Wills Act (see section 154 of Act V of 1881). The result is that probate is necessary in case of such Hindu wills as

PROBATE—*continued.*

9. EFFECT OF PROBATE—*continued.*

Probate as giving right to sue under will—*continued.*

fall within the Hindu Wills Act. But the omission from Act V of 1881 (which applies to all Mahomedans and Hindus) of any section corresponding to section 187 of the Indian Succession Act, and the retention of that section in the Hindu Wills Act, shows that it was the intention of the Legislature that, except in cases falling under the Hindu Wills Act, an executor of any Hindu or Mahomedan will may establish his right in a Court of Justice without taking out probate. In cases, however, falling within the provisions of Act XXVII of 1860, debtors have still the right (under section 2 of that Act) of insisting upon a plaintiff executor taking out probate. Where *A.*, one of three executors of a Mahomedan will, none of whom had taken out probate, desired to carry on a suit originally instituted by their testator to recover a share of an estate, all the other parties to the suit being desirous that the suit should be dismissed,—*Held* that *A.*, under section 92 of the Probate Act (V of 1881), being only one of three executors, could not carry on the suit without first taking out probate of the testator's will. *Held*, further, that *A.*, being an executor, had a right to carry on the suit and get in the assets of his testator in order to meet possible claims on the estate. The other parties to the suit who were beneficially interested in the estate, and who desired that the suit should terminate, had the remedy in their hands by putting the executor in funds to discharge the debts. MOOSA *v.* ESSA . . **I. L. R., 8 Bom., 241**

46. ——— Necessity of probate.—*Probate and Administration Act, 1881.—Mahomedan will.*—An executor of the will of a deceased Mahomedan, since the 1st April 1881, the date of the coming into force of the Probate and Administration Act, V of 1881, cannot claim to represent the estate of his testator until he has taken out probate. FATMA *v.* ESSA . . **I. L. R., 7 Bom., 266**

47. ——— Effect of probate of Parsi will before Succession Act.—*Probate in 1866.—Act XXVII of 1865.—Construction of will.—Executrix also trustee.—Suit against executrix.—Representation of the estate.—Civil Procedure Code, s. 437.*—The will of a Parsi testator in Bombay affecting lands in the mofussil, made before the 1st January 1866, when the Indian Succession Act, X of 1865, came into force, and proved subsequently,—*viz.*, on the 25th day of January 1866,—but before Act XXIV of 1867 came into operation, is governed by Act XXVII of 1860. *Held* that such probate has the same effect as probate in respect of the property of British subjects, but for the purpose only of collecting debts. It did not confer a title on the executrix to represent the testator's estate, except for the above-mentioned limited purpose, or to exercise the usual powers of an executrix where the testator's intention, to be gathered from the whole of the will, was to vest his property with the entire management of, and control over, it in a series of persons in succession as trustees, the first of whom was the executrix. *Held* also that, having regard to section 437 of the Code of Civil Procedure, the persons acting as such trustees in succession under the said will adequately represented all persons beneficially interested in the estate in all suits relating to it. ARDESIR JEHANGIR FRAMJI *v.* HIRABAI **[I. L. R., 8 Bom., 474**

PROBATE ACT (V OF 1881).

See PROBATE—EFFECT OF PROBATE. **[I. L. R., 7 Bom., 266**

——— s. 2.

See PROBATE—JURISDICTION OF DISTRICT COURT . . **I. L. R., 9 Bom., 241**

——— s. 4.

See LETTERS OF ADMINISTRATION. **[I. L. R., 10 Calc., 554**

——— ss. 18 to 23, 37, 44, 45, 46, 83, & 86.—*Debutter property, Administration in respect of.—Idol.—"Beneficiary."—Trustee with power of appointment.—Administration, Grant of letters of, to idol's property where probate has been previously granted of will dedicating the property.*—A testatrix by her will dedicated certain immoveable property to the sheba of an idol, and appointed an executrix, whom she also constituted shebait, and to whom she gave power to appoint the next shebait. The executrix died without having made any such appointment, and thereupon an application was made by the sister's son of the testatrix for letters of administration, with a copy of the will annexed, to be granted to him with respect to the debutter property. *Held* that section 45 of the Probate and Administration Act authorised such a grant to be made, inasmuch as no shebait having been appointed, there still remained some portion of the estate of the testatrix to be administered. *Held* also that the idol, being the *cestui que trust*, was a "beneficiary" within the meaning of that term as used in section 37 of the Act, and that as it could not undertake the management of the estate, under that section administration might be granted to some person on its behalf. *Held*, further, that the applicant, the sister's son of the testatrix, being the heir in the absence of other nearer heirs, as such was entitled to letters of administration, as the original grant in respect of the debutter property might have been made to him. RANJIT SING *v.* JAGANNATH PROSAD GUPTA. GUNGADHUR DASS RAI *v.* JAGANNATH PROSAD GUPTA . . . **I. L. R., 12 Calc., 375**

——— s. 50.

See PROBATE—OPPOSITION TO, AND REVOCATION OF, GRANT. **[I. L. R., 11 Calc., 492**

——— s. 83.

See PROBATE—JURISDICTION OF DISTRICT COURTS . **I. L. R., 9 Bom., 241**

PROBATE ACT (V OF 1881), s. 92.

See PROBATE—EFFECT OF PROBATE.
[I. L. R., 8 Bom., 241

——— s. 154.

See PROBATE—EFFECT OF PROBATE.
[I. L. R., 8 Bom., 241

PROBATE DUTY.

See CASES UNDER COURT FEES ACT, SCH. I, CL. 11.

PROCEDURE (CIVIL).

See CASES UNDER VARIOUS SECTIONS OF THE CIVIL PROCEDURE CODE.

See under the heading in respect of which the particular procedure is required.

——— (CRIMINAL).

See CASES UNDER VARIOUS SECTIONS OF THE CRIMINAL PROCEDURE CODE, 1882.

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"PROCEEDINGS," MEANING OF—

See CIVIL PROCEDURE CODE, 1882, s. 3 (1877, s. 3) . I. L. R., 3 Calc., 662
[I. L. R., 8 Bom., 287

See GENERAL CLAUSES CONSOLIDATION ACT, s. 6 . I. L. R., 3 Calc., 662, 727
[I. L. R., 8 Bom., 340
9 C. L. R., 281
I. L. R., 13 Calc., 86

PROCEEDS OF SALE.

See APPEAL—EXECUTION OF DECREE—PARTIES TO SUITS.
[B. L. R., Sup. Vol., 13, 927

See SALE FOR ARREARS OF RENT—SURPLUS PROCEEDS OF SALE . 13 W. R., 58
[I. L. R., 5 Calc., 494
I. L. R., 7 Calc., 173

See SALE FOR ARREARS OF REVENUE—SALE-PROCEEDS . . 16 W. R., 222
[I. L. R., 6 All., 112

See CASES UNDER SALE IN EXECUTION OF DECREE—DISTRIBUTION OF SALE-PROCEEDS.

——— Right of Government to—

See PAUPER SUIT—SUITS.
[I. L. R., 1 All., 596

PROCLAMATION.

ABSCONDING OFFENDER.
[10 B. L. R., Ap., 14
6 W. R., Cr., 73, 79
3 W. R., Cr., 34
2 N. W., 41 : Agra, F. B., Ed. 1874, 236
4 Msd., Ap., 48
I. L. R., 7 Mad., 436
I. L. R., 9 Calc., 861

PROCLAMATION OF SALE.

See CASES UNDER SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—IRREGULARITY—GENERAL CASES.

PRODUCTION OF DOCUMENTS.

See PLAINT—REJECTION OF PLAINT.
[2 Bom., 391 : 2nd Ed., 369

1. ——— **Production of documents with plaint.**—*Ground for non-production.*—Plaintiffs must, on the presentation of their plaints, produce in Court the originals of the document relied on by them in support of their claim. When a plaintiff can satisfy the Court at the hearing that some document on which he desires to rely was not presented with the plaint, because he was ignorant of its existence at the time, the Court will probably allow it to be received as evidence. CAMPBELL *v.* KEITH . . . . . 1 Hyde, 287

S. C. RITCHIE, STEWART, & Co., *v.* GLADSTONE, WYLLIE, & Co. . 1 Ind. Jur., O. S., 125

See MOHABEER DOSS *v.* LALLA DOSS
[1 W. R., 12

2. ——— *Civil Procedure Code, 1859, s. 39.*—Under section 39 of the Civil Procedure Code, 1859, the plaintiff was bound to produce, at the time the plaint is filed, all the documents on which he relied. PREMSOOKH CHUNDER *v.* RAJKISTO MITTER . . . . . 1 Hyde, 145

S. C. ANONYMOUS . 1 Ind. Jur., O. S., 14

3. ——— Where a plaintiff sues upon title-deeds as evidence of his claim, he is bound to file them with his plaint, or else have them ready to produce at the time of the first hearing; otherwise he is bound to show good cause for not having done so. LEKHRAJ ROY *v.* MUTTY MADHUB SEN . . . . . 14 W. R., 95

4. ——— *Civil Procedure Code, 1859, s. 39.—Document given to witness to refresh his memory.*—A document given to a witness as a script to refresh his memory is not "received in evidence" within the meaning of section 39 of Act VIII of 1859, and need not therefore have been produced when the plaint was filed. RAMJI MADAUJI *v.* RANGAYYA CHETTI . . . 1 Mad., 168

5. ——— *Civil Procedure Code, 1859, s. 39.*—The plaintiff sued to recover certain jewels, and one of her witnesses being examined by her counsel with reference to a list of the jewels which was in his possession, the defendant's counsel objected to the document being referred to at all, as it had not been filed with the plaint in compliance with section 39 of Act VIII of 1859. *Held* that section 39 of Act VIII of 1859 referred only to promissory notes, bills of exchange, and such documents as are in their nature the very essence of the case. KAMENEE DOSSEE *v.* HURROMONEY DOSSEE
[Bourke, O. C., 91 : Cor., 151

MANOORAM SHAW *v.* HURRYPERSAUD ROY
[Bourke, O. C., 162

PRODUCTION OF DOCUMENTS.—Production of documents with plaint—*continued.*

6. ——————— *Discretion to receive documents after filing of plaint.*—Act VIII of 1859 gave a discretionary power to receive documents after the filing of the plaint. LOPEZ *v.* DRIBERG . . . **W. R., 1864, Act X, 67**

7. ——————— *Reception of documents after filing of plaint.—Ground of appeal.*—Reception of documents under section 39, Act VIII of 1859, by the Court of first instance, cannot be a ground of appeal. The sanction of the Court receiving the documents clears the defect of their not having been tendered with the plaint. GOSAIN TOTA RAM *v.* RUKINIBALLAB
[3 B. L. R., P. C., 34: 12 W. R., P. C., 32 13 Moore's I. A., 77

ATTA OOLLAH MUNDLE *v.* SUKREOODDEEN TURUPDAR . . . . **W. R., 1864, 271**

8. ——————— *Civil Procedure Code, 1882, ss. 59, 63.—Appeal.—Rejection of documents admitted by lower Court.*—Certain documents having been allowed by the District Munsif to be filed by the plaintiff during the trial of a suit, the District Judge, on appeal, held that he was bound to strike them off the file on the ground that they were not filed with the plaint, nor entered in any list annexed to the plaint, and because the Munsif had not recorded any reason for admitting them. *Held* that, as the documents had been admitted in evidence by the lower Court, the Appellate Court was bound to consider them. MINAKSHI *v.* VELU
[I. L. R., 8 Mad., 373

9. ——————— *Civil Procedure Code, 1882, ss. 59, 63.—Held* that the refusal to admit in evidence a registered certificate of sale under section 63 of the Code of Civil of Civil Procedure, 1882, on the ground that it had not been produced with the plaint as required by section 59 of the Code, was improper, there having been no doubt of its existence at the date of suit. DEVIDAS JAGJIVAN *v.* PIRJADA BEGAM . . **I. L. R., 8 Bom., 377**

10. ——————— *Second certificate of sale obtained after first rejected as unregistered. Quære,*—Whether, where the original certificate of sale had been rejected by the Court as being unregistered, and the plaintiff had obtained a second one, the Court of first instance ought to have received the second one in evidence if issued and tendered in evidence subsequently to the filing of the suit but previously to the original hearing. LALBHAI LAKHMIDAS *v.* KAMULUDIN HUSEN KHAN . **12 Bom., 247**

11. ——————— *Omission to put copy on record.*—In a suit brought on a promissory note, where the note was produced when the plaint was presented and was marked by the officer of the Court, but the Judge at the hearing refused to receive it when tendered in evidence, because he found that there was no copy of the note among the papers, and the plaintiff's counsel was unable to explain the omission, and there being no application made to withdraw, the suit was dismissed,—*Held* that the Judge ought to have received a note in evidence which was "produced in Court by the plaintiff when the plaint was presented" (section 39 of the Civil Procedure Code, 1859); that the plaintiff's counsel was not bound, under the circumstances, to apply to withdraw the suit, and the Judge was not justified in dismissing the suit, which was accordingly remanded under section 351 of the Code, with a direction that it should be restored to its original place on the register, and be tried by one of the Judges of the Court. THOMPSON *v.* JEHANGIR HORMASJI.
3 Bom., O. C., 66

12. ——————— *Dismissal of claim for non-compliance with Civil Procedure Code.*—The Judge's decision disallowing a claim because the provisions of section 39 of Act VIII of 1859 had not been complied with, was held to be incorrect under the circumstances. EX PARTE RAYACHAND AMICHAND . . . . **2 Bom., 369**

PROFITS, SUIT FOR—

See CASES UNDER JURISDICTION OF REVENUE COURT—N.-W. P. RENT AND REVENUE CASES.

See CASES UNDER MESNE PROFITS.

See N.-W. P. RENT ACT, s. 7.
[I. L. R., 1 All., 659

See N.-W. P. RENT ACT, s. 94.
[I. L. R., 1 All., 512

See N.-W. P. RENT ACT, s. 208.
[I. L. R., 2 All., 239
I. L. R., 8 All., 61

PROHIBITORY ORDER.

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—IRREGULARITY—GENERAL CASES.
[3 B. L. R., A. C., 320

PROHIBITORY ORDER, SERVICE OF—

See SERVICE OF PROCESS.
[10 B. L. R., Ap., 12

"PROJAH" MEANING OF—

See LEASE—CONSTRUCTION.
[22 W. R., 398

"PROMISE TO PAY."

See LIMITATION ACT, 1877, s. 19 (1871, s. 20)—ACKNOWLEGEMENT OF DEBTS.
[I. L. R., 1 Bom., 590
I. L. R., 2 Bom., 230
9 W. R., 140
9 B. L. R., Ap., 43
6 Mad., 51
5 B. L. R., 633
I. L. R., 6 Bom., 683
I. L. R., 8 Bom., 905

PROMISSORY NOTE.

Col.
1. FORM OF— 4680
2. CONSIDERATION 4681
3. ASSIGNMENT OF, AND SUITS ON— . 4682

See CONSIDERATION
[1 Ind. Jur., N. S., 409

See CONTRACT—ALTERATION OF CONTRACTS—ALTERATION BY THE COURT.
[I. L. R., 4 Calc., 137

See CONTRACT—ALTERATION OF CONTRACTS—ALTERATION BY PARTY.
[I. L. R., 6 Bom., 371

See EVIDENCE—CIVIL CASES—SECONDARY EVIDENCE—UNSTAMPED OR UNREGISTERED DOCUMENTS.
[I. L. R., 3 Calc., 314
I. L. R., 7 Calc., 256
I. L. R., 3 All., 581, 717
I. L. R., 4 All., 135
I. L. R., 7 Mad., 112

See GOVERNMENT PROMISSORY NOTE.
[13 B. L. R., 359
15 W. R., 267
I. L. R., 5 Calc., 654

See HINDU LAW—CONTRACT—PROMISSORY NOTE . 3 B. L. R., O. C., 130

See INTEREST—STIPULATION AMOUNTING TO PENALTIES OR OTHERWISE
[10 Bom., 352
6 Bom., A. C., 7, 8
7 Bom., O. C., 19
I. L. R., 2 Calc., 202
I. L. R., 4 Calc., 137
I. L. R., 9 Calc., 689
I. L. R., 3 All., 260

See CASES UNDER JURISDICTION—CAUSES OF JURISDICTION—CAUSE OF ACTION—NEGOTIABLE INSTRUMENTS.

See NEGOTIABLE INSTRUMENTS SUMMARY PROCEDURE ON—
[3 B. L. R., O. C., 130, 146
9 B. L. R., 441

See STAMP ACT, XXXVI OF 1860.
[1 Ind. Jur., O. S., 124
1 Mad., 152

See STAMP ACT, X OF 1862, s. 22.
[2 B. L. R., O. C., 165
5 B. L. R., 103
1 Ind. Jur., N. S., 107

See STAMP ACT, X OF 1862, SCH. A, CL. 1.
[6 Bom., A. C., 107

See STAMP ACT, X OF 1862, SCH A, CL 10.
[3 Bom., O. C., 9
2 Ind. Jur., N. S., 203

See STAMP ACT, 1869, s 3.
[I. L. R., 3 All, 260, 581
21 W. R., 1

See STAMP ACT, 1869, s. 24.
[24 W. R., 1

PROMISSORY NOTE—*continued.*

See STAMP ACT, 1869, s. 28.
[7 Bom., O. C., 180
21 W. R., 446
13 B. L. R., Ap., 33
I. L. R., 4 Mad., 296
7 N. W., 124
7 Mad., 361

See STAMP ACT, 1869, s. 39.
[I. L. R., 3 All., 115

See STAMP ACT, 1879, s. 3.
[I. L. R., 8 Bom., 297
I. L. R., 8 Mad., 87

See STAMP ACT, 1879, s. 34.
[I. L. R., 8 Calc., 645
I. L. R., 3 Mad., 251

——— Payable by instalments.

See CASES UNDER LIMITATION ACT, 1877, ART. 75.

See NEGOTIABLE INSTRUMENTS, SUMMARY PROCEDURE ON—
[I. L. R., 1 Calc., 130

——— Payable on demand.

See CONSIDERATION . 7 Bom., O. C., 9

See INTEREST—CASES UNDER ACT XXXII OF 1839 . . 1 B. L. R., O. C., 41

See CASES UNDER LIMITATION ACT, 1877, ART. 73 (1871, ART. 72)
[I. L. R., 1 Calc., 328
I. L. R., 1 Mad., 301

——— Registered under s. 52, Act XX of 1866.

See MERGER . 1 B. L. R., O. C., 35

——— Suit on—

See ASSIGNMENT OF CHOSE IN ACTION.
[1 Mad., 150
4 Mad., 176
I. L. R., 1 All., 732

See HUSBAND AND WIFE.
[8 B. L. R., 372

1. FORM OF—

1. ——— **Acknowledgment.**—The plaintiff sued on two documents, signed by the defendant, in one of which a sum of R203 was stated to be "due to you, and payable on the 16th July;" and in the other a sum of R515 was mentioned "for which I give you this writing, the whole amount of which will be paid up in full on the 3rd of August." *Held* to be not mere acknowledgments but promissory notes. MANICK CHUND *v.* JOMOONA DOSS
[I. L. R., 8 Calc., 645

2. ——— **Uncertain agreement.**—*Held* that the following instrument was so vague and indefinite in its terms that it could not be regarded as a promissory note: "I, *J. M. C.*, do hereby promise to pay at Allahabad to the Manager of the

PROMISSORY NOTE—*continued.*

1. FORM OF—*continued.*

Uncertain agreement—*continued.*

Agra Savings Bank, Limited, the sum of R10 on or before the 15th day of October 1876, and a similar sum monthly every succeeding month, for full value and consideration received: dated the 9th September 1876." CARTER *v.* AGRA SAVINGS BANK
[I. L. R., 5 All., 562

3. ——— Contract or obligation.—A promissory note was held to be a "contract or obligation" under section 16 of the Registration Act of 1864, for the purposes of limitation. PYARI CHAND MITTER *v.* FRAZER . . **6 B. L. R., Ap., 40**

S. C. OFFICIAL ASSIGNEE *v.* FRAZER
[14 W. R., O. C., 51

See LESLIE *v.* PUNCHANUN MITTER.
[6 B. L. R., 668
S. C. 15 W. R., O. C., 1

4. ——— Necessity of delivery of note. —*Making of note.*—The making of a promissory note is altogether the act of the maker, and delivery to the promissee is requisite to render it complete. WINTER *v.* ROUND . . . **1 Mad., 202**

2. CONSIDERATION.

5. ——— Note given in payment of loss on wagering contract.—*Act XXI of 1848.* —*Bom. Act III of 1865.*—A promissory note which has for its consideration a debt due on a wagering contract is not binding in the hands of the original payee. TRIKAM DAMODHAR *v.* LALA AMIRCHAND
[8 Bom., A. C., 131

6. ——— Note given partly for "balance of bets and lotteries."—*Lottery Act (V of 1844).*—The defendant agreed with the plaintiff to take the plaintiff's mare "Bridesmaid" on "racing terms,"—all winnings to be divided equally between them, and the plaintiff to have the option of claiming a one-fourth share of any lottery in which she might be bought by or on account of the defendant; the plaintiff to keep and train "Bridesmaid" for R60 a month. Subsequently, the plaintiff agreed to keep and train, for a like sum for each horse, five horses belonging to the defendant. The defendant having been posted as a defaulter, the plaintiff, at the defendant's request, advanced certain sums to the Secretary of the Calcutta Races to enable the defendant's horses to run. As security for the repayment of such advances, and of a sum of R4,456-6 which had become due to the plaintiff, and which included an item of R1,149 for "balance of bets and lotteries," and a smaller sum in respect of certain tickets in the "Secundra Raffle," the defendant gave to the plaintiff a letter of hypothecation of his five horses, whereby it was agreed that in case of the defendant's default, the plaintiff should be at liberty to sell the horses. The defendant made default, and the plaintiff advertised the horses for sale. On the same day the defendant wrote and gave to

PROMISSORY NOTE—*continued.*

2. CONSIDERATION—*continued.*

Note given partly for "balance of bets and lotteries"—*continued.*

the plaintiff a letter, stating that, in consideration of the plaintiff's withdrawing the advertisement, and withholding the sale for a certain period, he would give the plaintiff a promissory note for the balance of his claim. A note for R7,000 was accordingly given by the defendant to the plaintiff. In the account delivered by the plaintiff to the defendant, he had by mistake over-credited the defendant with R744 in an item headed "cash received from the Secretary of the Calcutta Races, balance of racing account," and under which was included the following item: "*I. O. U.*, deducted from lottery account, R480." On receiving information of the error, the defendant gave the plaintiff another promissory note for R744. In an action on the notes brought under Act V of 1866, the plaintiff obtained a decree, which was set aside on the defendant's application, and leave was given to him to appear and defend. Written statements were then filed on the plaintiff's application. *Held* by MACPHERSON, *J.*, that the two promissory notes were given as a security for the whole of the plaintiff's claim; that the items for "balance of bets and lotteries" and for the "Secundra Raffle" being rendered illegal by the Lottery Act (V of 1844), part of the consideration for the notes was illegal, and no action was maintainable upon them His Lordship, therefore, dismissed the plaintiff's suit. On appeal, held by COUCH, *C. J.*, that the promissory note for R7,000 was not vitiated by the R1,149 being part of the consideration for it: although that portion of the latter sum which was won by lotteries was obtained by an illegal transaction, it was not illegal for the defendant to receive the money, and having done so, to pay the plaintiff his share or to promise to do so. But the money paid in respect of the "Secundra Raffle," being money paid in execution of an illegal purpose, was an illegal consideration which disentitled the plaintiff to recover on the note. *Held*, further, that the note for R744 was given upon good consideration. All the facts of the case being stated in the plaintiff's written statement, the Court might allow the plaint to be amended, and frame an issue as to what amount was due to the plaintiff in respect of the consideration for the note for R7,000. *Held* by MARKBY, *J.*, that both notes were good, inasmuch as the promise contained in them did not spring from, nor was it the creature of, the original illegal agreement, but was a separate agreement. JOSEPH *v.* SOLANO
[9 B. L. R., 441: 18 W. R., 424

3. ASSIGNMENT OF, AND SUITS ON—

7. ——— Endorsement to a third person for purpose of allowing him to sue. —*Assignment of negotiable instrument.*—There is nothing illegal in the true holder of a promissory note endorsing it to another person, with the express object of allowing him to sue upon it. RAMLAL MOOKERJEE *v.* HARAN CHANDRA DHAR
[3 B. L. R., O. C., 130: 12 W. R., O. C., 9

PROMISSORY NOTE—*continued.*

3. ASSIGNMENT OF, AND SUITS ON—*continued.*

8. ——— Suit by endorsee against maker.—*Endorsement of overdue note.*—In a suit by endorsee against the maker of a promissory note payable on demand, the defence was that there were dealings in skins between the defendant and the payee, and an agreement was made by which the payee was to pay the defendant R4,500 as an advance upon goods to be supplied by the defendant to the payee; that the money was paid, and the promissory note sued on was made and delivered as an acknowledgment of the receipt of the money and as a security for what should be due to the maker in respect of the dealings. The defendant stated that the state of the accounts between him and the maker showed a balance in favour of the defendant, and notice to the plaintiff of these facts was alleged. The note was endorsed to the plaintiff two years and eleven months after date. *Held* that, although the evidence failed to make out notice to the plaintiff, the note when endorsed was an overdue note, and that the plaintiff took it subject to the then state of the accounts between the payee and the defendant. COMMUNDUN MOHIDEEN SAIB *v.* OREE MEERAH SAIB . . **7 Mad., 271**

9. ——— Endorsement of note overdue.—*Note on demand.*—*Re-endorsement.*—Before a promissory note on demand can be treated as overdue in the hands of an endorsee, there must be some evidence of demand. The re-endorsement of a discharged promissory note cannot revive the liability of the maker. *Commundun Mohideen Saib* v. *Oree Meerah Saib, 7 Mad., 275,* followed. The fact that the endorsee of a promissory note becomes one of the members of a firm which has undertaken to discharge the liability created by the maker of the note does not discharge the obligation on the note so as to invalidate re-endorsement for value. VAN INGEN *v.* DHUNNA LALL LALLAH . **I. L. R., 5 Mad., 108**

10. ——— Receipt endorsed on note.—*Presumption of payment.*—Though a receipt on the back of a bill of exchange or promissory note *primâ facie* imports that the bill or note has been paid, yet the receipt is capable of being explained; and if it appears that the bill or note has not been paid, and that another bill or note was substituted for it, the Court will not be justified in concluding that the party who gave up the note in that way meant that the debt secured by the note was to be considered to have been paid. STEWART *v.* DELHI AND LONDON BANK **[17 W. R., 201**

PROMISSORY NOTES.

——— Issue of—

See COMPANY—POWERS, DUTIES, AND LIABILITIES OF DIRECTORS.
[1 B. L. R., O. C., 14

——— Summary procedure on—

See CASES UNDER NEGOTIABLE INSTRUMENTS, SUMMARY PROCEDURE ON—

PROMISSORY NOTES—*continued.*

See PRACTICE—CIVIL CASES—LEAVE TO SUE OR DEFEND.
[I. L. R., 3 Calc., 539

PROPERTY.

See CASES UNDER ATTACHMENT—SUBJECTS OF ATTACHMENT.

——— Divesting of—

See HINDU LAW—ADOPTION—EFFECT OF ADOPTION . **I. L. R., 2 Calc., 295**
4 C. L. R., 538
I. L. R., 7 Calc., 178
I. L. R., 12 Calc., 18, 246
8 Mad., 108
I. L. R., 7 Bom., 229
7 W. R., 392
3 Agra, 349
6 W. R., P. C., 43: 3 Moore's I. A., 229
3 W. R., P. C., 15: 10 Moore's I. A., 279

See CASES UNDER HINDU LAW—INHERITANCE — DIVESTING OF, EXCLUSION FROM, AND FORFEITURE OF INHERITANCE.

See CASES UNDER HINDU LAW—WIDOW—DISQUALIFICATION—UNCHASTITY.

See WILL—CONSTRUCTION.
[I. L. R., 4 Calc., 420

——— decreed to plaintiff, Order for production of—

See EXECUTION OF DECREE—MODE OF EXECUTION—GENERALLY, &c.
[3 N. W., 319

——— in the soil.

See FISHERY, RIGHT OF—
[24 W. R., 200
W. R., 1864, 63
I. L. R., 9 Calc., 183
I. L. R., 10 Calc., 50
1 W. R., 79
Marsh., 334: 2 Hay, 468

See OWNERSHIP, PRESUMPTION OF—
[I. L. R., 9 Mad., 175, 285

See SANAD . **I. L. R., 1 Bom., 523**

——— not in esse, Pledge of—

See STAMP ACT, 1869, s. 3.
[I. L. R., 2 Calc., 58

——— on which duty has been paid in England.

See COURT FEES ACT, SCH. 1, CL. 11.
[I. L. R., 4 Calc., 725

——— on which there is a mortgage or incumbrance.

See COURT FEES ACT, SCH. I, CL. 11.
[8 B. L. R., Ap., 43
6 N. W., 214
I. L. R., 1 Bom., 118

PROPERTY—*continued.*

——— **Subject to a trust.**

See COURT FEES ACT, SCH. I, ART. 11.
[6 B. L. R., Ap., 138
11 B. L. R., Ap., 39
[14 B. L. R., 184
7 B. L. R., 57

PROPRIETARY RIGHT.

See BOUNDARY . . 9 W. R., 426

——— *Proprietary right.—Mofussil Courts.—Legal and equitable rights to property.*—In mofussil Courts in this country there is no distinction between legal right and equitable right to property. There is but one kind of proprietary right, not divisible into parts or aspects. SEEDEE NAZEER ALI KHAN *v.* OJOODHYA RAM KHAN. MUNSOOR ALI KHAN *v.* OJOODHYA RAM KHAN . 8 W. R., 399

PROSECUTION.

——— **Commencement of—**

See CASES UNDER COMPLAINT—INSTITUTION OF COMPLAINT AND NECESSARY PRELIMINARIES.

——— **Revival of—**

See COMPLAINT—REVIVAL OF COMPLAINT.
[I. L. R., 1 Bom., 64
7 Mad., Ap., 16
I. L. R., 5 Bom., 405

See REVISION—CRIMINAL CASES—DISCHARGE OF ACCUSED.
[I. L. R., 2 Bom., 534
I. L. R., 6 All., 40
19 W. R., Cr., 56
I. L. R., 1 Calc., 282
I. L. R., 2 Calc., 405
I. L. R., 4 Calc., 16
1 C. L. R., 83

PROSPECTUS.

See COMPANY—ARTICLES OF ASSOCIATION AND LIABILITY OF SHAREHOLDERS.
[I. L. R., 1 Bom., 320

PROSTITUTE.

See MAHOMEDAN LAW—GUARDIAN.
[I. L. R., 1 All., 598

——— **Suit for rent of lodgings let to—**

See LANDLORD AND TENANT—TENANCY FOR IMMORAL PURPOSE.
[9 B. L. R., Ap., 37

1. ——— **Registration of prostitutes.**—*Act XIV of 1868, ss. 11 and 21.—Jurisdiction of Magistrates to entertain pleas of irregularity in the registry.—Possession of registry ticket.*—Under Act XIV of 1868 the police are not empowered to put a woman on the register of "common prostitutes" against her will. The penalty prescribed by section 11, Act XIV of 1868, for disobedience of any of its rules, is for a "woman" who voluntarily

PROSTITUTE.—Registration of prostitutes—*continued.*

registers herself as a "common prostitute." A Magistrate has authority to hear any objection urged by a woman charged with disobedience of the rules under Act XIV of 1868, against the legality of her registry, or that she is not a common prostitute. The possession of a registry ticket is not sufficient evidence of being a common prostitute. IN THE CASE OF LAKHIMANI RAR
[3 B. L. R., A. Cr., 70

S. C. QUEEN *v.* SUKHIMONEE RAUR
[12 W. R., Cr., 55

2. ——— *Act XIV of 1868, ss. 11, 21.—Rules 13 and 27 passed under the Act.—Magistrate, Competency of.—Jurisdiction.*—Any woman desirous of ceasing to carry on the business of a common prostitute is, under the provisions of the Contagious Diseases Act, 1868, absolutely entitled to have her name removed from the register; and any rule, or portion of a rule, purporting to have been framed under the provisions of that Act which places any obstacle in the way of her doing so is *ultra vires*, and therefore void. Where a woman is prosecuted before a Magistrate under section 11 of Act XIV of 1868, she is not precluded from pleading that she has ceased to be a common prostitute, and that she has taken steps, under section 21 and the rules framed thereunder, for the removal of her name from the register; and the Magistrate is competent to entertain such a defence. EMPRESS *v.* NISTAR RAUR
[I. L. R., 6 Calc., 163 : 7 C. L. R., 197

PROSTITUTION.

——— **Disposal of minor for purposes of—**

See PENAL CODE, S. 372.
[6 Bom., Cr., 60
5 Mad., 415
6 B. L. R., Ap., 34
I. L. R., 2 All., 694

——— **Obtaining possession of minor for purposes of—**

See PENAL CODE, S. 372.
[6 B. L. R., Ap., 34
5 Mad., 473

——— **Selling or hiring out minor for purposes of—**

See PENAL CODE, S 372.
[I. L. R., 1 Mad., 164
I. L. R., 2 All., 694

PROTECTOR OF LABOURERS.

See BENGAL ACT VI OF 1865.
[3 B. L. R., A. Cr., 39

PROVISION IN ACT FOR BENEFIT OF GOVERNMENT.

See BOMBAY ACT II OF 1863.
[I. L. R., 2 Bom., 520

PROVOCATION.

See CASES UNDER CULPABLE HOMICIDE.

PUBLIC DEMANDS RECOVERY ACT (BENGAL ACT VII OF 1880).

——— s. 6 (b) and s. 10.—*Suit to set aside certificate.—Mode of service of notice.*—Although no special provision is made in Bengal Act VII of 1880 as to the manner of service of the notice prescribed in section 10, it is not to be presumed that the Legislature intended that service of a less effectual character should be sufficient than it has expressly provided for similar processes under the Civil Procedure Code. Before, therefore, a service under Bengal Act VII of 1880 can be effected by posting it on the residence of the party on whom it is wished to serve it, it must be shown that some attempt has been made to effect personal service, and that such personal service for reasons stated could not be made. In such a case, when the fact of service of notice is denied, the onus is on the party alleging service to prove it. RAKHAL CHANDRA RAI CHOWDHURI *v.* SECRETARY OF STATE FOR INDIA IN COUNCIL . . I. L. R., 12 Calc., 603

——— ss. 10, 23.—*Attachment under certificate procedure.*—The certificate and notice referred to in section 10, Bengal Act VII of 1880, are executive acts, and an attachment, which is the result of those acts, is not a judicial, but an executive proceeding. The meaning of section 23 of that Act, which lays down that a Collector "in the discharge of his functions shall be deemed to be a person acting judicially within the meaning of Act XVIII of 1850," is, that for the purpose of protecting him from personal liability his action is to be regarded as judicial. RAM NARAIN KOER *v.* MAHABIR PERSHAD SINGH . . . . I. L. R., 13 Calc., 208

PUBLIC DOCUMENTS.

See CASES UNDER EVIDENCE ACT, s. 74.

PUBLIC FERRY, PLYING BOAT FOR HIRE NEAR—

See CRIMINAL TRESPASS.
[I. L. R., 1 All., 527

See PENAL CODE, s. 188.
[I. L. R., 1 All., 527

PUBLIC HIGHWAYS, POWERS OF MUNICIPAL COMMISSIONERS OVER—

See BENGAL MUNICIPAL ACT, III OF 1864.
[I. L. R., 2 Calc., 425

See PUBLIC ROAD . I. L. R., 7 All., 362

PUBLIC NUISANCE.

See NUISANCE—PUBLIC NUISANCE UNDER PENAL CODE.

PUBLIC OFFICER.

See COLLECTOR . I. L. R., 3 All., 20

See OFFICIAL TRUSTEE.
[I. L. R., 7 Calc., 499

PUBLIC POLICY, AGREEMENTS CONTRARY TO—

See CHAMPERTY.
[I. L. R., 2 Calc., 233
13 B. L. R., 530
6 Bom., A. C., 63
8 Bom., O. C., 1
7 Mad., 128
23 W. R., 165

See CASES UNDER CONTRACT ACT, s. 23—ILLEGAL CONTRACTS—AGAINST PUBLIC POLICY.

PUBLIC POLICY, CUSTOM CONTRARY TO—

See HINDU LAW—CUSTOM—IMMORAL CUSTOMS . I. L. R., 1 Mad., 168, 356

PUBLIC PROSECUTOR.

See CRIMINAL PROCEEDINGS.
[8 Bom., Cr., 126

——— *Government pleader.—Withdrawal from prosecution.—Criminal Procedure Code, 1882, s. 494.—Held* by the Full Bench that a person appointed by the Magistrate of the district, under section 492 of the Criminal Procedure Code, to be Public Prosecutor for the purpose of a particular case tried in the Court of Session, has not the power of a Public Prosecutor with regard to withdrawal from prosecution under section 494. QUEEN-EMPRESS *v.* MADHO
[I. L. R., 8 All., 291

PUBLIC ROAD.

See JURISDICTION OF CIVIL COURT—MAGISTRATE'S ORDERS, INTERFERENCE WITH— . . 7 W. R., 11, 48, 95
[8 W. R., 239
3 B. L. R., A. C., 305
3 B. L. R., Ap., 43

See CASES UNDER JURISDICTION OF CIVIL COURT — PUBLIC WAYS, OBSTRUCTION OF—

See OWNERSHIP, PRESUMPTION OF—
I. L. R., 7 All., 362

See CASES UNDER RIGHT OF SUIT—OBSTRUCTION OF PUBLIC HIGHWAY.

1. ——— User of road by public.—*Evidence that road is public.*—In order to establish that a road is a public road, it is sufficient if acts of user by the public are shown to have been acquiesced in by the owner of the land over which the road passes, and that those acts are of such a character as to warrant the inference that the owner intended to make over to the public the right to use the land as a public highway. ANDERSON *v.* JUGGODUMBA DABI
[6 C. L. R., 282

2. ——— Suit to remove trees planted on public road.—*Space on sides of road.*—A public road includes a fair margin on either side of the road, which may be used for various purposes in connection with the road itself. Where trees have

PUBLIC ROAD.—Suit to remove trees planted on public road—*continued.*

been planted on the margin of a public road, a suit will not lie by the proprietor of the land through which the road passes to have them removed. HARRENDRO COOMAR CHOWDHRY *v.* TARAMONI CHOWDHRAIN . . . . . 7 C. L. R., 272

3. ——— **Diversion of road.**—*Right of owners of land adjoining old road.—Grant by municipality of land forming old road.—N.-W. P. and Oudh Municipalities Act, XV of 1873), s. 38.—Power of municipality over public highway.*—There is a presumption that a highway, or waste land adjoining thereto, belongs to the owners of the soil of the adjoining land. Section 38 of Act XV of 1873 (N.-W. P. and Oudh Municipalities Act) was not intended to deprive persons of any private right of property they have in the land used as a public highway, or to confer such rights on the municipality, nor has the section any such effect. In a case where such land ceased to be used as a public highway, and was granted by the municipality to third persons, who proceeded to build thereon,—*Held* that the owners had a good cause of action against such persons for the demolition of the buildings and restoration of the property to its original condition. NIHAL CHAND *v.* AZMAT ALI KHAN . . I. L. R., 7 All., 362

PUBLIC HEALTH, OFFENCE AFFECTING—

——— *Penal Code, s. 269.—Travelling in a train while suffering from cholera.—K.*, knowing that he was suffering from cholera, entered a train as a passenger without informing the railway company's servants of his condition. *M.*, knowing of *K's* condition, bought *K.'s* ticket and travelled with him. *Held* that *K.* was properly convicted under section 269 of the Penal Code of negligently doing an act which was, and which he had reason to believe was, likely to spread infection of a disease dangerous to life, and *M.* of abetment of *K.'s* offence. QUEEN-EMPRESS *v.* KRISHNAPPA . I. L. R., 7 Mad., 276

PUBLIC SAFETY, OFFENCE AFFECTING—

See CHARGE—FORM OF CHARGE—SPECIAL CASES. . . . . 1 Bom., 137

PUBLIC SERVANT.

See ASSAULT ON PUBLIC SERVANT.
[13 W. R., Cr., 49
I. L. R., 9 Bom., 558

See ESCAPE FROM CUSTODY.
[I. L. R., 6 All., 129

See FALSE EVIDENCE—FABRICATING FALSE EVIDENCE . I. L. R., 8 All., 653
[3 Agra, Cr., 1
7 Bom., Cr., 64
I. L. R., 5 All., 553
7 N. W., 134
8 W. R. Cr., 27
19 W. R., Cr., 40
I. L. R., 6 All., 42

PUBLIC SERVANT—*continued.*

See CASES UNDER PENAL CODE, s. 182.

See PENAL CODE, s. 221.
[I. L. R., 3 All., 60

See SANCTION TO PROSECUTION—WHERE SANCTION IS NECESSARY.
[I. L. R., 3 Calc., 758: 2 C. L. R., 520

——— **Acts done by—**

See MUNSIF . . 1 Bom., 144
See PENAL CODE, s. 217.
[I. L. R., 3 Calc., 412

——— **Contempt of authority of—**

See COMPLAINANT.
[I. L. R., 2 Bom., 653

See CASES UNDER CONTEMPT OF COURT—PENAL CODE, s. 174.

See CALES UNDER CONTEMPT OF COURT—PENAL CODE, s. 228.

——— **Disobedience of direction of law by—**

See CRIMINAL PROCEDURE CODE, 1882, s. 45 (1872, s 90).
[I. L. R., 1 Mad., 266

See PENAL CODE, s. 217.
[I. L. R., 1 Mad., 266

——— **Disobedience of order of—**

See CASES UNDER PENAL CODE, s. 188.

——— **Disobedience of, with intent to save person from punishment.**

See PENAL CODE, s. 217.
[I. L. R., 3 Calc., 412

——— **Obstruction of, in execution of his duty.**

See ESCAPE FROM CUSTODY.
[2 Bom., 134: 2nd Ed., 128

1. ——— **Municipal Commissioner.**—*Act XXVI of 1850.—Bom. Reg. II of 1827, s. 43.*—A municipal commissioner appointed under Act XXVI of 1850 was a public servant within the meaning of Regulation II of 1827, section 43; and consequently a Munsif had no jurisdiction to try a suit brought against him for acts done in his public capacity. GREAVES *v.* BHAGVAN TULSI
[4 Bom., A. C., 93
REG. *v.* PURSHOTAM VALJI . 5 Bom., Cr., 33

2. ——— **Person performing public duties.**—*Penal Code, s. 21.*—Any person, whether receiving pay or not, who chooses to take upon himself duties and responsibilities belonging to the position of a public servant, and performs those duties and accepts those responsibilities, and is recognised as filling the position of a public servant, must be regarded as one, and it does not lie in his mouth to

PUBLIC SERVANT.—Person performing public duties—*continued.*

say subsequently that, notwithstanding his performance of public duties and the recognition by others of such performance, he is not a "public servant" within the definition contained in section 21 of the Penal Code. QUEEN-EMPRESS *v.* PARMESHAR DAT [I. L. R., 8 All., 201

3. ——— **Engineer receiving municipal pay.**—*Penal Code, s. 21.*—An engineer who receives and pays to others municipal moneys is a public servant within the meaning of section 21, clause 10, of the Penal Code, although he may not have the power of sanctioning the expenditure of such moneys. REG *v.* NANTAMBAM UTTAMBAM [6 Bom., Cr., 64

4. ——— **Izaphatdar.**—*Penal Code, s. 21.—Lesses of village undertaking to keep forest accounts.—Officer.*—The word "officer" in section 21, clause 9 of the Penal Code, means a person employed to exercise to some extent a delegated function of Government: he must be either himself armed with some authority or representative character, or his duties must be immediately auxiliary to those of some one who is so armed. Hence an izaphatdar —*i.e.*, a lessee of a village who has undertaken to keep an account of its forest revenues and pay a certain proportion to the Government, keeping the remainder for himself—is not an officer, and, therefore, not a public servant within the meaning of section 21. REG. *v.* RAMAJIRAV JIVBAJIRAV [12 Bom., 1

5. ——— **Labourer employed by Government.**—*Penal Code, s. 21.*—A carter employed by Government is not a public servant within the meaning of section 21 of the Penal Code. QUEEN *v.* NACHIMUTTU . . I. L. R., 7 Mad., 18

6. ——— **Mohurrir appointed under Beng. Act IX of 1862.**—*Money received for registering deeds.*—Money received by a mohurrir appointed under the Registration Act, Bengal Act IX of 1862, by way of fees for registering deeds, is money entrusted to him as a public servant. QUEEN *v.* DWARKANATH GHOSE . . 20 W. R., Cr., 49

7. ——— **Court of Wards peon.**—*Penal Code, s. 21.*—A peon employed by the manager of an estate under the charge of the Court of Wards is not a public servant within the meaning of section 21 of the Penal Code. QUEEN *v.* ARAYI [I. L. R., 7 Mad., 17

8. ——— **Person appointed by Government Solicitor to act as Prosecutor in the Police Courts.**—*Penal Code, s. 21.*—A person appointed by the Government Solicitor with the approval of Government and under an arrangement by the Governor General in Council to act as Prosecutor in the Calcutta Police Courts, is a public servant within the meaning of section 21 of the Penal Code. EMPRESS *v.* BUTTO KRISTO DOSS [I. L. R., 3 Calc., 497

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9. ——— **Civil Surgeon.**—*Penal Code, ss. 116 and 161.—Abetment of illegal gratification.*—Where the accused was charged under section 116, Penal Code, with having abetted the commission of an offence punishable under section 161 of that Code, the person abetted having been a Civil Surgeon of a sudder station, it was held that the enhanced imprisonment prescribed by the latter part of section 116 could not be awarded, as the Civil Surgeon was not a public servant within the words of the section "whose duty it is to prevent the commission of such offence." QUEEN *v.* RAMNATH SARMA BISWAS [21 W. R., Cr., 9

10. ——— **Peon of Collector's Court.**—*Penal Code, s. 21, cl. 9, and s. 161.—Illegal gratification.—Peon remunerated by fees.*—A peon of the Collector's Court, who received no fixed pay from the Government, but was remunerated by fees whenever employed to serve any process, and was placed on the register of supernumerary peons, had been ordered by the Magistrate to do duty on a particular day at the office of the special Sub-Registrar, where he was detected receiving an eight-anna piece from a person, and was prosecuted for receiving an illegal gratification as a public servant. *Held* that the peon was a public servant under the definition in the 9th clause of section 21 of the Penal Code, and the the trial of the charge against him must be proceeded with. QUEEN *v.* RAM KRISHNA DAS [7 B. L. R., 446

S. C. QUEEN *v.* RAMKISTO DASS [16 W. R., Cr., 27

11. ——— **Officer employed in Criminal Court.**—*Obtaining valuable thing without consideration.—Illegal gratification.—Penal Code, s. 165.*—*K*, a police officer, employed in a Criminal Court to read the diaries of cases investigated by the police and to bring up in order each case for trial with the accused and witnesses, after a case of theft had been decided by the Court in which the persons accused were convicted, and a sum of money, the proceeds of the theft, had been made over by the order of the Court to the prosecutor in the case, asked for and received from the prosecutor a portion of such money, not as a motive or reward for any of the objects described in section 161 of the Penal Code, but as "dasturi." *Held* that *K.* was not, under these circumstances, punishable under section 161 of the Penal Code, but under section 165 of that Code. EMPRESS OF INDIA *v.* KAMPTA PRASAD [I. L. R., 1. All., 530

12 ——— **Poddar of Bank of Bengal.**—*Illegal gratification.—Penal Code, ss. 21 and s. 161.*—The manager of a Court of Wards estate paid into a bank, carrying on the treasury business of the Government, a sum of money on behalf of Government. *B.*, a poddar in the bank, demanded and took a reward for his trouble in receiving the money. On *B.* being prosecuted and charged under section 161 of the Penal Code,—*Held* that, although the money might have been paid on account of Government, it was on behalf of the bank, and not

PUBLIC SERVANT.—Poddar of Bank of Bengal—*continued.*

on behalf of the Government; that the money was received by the accused; and that the poddar was a servant of the bank only, and not a public servant within the meaning of clause 9, section 21 of the Penal Code. IN THE MATTER OF THE PETITION OF MODUN MOHUN . . . I. L. R., 4 Calc., 376

13. ——— Convict warders.—*Penal Code, s. 223.—Suffering an escape from custody.*—Convict warders are "public servants" within the meaning of section 223 of the Penal Code. QUEEN *v.* KALLACHAND MOITREE . 7 W. R., Cr., 99

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[I. L. R., 2 Calc., 383

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[I. L. R., 6 Mad., 287

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1. ——— Weight to be attached to.—Observations of the Privy Council as to the weight to be attached to the opinions of pundits. COLLECTOR OF MADURA *v.* MUTU RAMALINGA SATHUPATHY
[1 B. L. R., P. C., 1 : 12 Moore's I. A., 397 : 10 W. R., P. C., 17

2. ——— *Pundits disagreeing with current authorities.*—The opinions of pundits must not be taken on their authority to be a correct exposition of the law when such opinions are discordant from works of current and established authority. COLLECTOR OF MASULIPATAM *v.* CAVALY VENCALA NARAINAPAH
[2 W. R., P. C., 61 : 1 Moore's I. A., 529

3. ——— Reference to pundits.—*Statement of case.*—Every reference in a suit to law officers likely to bind a right should embrace all important facts proved or admitted in the cause which may affect the conclusion, and it is the duty of the Court itself so to frame the questions as to elicit an

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[2 W. R., P. C., 4 : 8 Moore's I. A., 400

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[12 B. L. R., Ap., 7

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[3 B. L. R., A. C., 423

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[3 Bom., Cr., 54

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[3 Bom., Cr., 10
4 Mad., Ap., 9
6 Mad., Ap., 41
7 Mad., Ap., 8

——— ss. 26 & 29.—*Duty of guard.—Injury to coolies getting on train when in motion.*—Where some coolies were employed in assisting a ballast train into motion at a railway station, and one of them, after pushing the train, in getting up on the train, or in attempting to do so, fell and was so injured that he afterwards lost his life,—*Held* that the evidence did not show that it was the duty of the guard to see that no one got up on the train when in motion. QUEEN *v.* FLOOD
[8 W. R., Cr., 43

——— s. 27.

See JURISDICTION OF CRIMINAL COURT—OFFENCES COMMITTED DURING JOURNEY.
[1 Mad., 193

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[3 Bom., Cr., 54

——— (XXV OF 1871), s. 2.—*Act XVIII of 1854, s. 17.—Refusal to produce ticket.—Fraudulent intention.—Trespass.—Passenger by rail.*—The plaintiff entered a carriage on the defendants' railway at Surat with the purpose of proceeding to Bombay. By an oversight, and without any fraudulent intent, he omitted to procure a ticket at Surat. On arriving at Nowsari he applied to the station master for a ticket to Bombay, but was refused; he was, however, allowed by the defendants' servants to proceed in the same train to Bulsar, where he again applied for a ticket, and was again refused, but was directed by the defendants' servants to get into the train and not leave it again. At Dhandu he again got out and applied for a ticket to the station master. During a discussion between the plaintiff's master and the station master, the plaintiff, at the direction of his master, re-entered the train. Ultimately the station master refused to give the plaintiff a ticket, and ordered him to get out of the train; and, on his not complying with this order, sent a sepoy, who forcibly removed the plaintiff from the carriage. In an action by the plaintiff to recover damages for the forcible and illegal removal of the plaintiff from the carriage, and for the illegal detention of the plaintiff at the station at Dhandu, and for the illegal refusal of the defendants to allow the plaintiff to proceed in the train to Bombay,—*Held*, 1st, that the latter portion of section 2 of Act XXV of 1871, amending section 1 of Act XVIII of 1854, which provides for payments to be made by persons failing to produce their tickets when demanded by the servants of the company, applies only to the case of a person who has received a ticket and will not or cannot produce it, and not to a person travelling without having obtained a ticket with no

RAILWAY ACT (XXV OF 1871), s. 2— *continued.*

intention to defraud; 2nd, that the absence of a fraudulent intention did not make the entry into the carriage less unlawful, and consequently that the plaintiff started from Surat as a trespasser; 3rd, that the conduct of the railway officials at the stations intermediate between Surat and Dhandu, if it amounted at all to leave and license to the plaintiff to proceed without a ticket, could only operate as such until the train stopped at the next station; 4th, that there was no legal obligation on the station master to issue a ticket to the plaintiff to enable him to proceed from Dhandu. PRATAB DAJI *v.* BOMBAY, BARODA, AND CENTRAL INDIA RAILWAY COMPANY **[I. L. R., 1 Bom., 25**

——— **s. 21.**—*Allowing cattle to stray on the line.—Fences to line.*—On the 10th April 1874 prisoner's cow strayed on a railway line provided with a fence. On the 13th June following, the Government published rules under section 21 of the Railway Act Amendment Act, 1871, determining what kind of fences should be deemed to be suitable for the exclusion of cattle. On the date of the offence there were no such rules. No evidence was offered of the state of the fence, and the prisoner was convicted solely on his admission that he was the owner of the cow. *Held* that the state of the fences required specific proof, in the absence of which the conviction could not be sustained. ANONYMOUS **[8 Mad., Ap., 1**

——— **s. 29.**—*Endangering life by negligence.—Precaution taken by others to avoid danger.*—The prisoner, a servant of a railway company, was convicted, under section 29 of Act XXV of 1871, of endangering the lives of the persons in a certain train by negligence. There was no evidence that the safety of any persons in any train had been endangered by his neglect of duty. On the contrary, by reason of precautions taken by other persons, any possible danger which might have resulted from his neglect was avoided. *Held* that he could not be convicted and punished under section 29 of Act XXV of 1871. QUEEN *v.* MANPHOOL . . **5 N. W., 240**

——— **(IV OF 1879), s. 10.**

See CARRIERS. **[I. L. R., 10 Calc., 166, 210**

1. ——— **s. 11 & sch. II (1).**—*Silks.—Insurance.—Loss of goods by railway company.*—The term "silks in a manufactured state and whether wrought up or not wrought up with other materials" used in the second schedule of the Railway Act, 1879, does not apply to all classes of goods in which silk may be introduced. A cloth composed of silk and cotton thread, one eighth being silk and seven eighths cotton, the proportionate value of silk and cotton being one to four and a half, does not come within the meaning of the said term. SAMINADHA MUDALI *v.* SOUTH INDIAN RAILWAY COMPANY . . . . **I. L. R., 6 Mad., 420**

2. ——— **s. 11.**—*Railway Act, 1854, s. 10.—Silk.—Question of fact.*—Whether or not cotton

RAILWAY ACT (IV OF 1879), s. 11— *continued.*

fabrics bordered with silk, or having a portion of silk otherwise used in their manufacture, are "silks in a manufactured or unmanufactured state, wrought up or not wrought up with other materials," within the meaning of Act XVIII of 1854, section 10, is a question of fact to be decided on the evidence, not a question of law to be reserved for the opinion of the High Court, under Act IX of 1850, section 55, and Act XXVI of 1864, section 7. *Semble,*—The proper test for a Judge to apply in such cases is to determine whether or not the value of the silk wrought up with other materials is more than half the value of the fabric. If it be not, the fabric cannot be considered to be silk within the meaning of the Act. LAKHMIDAS HIRACHAND *v.* G. I. P. RAILWAY COMPANY . . . **4 Bom., O. C., 129**

——— **ss. 17, 31.**—*Passenger not producing season ticket when called upon.—Travelling without a ticket.—Order for recovery of fare.*—A passenger who has obtained a monthly ticket is liable to be called upon to produce it at any time on the journey which it covers, and if he does not so produce it, he is liable under sections 17 and 31 of the Railway Act to pay the fare for the journey between the stations for which his ticket was issued. The order under section 31 in case of his refusal to pay it, should be one merely for recovery of the amount due as the fare, and not an order to pay such or any other sum as if it were a fine. A passenger who has such a ticket which is still in force and in his possession, cannot be said to be travelling without a ticket within the meaning of section 31, merely because he does not happen to have the ticket with him, and therefore cannot produce it when called upon to do so. IN THE MATTER OF THE PETITION OF BUSKIN. IN THE MATTER OF THE PETITION OF THOMAS. HART *v.* BUSKIN. HART *v.* THOMAS **[I. L. R., 12 Calc., 192**

——— **s. 26.**—*Disobedience of rule.—Accident.—Liability.*—Liability to conviction under section 26 of the Railway Act, 1879, arises not from the consequences directly referable to the breach of the rule, but because of the danger which the breach of the rule entails. SNELL *v.* QUEEN **[I. L. R., 6 Mad., 201**

RAILWAY COMPANY.

See CONTRACT—PRIVITY OF CONTRACT. **[17 W. R., 240**
18 W. R., 145

See MUNICIPAL TAX . **9 Bom., 217**

See NEGLIGENCE . . **9 W. R., 73**
[I. L. R., 1 All., 60

See PRINCIPAL AND AGENT—LIABILITY OF PRINCIPAL . **I. L. R., 5 Bom., 371**

See CASES UNDER RAILWAY ACTS.

1. ——— **Liability for nuisance caused by works.**—*Statutory powers.—Beng. Reg. I of 1824.—Act XLII of 1850.—Land taken for public purposes.—Suit for injunction to restrain nuisance*

RAILWAY COMPANY.—Liability for nuisance caused by works—*continued.*

—The plaintiffs, the owners and occupiers of a house and premises in Howrah, sued for an injunction to restrain a nuisance caused by certain workshops, forges, and furnaces erected by the defendants, and for damages for the injury done thereby. The defendants were a railway company incorporated under an Act of Parliament for the purpose of making and maintaining railways in India, and by an agreement (entered into under their Act of Incorporation) between them and the East India Company, they were authorised and directed to make and maintain such railway stations, offices, machinery, and other works (connected with making, maintaining, and working the railways) as the East India Company might deem necessary or expedient. The workshops complained of were erected in 1867 under the sanction of the Bengal Government on land purchased by the Government in 1854 for the purposes of the railway under Regulation I of 1824 and Act XLII of 1850, and which had been made over to the defendants. *Held*, a nuisance having been proved to exist,—that is to say, such annoyance as materially interfered with the ordinary comfort of human existence in the house, and caused sensible injury to the property, of the plaintiffs,—the defendants could not plead laches or acquiescence on the plaintiffs' part, as, upon the plaintiffs complaining in May 1870, the defendants had admitted that there was a nuisance, and had up to June 1871 made various efforts to abate it. Nor could the defendants escape liability on the ground that the nuisance had been caused by them in the reasonable exercise of powers conferred upon them by the Legislature. An injunction was granted restraining the defendants, and liberty to apply was reserved in the decree. On a motion by the defendants, supported by an affidavit showing the alterations which they proposed to make with the view of abating the nuisance, and alleging that a period of three months was required to carry out these alterations, and that a refusal to grant this time would necessitate the closing of the company's workshops, and would occasion great inconvenience, the Court granted the time asked for, on the conditions that the defendants paid the costs of the application, and did all they possibly could in the meanwhile to prevent annoyance to the plaintiffs. RAJ MOHUN BOSE *v.* EAST INDIAN RAILWAY COMPANY

[10 B. L. R., 241

2. ——— **Fire caused by spark from engine.**—*Action for damages.—Negligence.—Statutory powers.*—The East Indian Railway Company was incorporated under 12 and 13 Victoria, Cap. XCIII, "for the purpose of making and constructing, working and maintaining" the East Indian Railway, including all necessary, accessary, or convenient extensions, branches, &c., as might be agreed upon between the Railway Company and the East India Company; and by agreement between the Railway Company and the East India Company, dated 17th August 1849, the Railway Company was "authorised and directed to make and maintain such stations, offices, machinery, and other works and conveniences connected with the making, maintaining, and working the railway," and "to provide a good and sufficient working stock of engines, carriages, and other plant and machinery for working the said railway." The plaintiff was the owner of a piece of land adjoining the railway line at Kharmatta, a station on the Chord Line of the Company's railway, on which land was erected a bungalow, with stables and out-houses adjoining. In an action brought by the plaintiff against the Railway Company to recover compensation for damages occasioned by a fire caused by a spark from one of the engines of the Company, the plaint alleged want of due care on the part of the defendants in the management of the line by allowing dry grass of too great a length to remain on the railway banks, and in driving their engines along the line without due precautions being taken to prevent the expulsion of sparks. *Held* that the defendant Company was authorised to run locomotive engines on the lines of railway constructed by the Company under the statutory powers given to it, and, therefore, the Company was not liable for damage caused in working the line under such statutory powers, without proof of negligence. *Held*, also, on the evidence, that neither in the construction of their engines, nor in the condition of the railway banks, was any negligence shown on the part of the Company. HALFORD *v.* EAST INDIAN RAILWAY COMPANY

[14 B. L. R., 1

See also MADRAS RAILWAY COMPANY *v.* ZEMINDAR OF CARVETINAGARAM

[14 B. L. R., 209 : 22 W. R., 279
L. R., 1 I. A., 364

3. ——— **Liability of company.**—*Loss of articles not declared or insured.—Liability between arrival and delivery.*—A railway company is not liable for non-delivery of articles specified in section 10, Act XVIII of 1854, the value of which has neither been declared nor insured. The protection conferred by that section extends till such time as the consignee takes delivery, and does not terminate on the arrival of the articles at their destination. ILLOOR KRISTNIAH *v.* GREAT INDIAN PENINSULAR RAILWAY COMPANY. ILLOOR KRISTNIAH *v.* MADRAS RAILWAY COMPANY . . **I. L. R., 2 Mad., 310**

4. ——— *Railway Act, 1854, s. 10.—Declaration of nature of goods.—Silver.—Loss by criminal act of company's servants.*—Section 10 of the Railway Act, which provides that no railway company shall in any case be answerable for loss or injury in respect of gold, silver, and other excepted articles delivered for carriage, unless the conditions of that section are fulfilled, applies where the loss has been caused by the criminal acts of the company's servants. *Semble*,—If, after declaration made by the sender of an excepted article entitling the railway company to receive an increased charge, the goods are carried at the ordinary rates, the sender would be entitled to recover in case of loss. The conditions of section 10 are not fulfilled by the sender merely giving an account of the quantity and description of the goods delivered for carriage when required to do so by the booking clerk. To establish

RAILWAY COMPANY.—Liability of company—*continued.*

the liability of the railway company in the case of excepted articles, the declaration required by section 10 must be made in such a manner as to intimate that the sender invites the company to undertake the special risk and is willing to pay the special rates. VENKATACHALA *v.* SOUTH INDIAN RAILWAY COMPANY . . . . . **I. L. R., 5 Mad., 208**

5. ——— *Negligence.—Liability for injury.—Act XVIII of 1854, s. 11.*—A railway company is liable for injury sustained by goods committed to their care, if they have been guilty of gross negligence. ASSAM TEA COMPANY *v.* EAST INDIAN RAILWAY COMPANY . **Bourke, O. C., 39**

6. ——— *Damage done not covered by risk note.—Onus probandi.*—A company, though protected from certain risks by a risk note, is not absolved from all liability or able to impose on the consignor the burden of proving that the loss or non-delivery of the goods was caused by some default not covered by the risk note for which the company is liable. SUNTOKH RAI *v.* EAST INDIAN RAILWAY COMPANY . . . . . **2 Agra, 200**

7. ——— *Liability of company.—Carriers of goods.—Act XVIII of 1854, s. 11.—Negligence.*—The East Indian Railway Company cannot, under section 11 of Act XVIII of 1854, limit their responsibility as carriers in respect of ordinary goods so as not to be liable for loss or injury caused by gross negligence or misconduct, though possibly they may, with the consent of Government, limit their liability by contract or notice for loss arising otherwise than by gross neglect. EAST INDIAN RAILWAY COMPANY *v.* JORDAN **[4 B. L. R., O. C., 97: 14 W. R., O. C., 11**

8. ——— *Carriers.—Insufficiency of evidence.*—The consignees of two bundles of cow-hides which had been carried by a railway company having refused to take delivery on the ground of shortness in the number of pieces, the railway company pleaded that they were not indebted, as they had contracted to carry such and such a number of bundles, and had done so. The bills of lading showed so many bundles said to contain such a number of pieces The company also contested the plaintiff's enumeration of pieces. *Held* that the railway company was not liable, there being no evidence that the bundles had been broken or the hides counted by pieces. SCHLARPFER, PUTZ, & Co., *v.* EASTERN BENGAL RAILWAY COMPANY **[21 W. R., 380**

9. ——— *Carriers.—Evidence.—Burden of proof of negligence.—Misdescription of goods.—Act III of 1865 (Carriers Act), s. 9.—Act XVIII of 1854, s. 11.*—The plaintiff caused to be delivered to the defendants, for carriage from Bombay to Oojein, certain goods, among which were twelve bags of sugar-candy. His agent, when signing the consignment note at the railway station, erroneously, but without fraudulent intent, stated the contents of the twelve bags to be alum, for which a lower freight was charged by the defendants.

RAILWAY COMPANY.—Liability of company—*continued.*

The railway clerk received the goods and gave a receipt note, on which the following condition was printed: "The company give notice that they are not responsible for loss or damage arising from fire, the act of God, or civil commotion." In the course of the journey a fire broke out in the train, and a large portion of the plaintiff's goods, including ten bags of the sugar-candy, was destroyed. In an action for damages for non-delivery,—*Held* (1), under the provisions of section 9 of the Carriers Act (III of 1865), the burden of proving negligence on the part of the defendants did not rest upon the plaintiff, notwithstanding the condition in the receipt note; (2), the misdescription, by the plaintiff's agent, of the twelve bags of sugar-candy as alum did not exonerate the defendants from all liability to the plaintiff in respect of these bags. The plaintiff, however, was only entitled to recover, in respect of the ten lost bags, the value of alum only, and not sugar-candy; while the defendants, on the other hand, could not, in respect of the said ten bags, charge freight as for sugar-candy. ISHVARDAS GULASCHAND *v.* G. I. P. RAILWAY COMPANY . **I. L. R., 3 Bom., 120**

10. ——— *Act XVIII of 1854, ss. 11 and 43.—Carriers.*—The defendants having made arrangements with the Madras Railway Company for the through carriage of goods, received from the plaintiff's agent at Poona thirty bags of jowari to be conveyed thence to Bellary and delivered to the plaintiff's agent there. The "goods consignment note," which was signed by the plaintiff's agent at Poona, contained the following condition, of which he had due notice: "The Company receive goods for conveyance to stations on other railways with which they have made arrangements to book through, *subject to the rules and regulations and rates and fares of the respective companies over whose lines the goods may pass.*" On reaching Raichore the bags of jowari were transferred from the defendants' waggon, in which they had left Poona, into a waggon of the Madras Railway Company. One bag was subsequently lost; but the remaining twenty-nine arrived, and were unloaded in good condition at Bellary on the 19th September 1877. No steps were taken, either by the defendants or by the Madras Railway Company, to give information of the arrival of the bags to the consignee, and he never received them. The plaitiff sued to recover their value. The defendants pleaded, (1) that, under a rule of the Madras Railway in force at the time of the making of the contract between the plaintiff and the defendants, delivery was complete the instant the bags were unloaded at Bellary; and (2) that the plaintiff's agent at Bellary did not apply for the goods, but allowed them to remain in the station-yard until they became rotten by rain and were destroyed by order of the Collector some time in November. The Madras Railway Company had issued a public notice of the above rule in the following terms: "The Madras Railway Company hereby give public notice that they will not be responsible for loss of, or damage to, grain after it has been unloaded from the Company's waggons." The defendants sought to incorporate this notice

RAILWAY COMPANY.—Liability of company—*continued.*

into their contract with the plaintiff by virtue of the condition printed in their "goods consignment note." *Held* that the said public notice afforded no protection to the defendants, on the ground that it was invalid as a regulation for non-compliance with the provisions of section 43 of Act XVIII of 1854, inasmuch as it had not been sanctioned by the Local Government, and had not been posted up at all the stations of the Madras line of railway; and that it could not otherwise be binding against the plaintiff, as neither the plaintiff nor his agent were shown to have had any knowledge of it at the time of entering into the contract with the defendants. *Quære,*—Whether, if the plaintiff or his agent had such knowledge at the time of making the consignment, the notice would have constituted such a stipulation as to contravene section 11 of Act XVIII of 1854, or whether it might be read together with that section, and treated as effectual, except so far as its operation would be limited in its scope by that section. *Held,* also, that the arrival of the grain at the station of destination (Bellary) having been proved, the burden of showing that the goods were ready for delivery to the plaintiff for a reasonable time after such arrival lay on the defendants, although no proof had been given of any application for delivery by the plaintiff within a reasonable time. It is the duty of a railway company to keep goods, which have reached the station of their destination, ready there for delivery until the consignee in the exercise of due diligence can call for and remove them, and it is the duty of the consignee to call for and remove them within a reasonable time. *Semble,*—The object of section 11 of Act XVIII of 1854 is to preclude railway companies from being able by any stipulation to escape from liability for loss or injury to goods caused by the gross negligence or misconduct of their agents or servants. SURUTRAM BHAYA *v.* G. I. P. RAILWAY COMPANY

[I. L. R., 3 Bom., 96

11. ——————— *Carriers, Liability of.—Contract Act (IX of 1872), ss. 151, 152.—Act XVIII of 1854.—Act III of 1865.*—The English common law rule, under which common carriers are held liable as insurers of goods against all risks except the act of God or the King's enemies, is not now in force in India. In cases not met by the special provisions of the Act relating to railways and carriers, the liability of carriers for loss or damage to goods entrusted to them is prescribed by sections 151 and 152 of the Contract Act (IX of 1872). The plaintiff's goods were being carried in a train of the defendants from Nandgaon to Egatpuri. During the journey the train was plundered by robbers, and the plaintiff's goods were stolen. *Held,* the defendants were entitled to the benefit of section 152 of the Contract Act, and should be permitted to give evidence that the robbers of the plaintiff's goods were not the servants or agents of the defendants, and that the defendants (by their servants and agents) took as much care of their goods as a man of ordinary prudence would, under similar circumstances, take of his own goods of the same bulk, quality, and value as the goods in question. KUVERJI TULSIDAS *v.* G. I. P. RAILWAY COMPANY

[I. L. R., 3 Bom., 109

12. ——————— *Interchange of traffic between two railway companies.—Agency.*—When two railway companies interchange traffic, goods, and passengers with through tickets, rates, and invoices, payment being made at either end and profits shared by mileage, the receiving company, by granting a receipt-note for goods to be carried over and delivered at a station of the delivering company's line, does not thereby contract with the consignor of the goods as agent of the delivering company. KALEE KAHU RUM MAIGRAJ *v.* MADRAS RAILWAY COMPANY . . . I. L. R., 3 Mad., 240

RAILWAY RECEIPT.

See CONTRACT—BREACH OF CONTRACT.

[8 B. L. R., 581

RAJ, SUCCESSION TO—

See HINDU LAW—ALIENATION—RESTRAINT ON ALIENATION.

[I. L. R., 8 Calc., 199

See HINDU LAW—CUSTOM—INHERITANCE.

[3 B. L. R., P. C., 13
9 B. L. R., 310, note
6 W. R., P. C., 1; 2 Moore's I. A., 344
2 W. R., 232
W. R., F. B., 97
I. L. R., 1 Calc., 186

See CASES UNDER HINDU LAW—INHERITANCE—IMPARTIBLE PROPERTY.

RAPE.

See SENTENCE—GENERAL CASES.

[6 W. R., Cr., 59

See SENTENCE—TRANSPORTATION.

[1 B. L. R., A. Cr., 5

1. ——— **Consent.**—*Consent through fear of injury.*—Sexual intercourse by a man with a woman without her free consent—*i.e.,* a consent obtained without putting her in fear of injury—amounts to rape; and the Judge should leave the question to the jury, and not direct them to find that the woman's consent after a considerable struggle renders the charge of rape nugatory. QUEEN *v.* AKBAR KAZEE . . . 1 W. R., Cr., 21

2. ——— **Attempt to commit rape.**—*Indecent assault.—Penal Code, ss. 354, 375, and 511.*—An indecent assault upon a woman does not amount to an attempt to commit rape, unless the Court is satisfied that there was a determination in the accused to gratify his passions at all events, and in spite of all resistance. *Reg.* v. *Lloyd, 7 C. & P., 318,* followed. EMPRESS *v.* SHANKAR

[I. L. R., 5 Bom., 403

RASHNESS.

See CULPABLE HOMICIDE
[I. L. R., 4 Calc., 764., 815
7 Mad., 119
I. L. R., 3 All., 597, 776
I. L. R., 6 All., 248

RATIFICATION.

See COMPANY—POWERS, DUTIES AND LIABILITIES OF DIRECTORS.
[I. L. R., 3 Calc., 280

See GUARANTEE . I. L. R., 5 Calc., 421

See CASES UNDER GUARDIAN—RATIFICATION.

See HINDU LAW—ALIENATION—ALIENATION BY FATHER . . 2 Bom., 301

See MASTER AND SERVANT.
[2 B. L. R., O. C., 140

See CASES UNDER PRINCIPAL AND AGENT—RATIFICATION.

1. ——— Doctrine of ratification.—*Criminal case.*—The doctrine of subsequent ratification does not apply in a criminal case. REG. *v.* RAMA BIN GOPAL . . . . 1 Bom., 107

2. ——— Delay in repudiating contract.—*Consent.*—Where a party to a contract seeks release from its obligations, on the ground that, for some reason or another, he is entitled to repudiate it, he must assert this right as soon after becoming aware of it as he reasonably can. Long inaction unaccounted for must be held in equity to be a ratification of the contract. ISHAN CHUNDER MOJOOMDAR *v.* SREEKANT NATH . . . . 9 W. R., 110

3. ——— Delay in repudiating act of agent.—*Agent acting contrary to authority of principal.*—Where the proprietors of an estate, on being informed by their agent of a proposition to obtain a lease of the property, refused their consent, and the agent notwithstanding gave the applicant an amuldustuck to enter upon the property as lessee, and gave no notice at the time to the proprietors, but subsequently informed them of it,—*Held* that the proprietors were not under obligation to take early steps to disavow the act of their agent, and their not doing so did not amount to ratification of his act. MUHBOOL BUKSH *v.* SUHEEDUN
[14 W. R., 378

READINESS AND WILLINGNESS.

See CONTRACT—CONDITIONS PRECEDENT.
[3 Mad., 125, 209

See CONTRACT—CONTRACTS FOR GOVERNMENT SECURITIES OR SHARES.
[I. L. R., 9 Calc., 791
3 Bom., O. C., 79
1 Ind. Jur., N. S., 17
2 Bom., 260, 267, 272 : 2nd Ed., 246, 253, 258

See CONTRACT ACT, s. 51.
[I. L. R., 4 Calc., 252

REASONABLE AND PROBABLE CAUSE.

See ARREST—CIVIL ARREST.
[I. L. R., 4 Calc., 583

See CHAMPERTY . I. L. R., 2 Calc., 233
[13 B. L. R., 530

See DEFAMATION . . 2 Agra, 87

See MALICE . . . 2 N. W., 353
[4. N. W., 42

See CASES UNDER MALICIOUS PROSECUTION.

RECEIPT.

See PROMISSORY NOTE—ASSIGNMENT OF AND SUITS ON— . 17 W. R., 201

See REGISTRATION ACT, 1877, s. 17.
[I. L. R., 2 Bom., 489

See STAMP ACT, 1869, SCH. II, CL 7.
[I. L. R., 4 Calc., 829

See STAMP ACT, 1869, SCH. II, CL. 11.
[23 W. R., 403

See STAMP ACT, 1879, s. 61.
[I. L. R., 8 Mad., 11

See STAMP ACT, 1879, SCH. I, ART. 52.
[I. L. R., 6 All., 253
I. L. R., 11 Calc., 271

——— of consideration, Acknowledgment of—

See REGISTRATION ACT, 1877, s. 17.
[I. L R., 1 Bom., 190

——— of mortgage-debt, Memorandum of—

See REGISTRATION ACT, 1877, s. 17.
[I. L. R., 1 Bom., 197

——— for sums paid on bond hypothecating immoveable property.

See REGISTRATION ACT, 1877, s. 17.
[I. L. R., 1 All., 402

——— for rent.

See CASES UNDER EVIDENCE—CIVIL CASES—RENT RECEIPTS.

——— Refusal to give—

See STAMP ACT, 1879, s. 64.
[I. L. R., 9 Bom., 27

RECEIVER.

See ADMINISTRATION.
[I. L. R., 10 Calc., 713

See APPELLATE COURT—OBJECTION TAKEN FOR FIRST TIME ON APPEAL—SPECIAL CASES—PARTIES . . 12 W. R., 117

——— Order as to—

See APPEAL—RECEIVERS.
[I. L. R., 5 Bom., 45
I. L. R., 7 Calc., 719
I. L. R., 6 Mad., 355
1 Mad., 129
6 C. L. R., 467

RECEIVER—*continued.*

——— Order on, to sell.

See ATTACHMENT—SUBJECTS OF ATTACHMENT—PROPERTY AND INTEREST IN PROPERTY OF VARIOUS KINDS.

[I. L. R., 1 Calc., 403

——— Power to appoint—

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—RECEIVER.

[I. L. R., 2 Bom., 558

1. ——— Appointment.—*Appointment out of jurisdiction of High Court—Power of High Court.—Quære,*—Whether the High Court at Calcutta can appoint a receiver of property situate at Bombay. ISMAIL HADJEE HUBEEB *v.* MAHOMED HADJEE JOOSUB. ROHIMA BYE *v.* MAHOMED HADJEE JOOSUB

[13 B. L. R., 91: 21 W. R., 303

2. ——— *Pending suit.*—It is not a matter of course, but when the circumstances are such that a special case is made out, the Court will appoint a receiver, pending litigation to set aside probate. JOYKALLY DABEE *v.* SHIB NATH CHATTERJEE . . . . Bourke, Test., 5

3. ——— *Power of Principal Sudder Ameen.—Semble,*—A Principal Sudder Ameen cannot, like the Court of Chancery, appoint a receiver in a case where the defendant has kept the plaintiff for a considerable time out of assets to which he is jointly entitled with the defendant. JOYNARAIN GEEREE *v.* SHIBPERSHAD GEEREE

[6 W. R., Mis., 1

4. ——— *Grounds for appointment.—Civil Procedure Code, 1882, s. 503.—Waste by Hindu widow.*—The powers conferred by section 503 of the Civil Procedure Code are not to be exercised as a matter of course, and it is not a reason for allowing an application for the appointment of a receiver that it can do no harm to appoint one. The discretion given by that section is one that should be used with the greatest care and caution. Because a plaintiff in his plaint makes violent and wholesale charges of waste and malversation against a defendant in possession of property as executor under a will or as the tenant for life, and upon this basis applies for a receiver to be appointed, it is not a necessary consequence that such appointment should be made. *Held* in this case, where the sons of a Hindu widow, in possession of her husband's estate under a will, sued their mother, as reversioners under the will, for possession of the estate, on the ground of mismanagement and waste, and on the same grounds applied for the appointment of a receiver under section 503 of the Civil Procedure Code, that a receiver had been appointed on insufficient grounds. PROSONOMOYE DEVI *v.* BENI MADHAB RAI . I. L. R., 5 All., 556

5. ——— *Power of Subordinate Judge.—Civil Procedure Code, 1877, ss. 503, 505.*—A Subordinate Judge, if he has good grounds, may decline to appoint a receiver even after he has received the necessary authority from the District Judge under section 505 to do so. GOSSAIN DULMIR PURI *v.* TEKAIT HETNARAIN . 6 C. L. R., 467

RECEIVER.—Appointment—*continued.*

6. ——— *Receiver in suit for arrears of rent and ejectment.—Beng. Act VIII of 1869, ss. 23, 52.—Civil Procedure Code (Act XIV of 1882), ss. 503, 505.*—Although, having regard to the provisions of sections 23 and 52 of Bengal Act VIII of 1869, section 503 of the Civil Procedure Code would not apply to a suit brought under Bengal Act VIII of 1869 merely for arrears of rent, there is no provision in that Act which excludes the operation of section 503 when a suit is brought for recovery of the tenure itself. When, therefore, a suit was brought under Bengal Act VIII of 1869 for arrears of rent and for ejectment of the defendant,—*Held* that a receiver of the rents and profits of the tenure might properly be appointed under the provisions of section 503 of the Civil Procedure Code. KARTIC NATH PANDY *v.* PADMANUND SINGH . . I. L. R., 11 Calc., 496

7. ——— *Civil Procedure Code, 1882, s. 503.—Appointment of receiver after decree.*—In a suit brought in 1880 by the widow of a deceased partner to wind up a partnership, the surviving partner was prohibited by the Court, at the instance of the plaintiff, from collecting debts due to the firm; but leave was given to apply for the recovery of debts which might become barred by limitation. After decree, on the application of the plaintiff, a receiver was appointed under section 503 of the Code of Civil Procedure to collect outstanding debts for the purpose of executing the decree. The receiver having sued in 1883 to recover a debt which was due to the firm in 1879, the suit was dismissed, on the ground, among others, that the appointment of a receiver after decree was *ultra vires. Held* that the appointment of the receiver was valid. SHUNMUGAM *v.* MOIDIN . . I. L. R., 8 Mad., 229

8. ——— Receiver of High Court.—*Position of.—Right to sue and defend suits.*—The Receiver of the High Court does not represent the estate for which he is receiver, but is merely an officer of the Court, and as such cannot sue and be sued, except with the permission of the Court. MILLER *v.* RAM RANJAN CHAKRAVARTI

[I. L. R., 10 Calc., 1014

9. ——— *Position and functions of.—Parties.—Suit for specific preformance.*—The receiver in a suit is nothing more than the hand of the Court for the purpose of holding the property of the litigants whenever it is necessary that it should be kept in the grasp of the Court in order to preserve the subject-matter of the suit *pendente lite;* and the possession of the receiver is simply the possession of the Court. He has no personal rights in the property, nor can he take any steps with regard to it without the sanction of the Court. If it is necessary for him to take action of any sort, he should be put in motion by the Court on the application of the parties to the suit; and whatever he rightly does with regard to the property, he does simply as the agent of the owners of the property.

RECEIVER.—Receiver of High Court— *continued.*

Where the receiver in a suit had, by order of Court, sold certain property in the suit, and had executed the contract of sale in his own name, a plaint praying for specific performance against the purchaser for refusing to complete the contract was admitted with the receiver as co-plaintiff, he having obtained leave to sue. WILKINSON *v.* GANGADHAR SIRKAR **[6 B. L. R., 486**

10. ——————— *Right of suit as receiver and right to possession of property.—Rule of Supreme Court.*—In a suit by *K.* against *B.* and others, the Supreme Court ordered that the estate of *R* (deceased) should be applied to the payment of his debts, legacies, &c., and appointed a receiver of the rents and profits of his real property. It also ordered the defendants and persons claiming through them to give up to the receiver such of the real property as might be in their possession. Subsequently, in the same suit, the High Court declared that *K.* was entitled to a moiety of the estate of *R.* after payment of costs and legacies, and directed the estate to be sold and the proceeds brought into Court. Afterwards the Receiver brought a suit in his own name against *R.* and one *S.*, alleging that, though the property had been decreed to *K.* and himself jointly, yet *K.* had, by collusion, obtained sole possession of it, and that, in execution of a money-decree against her, it had been sold to *S.* *Held* that, as Receiver of the High Court, plaintiff had no title as of right against *S.* to the immediate possession of the property, and no right to sue in another Court in his own person to receive possession thereof. The rule on the Original side of the Court, taken from the practice of the English Court of Chancery, is not to compel a party to a suit to give up to the receiver possession of property unless an order of Court to that effect has previously been made upon him; the proper course being by proceedings in Court to fix an occupation rent, and to order the party in possession to pay the same. RAM LOCHUN SIRCAR *v.* HOGG **[10 W. R., 430**

11. ——— **Power of receiver.**—*Power to question title of third party.*—A receiver appointed by order of the Supreme Court can only sue for possession, and has no right to question the title of a third party in a suit with respect to the property put under his management. DINONATH SREEMONEE *v.* HOGG . . . . . **2 Hay, 395**

12. ——————— *Civil Proceedure Code, 1882, s. 503.—Right to sue.*—A zemindari was attached in execution of certain decrees against the zemindar, and the plaintiff was appointed receiver with full powers, under section 503 of the Code of Civil Procedure, to manage the zemindari. Before the appointment of the receiver, the zemindar had expended certain sums at the defendant's request to repair a tank for the irrigation of lands held by them in common with him. This suit was brought to recover the sum so expended. It was objected that the receiver could not maintain the suit on the ground that the sum sued for was neither the subject of a suit against the zemindar nor property attached in

RECEIVER.—Power of receiver— *continued.*

execution of a decree against him. *Held* that the receiver could maintain the suit. SUNDARAM *v.* SANKARA . . . . **I. L. R., 9 Mad., 334**

13. ——————— *Powers of receiver pending final decree.*—A receiver appointed by the Court in a civil suit with the object of preserving property and keeping it within the reach of the Court until a final decree can be made, can but exercise at the utmost such powers and rights over the property as the parties to the suit turn out to be possessed of when their rights are finally determined. IN THE MATTER OF THE PETITION OF TEIL & CO. TEIL & CO. *v.* ABDOOL HYE . . **19 W. R., 37**

14. ——————— *Civil Procedure Code, 1882, s. 503.*—In 1879 a zemindar granted a lease of part of the zemindari for twenty years, reserving a rent of R18,000 per annum. In 1881, the zemindari having been attached by a creditor, the zemindar granted a new lease in perpetuity in lieu of the former lease, reserving a rent of R12,000 a year. A receiver of the zemindari having subsequently been appointed with full powers under the provisions of section 503 of the Code of Civil Procedure, sued the lessee to recover rent at the rate reserved in the first lease from 1881. *Held* that the receiver was entitled to recover the rent claimed. The provisions of section 503 of the Code of Civil Procedure were intended to declare that the receiver, in respect of all property which was or could be attached, had the powers of the owner as they existed at the time the property was brought under the orders of the Court by attachment, provided that they have not ceased by operation of law. GOPALASAMI *v.* SANKARA . **I. L. R., 8 Mad., 418**

15. ——— **Parties to conveyance.**—*Sale by receiver under order of Court.*—Where certain property, the subject-matter of a suit, in which the Court Receiver had been appointed receiver, was sold in pursuance of an order of Court made by consent of parties,—*Held* that an application by the Court Receiver for an order that the purchaser do complete the purchase according to the conditions of sale must be refused as not being made in proper form. A sale of property under an order of Court by a person appointed receiver in a suit is not a sale by the Court. The fact that such person is the Court Receiver does not place him in a different position. When the receiver sells under such an order, it is necessary that he, being in possession of the property, should be a party to the conveyance. CHANDRA NATH BISWAS *v.* BISWANATH BISWAS **[6 B. L. R., 492, note**

16. ——— **Mode of questioning acts. of receiver.**—*Seizure of property by Collector as receiver.*—Where property is seized and retained by a Collector in his capacity of receiver, his acts cannot be disputed by way of motion to discharge or get rid of the attachment. BISSESSUREE DEBIA *v.* SOOKRAM DOSS . . . . **15 W. R., 347**

RECEIVER—*continued.*

17. ——— **Firm in hands of receiver, Claims on.**—*Civil Procedure Code, 1877, s. 503.—Management of business by receiver.—Claim by servant for prior arrears of wages on assets of firm.*—A servant of a firm, the business of which is being managed by a receiver appointed under section 503 of the Code of Civil Procedure, 1877, has no preferential claim over the attaching creditor on the assets of the firm for wages due before the appointment of the receiver. SHORT *v.* PICKERING [I. L. R., 6 Mad., 138

RECITALS IN DOCUMENTS.

See CONTRACT—CONSTRUCTION OF CONTRACTS . . I. L. R., 2 Mad., 239

See EVIDENCE—CIVIL CASES—RECITALS IN DOCUMENTS.

See ONUS PROBANDI—DOCUMENTS RELATING TO LOANS, EXECUTION OF AND CONSIDERATION FOR, &c. . 8 W. R., 215
19 W. R., 149
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RECOGNISANCE TO APPEAR.

1. ——— **Case made over to police for investigation.**—*Criminal Procedure Code, 1861, s. 151.—Particulars of recognisance.*—In a case which is made over for investigation to the police, the prosecutor and his witnesses should be required to enter into recognisances to attend and give evidence. A recognisance binding over an accused person to appear to answer a charge should specify the particular day on which he should be in attendance in Court. QUEEN *v.* POORAN JOLAHA [11 W. R., Cr., 47

2. ——— **Power to take recognisances.**—*Witness.—Power of Magistrate.*—A Subordinate Magistrate has no power under the provisions of the Criminal Procedure Code to take recognisances from a complainant and witnesses to appear on a certain day before, a Magistrate of co-ordinate jurisdiction, and recognisances thus taken cannot be forfeited. ANONYMOUS . . . 4 Mad., Ap., 17

See VENKATAPPAH *v.* PAPAMMAH [5 Mad., 132

See also ANONYMOUS . . 4 Mad., Ap., 6

3. ——— *Security for good behaviour.—Criminal Procedure Code, 1872, s. 204.—Adjourned hearing.*—Where it becomes necessary to adjourn the hearing of a summons case, the attendance of the accused person at the adjourned hearing can be secured under the provisions of section 204 of Act X of 1872. Therefore, where a person appeared in answer to a summons requiring him to find security for good behaviour for one year, and the Magistrate adjourned the hearing of the case in order that the accused person might produce evidence as to character, the Magistrate was empowered to take a personal recognisance from the accused

RECOGNISANCE TO APPEAR.—Power to take recognisances—*continued.*

person for his appearance at the adjourned hearing. QUEEN *v.* CHOCHA RAI . . 6 N. W., 366

4. ——— *Power of police officers.—Criminal Procedure Code, 1872, ss. 396, 397.—Bail taken by police officer.*—The powers contained in sections 396 and 397 of the Code of Criminal Procedure extend not only to recognisances taken by a Magistrate for the appearance of an accused person by a surety under section 125, but also to such recognisances when taken by a police officer. IN THE MATTER OF THE PETITION OF KRISTO PROSAD MUNDLE . . . . 22 W. R., Cr., 74

5. ——— **Security bond to appear before police.**—*Code of Criminal Procedure (Act X of 1882), s. 514.*—As there is no provision in the Criminal Procedure Code authorising a police officer to take a surety bond for the production of any person before the police, such a bond is *ab initio* void, and a Magistrate has no power to alter it and impose fresh obligations thereunder. IN THE MATTER OF CHANDRA SEKHAR RAI . . . I. L. R., 11 Calc., 77

6. ——— **Recognisance bond.**—*Where appearance of accused has been dispensed with.—Agent.—Held* that where the personal attendance of an accused is dispensed with, a recognisance bond, if such is deemed necessary, should be taken from him, and not from his agent, binding him (the accused) to appear either in person or by an agent; and that a Magistrate has no legal authority to secure the attendance of an agent by such a bond. REG. *v.* LALLUBHAI JASSUBHAI . . . 5 Bom., Cr., 64

7. ——— **Bail bond to appear "when called on."**—*Right of sureties to notice.*—Where the condition of bail bonds, given by the defendants and by the surety of a security bond, was that the defendants should appear when called upon,—*Held* that the defendants and their surety were entitled to reasonable notice of the time at which the former would be required to attend. ANONYMOUS [4 Mad., Ap., 45

8. ——— **Discharge of surety.**—*Permission of Court to accused to leave.*—Where a surety conditioned that he would be responsible for the continued presence of an accused person at one Court (Nowadah), it was held that the surety was released from liability under his recognisance by the permission which the Court at Nowadah gave the accused, without the surety's consent, of leaving that place of business, and also by the subsequent transfer of the case to another Court. QUEEN *v.* MEWA LALL . . . . 13 W. R., Cr., 53

9. ——— **Prosecutor, Failure of, to appear.**—*Power of Magistrate to order recognisance to be forfeited.*—A Subordinate Magistrate has no power to order a recognisance executed by a prosecutor before a police-station officer, binding himself to appear before the Subordinate Magistrate, to be forfeited on the failure of the prosecutor to appear. ANONYMOUS . . . . 4 Mad., Ap., 18

RECOGNISANCE TO APPEAR—*continued.*

10. ——— Failure to appear.—*Forfeiture of recognisances.*—The estreating of recognisances is a proceeding resorted to where persons who have undertaken to give evidence in a criminal inquiry have failed without just excuse to attend, and have thus created an obstruction to public justice; but where a Magistrate thinks it proper to estreat their recognisances, he ought to allow them an opportunity of justifying their default. QUEEN *v.* DASSOO MANJEE . . . . 11 W. R., Cr., 39

11. ——— *Criminal Procedure Code, 1861, s. 219.—Forfeiture of recognisance.*—Where a defendant charged with an offence bound himself to appear before a Subordinate Magistrate on the 10th June, and the defendant did appear on that day but made default on the 11th of June, on which the case was called,—*Held* that there was no forfeiture of the recognisance. In such cases section 219 of the Code of Criminal Procedure requires that the Magistrate shall form a reasonable opinion that there has been wilful default before issuing process to enforce the penalty. ANONYMOUS [4 Mad., Ap., 44

12. ——— *Forfeiture of recognisances.—Notice.*—Defendants were charged with theft, and on their appearance before the Subordinate Magistrate on 1st May were bound over by recognisance to appear from that date until the close of the trial. On the 2nd May, when the case was called on, defendants were not present, but they appeared on the 3rd. The Subordinate Magistrate heard what they had to say, and directed the penalties on the forfeited recognisances to be levied from the defendants. *Held* that there was no ground for the interference of the High Court as a Court of Revision; that there was nothing illegal in requiring defendants to execute such a bond, and that no notice was necessary before proceeding to enforce the penalty. ANONYMOUS [6 Mad., Ap., 39

13. ——— Failure of surety to produce accused.—*Forfeiture of recognisance.—Attachment of property of surety for accused person.—Notice.*—A surety who was bail for an accused person having failed to produce him on the day appointed, the Deputy Magistrate ordered that the bail-bond be forfeited, and a warrant be issued for the attachment and sale of the moveable property, first, of the accused, and, secondly, of the surety. No recognisance had been signed by the accused, and no notice had been given to the surety to show cause. On a reference by the Magistrate, the Deputy Magistrate's order was set aside as being illegal. QUEEN *v.* DURGA DAS BHUTTACHARJEE [7 B. L. R., Ap., 37

S. C. KHOODEE KOIBURTNEE *v* DURGADASS BHUTTACHARJEE . . 15 W. R., Cr., 82

14. ——— Enforcement of security bond.—*Notice to surety to pay amount of bond.—Forfeiture of recognisances.—Service of notice.*—A notice must be served on a surety, calling upon him to pay the amount of his security bond, or to show

RECOGNISANCE TO APPEAR.—Enforcement of security bond—*continued.*

cause why he should not pay the same, before an order can be made to levy the sum from him. QUEEN *v.* JEEBUN SHEIKH . 9 W. R., Cr., 4

15. ——— *Civil cases.—Civil Procedure Code, 1882, s. 349.*—A security bond given under the provisions of Section 349 of the Code of Civil Procedure, 1882, for the production of a judgment-debtor when called upon, cannot be enforced summarily. MOIDIN *v.* CHANDU [I. L. R., 7 Mad., 273

RECOGNISANCE TO KEEP PEACE.

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1 PERSONS OUT OF JURISDICTION.

1. ——— Power of Magistrate as to persons not resident in his district.—*Power of the Magistrate of a district to call on a person residing in another district to furnish security.—Criminal Procedure Code, s. 107.—Held* by the Full Bench that the terms of section 107, Criminal Procedure Code, do not empower a Magistrate to issue process to a person not residing within the limits of his district. IN THE MATTER OF THE PETITION OF JAI PRAKASH LAL . . I. L. R., 6 All., 26

RECOGNISANCE TO KEEP PEACE—*continued.*

1. PERSONS OUT OF JURISDICTION—*continued.*

Power of Magistrate as to persons not resident in his district—*continued.*

2. ——————— *Criminal Procedure Code (Act X of 1882), s. 107.—Power of District Magistrate to call on person residing in another district for security.*—A Magistrate has no jurisdiction to take proceedings under section 107 of the Criminal Procedure Code against a person not personally within his jurisdiction. *In the matter of the petition of Jai Prokash Lal, I. L. R., 6 All., 26;* and *In the matter of the petition of Rajendra Chunder Roy Chowdhry, I. L. R., 11 Calc., 737,* followed. Even assuming there was jurisdiction, it was not a case where the Magistrate should have called upon the petitioner to appear personally, he residing at a distance, there being no special circumstance making his personal attendance necessary, and the Magistrate having power under section 116 to allow him to appear by a pleader. IN THE MATTER OF THE PETITION OF DINONATH MULLICK. DINONATH MULLICK *v.* GIRIJA PROSONNO MOOKERJEE

[I. L. R., 12 Calc., 133

3. ——————— *Power of a District Magistrate to call on a person residing in another district to furnish security.—Criminal Procedure Code (Act X of 1882), s. 107.—Procedure.*—The provisions of section 107 of Act X of 1882 do not empower a Magistrate to issue process on persons not residing within the limits of his district. The proper course for a Magistrate to pursue, where he believes that certain persons who are resident beyond the limits of his district are likely to commit a breach of the peace within his district, is to cause information of the fact to be given to the Magistrate within whose district such persons reside, and to produce evidence in support of such view, in order that proceedings may be taken against them by a Court which has jurisdiction. IN THE MATTER OF THE PETITION OF RAJENDRO CHUNDER ROY CHOWDHRY

[I. L. R., 11 Calc., 737

2. MAGISTRATE WITH POWERS OF APPELLATE COURT.

4. ——— **Magistrate of district, Power of.**—*Criminal Procedure Code, 1872, s. 489.—Security for keeping the peace.*—The Magistrate of a district, when exercising the powers of an Appellate Court, is competent to make an order under section 489 of the Criminal Procedure Code requiring the appellant to furnish security for keeping the peace. EMPRESS OF INDIA *v.* KAMTA PRASAD

[I. L. R., 4 All., 212

3. WHEN RECOGNISANCE MAY BE TAKEN.

5. ——— **Prevention of wrongful act.**—*Act XXV of 1861, s. 282.—Act X of 1872, s. 491.—Power of Magistrate.—Breach of the peace.*—

RECOGNISANCE TO KEEP PEACE—*continued.*

3. WHEN RECOGNISANCE MAY BE TAKEN—*continued.*

Prevention of wrongful act—*continued.*

Wrongful act.—Under section 282 of Act XXV of 1861, a Magistrate could prevent a person from doing a wrongful act, but not one which the person might lawfully do. It was not intended that a person should be prevented by a Magistrate from exercising his rights of property because another person would be likely to commit a breach of the peace if he did so. IN THE MATTER OF THE PETITION OF KASHI CHUNDER DOSS. KASHI CHUNDER DOSS *v.* HURKISHORE DOSS

[10 B. L. R., 441: 19 W. R., Cr., 47

6. ——— **Prevention of crime.**—*Pending charge of specific offence.—Criminal Procedure Code, 1872, ch. XXXVIII, ss. 489—503.*—The object of Chapter XXXVIII, Code of Criminal Procedure, 1872, was the prevention, not the punishment, of crime. When a charge of a specific offence is under trial, proceedings under Chapter XXXVIII should not be instituted. *In the matter of the petition of Juggut Chunder Chuckerbutty, I. L. R., 2 Calc., 110,* followed. IN THE MATTER OF UMBICA PROSHAD

[1 C. L. R., 268

7. ——— **Offence against public tranquillity.**—*Order to convicted person to find security.—Recognisance to convicted person.—Criminal Procedure Code, 1861, s. 280.—Offences affecting the human body.*—An order directing a person convicted of an offence to find security to keep the peace should be simultaneous with the conviction, and should not provide for an engagement to be executed at a future period. Section 280 of the Code of Criminal Procedure, 1861, did not refer to offences affecting the human body, but to cases of riot, simple assault, or other breach of the peace, being an offence against public tranquillity. QUEEN *v.* KUNHIYA

[4 N. W., 154

8. ——— **Order for recognisances on expiration of sentence for criminal trespass.**—The order of the Magistrate directing the prisoner, on the expiration of his sentence for the offence of criminal trespass, to execute personal recognisances to keep the peace, was upheld as legal and necessary. QUEEN v. GENDOO KHAN

[7 W. R., Cr., 14

9. ——— **Order for recognisance on dismissal of charge of criminal trespass.**—*Criminal Procedure Code (Act XXV of 1861), s. 283.*—A charge of criminal trespass and mischief was dismissed: thereupon the Magistrate recorded an order in the presence of both parties, calling on them to show cause, on a day fixed, why they should not enter into recognisances to keep the peace. *Held,* it was not necessary also to issue a summons to them under section 283 of the Criminal Procedure Code. QUEEN v. CHOWDHRY . 2 B. L. R., Ap., 28

10. ——— **Order for recognisance on conviction of criminal trespass.**—*Criminal*

RECOGNISANCE TO KEEP PEACE—*continued.*

3. WHEN RECOGNISANCE MAY BE TAKEN —*continued.*

Order for recognisance on conviction of criminal trespass—*continued.*

Procedure Code, 1872, s. 489.—Sentence.—On a conviction of criminal trespass under section 447, Penal Code, the Joint Magistrate added to the sentence of imprisonment an order that the prisoners should give recognisances to keep the peace. The Sessions Judge recommended that the order as to recognisances should be quashed, as criminal trespass was not one of the offences detailed in section 489 for which such recognisances could be taken. The High Court declined to act on this recommendation, holding that there was nothing illegal in the Joint Magistrate's order, the conduct of the accused clearly pointing to an intention to commit a breach of the peace. QUEEN v. JHAPOO . . . . . **20 W. R., Cr., 37**

11. ——— Order for recognisances on renewal of conviction of house-trespass.—*Order in absence of accused. — Criminal Procedure Code, 1861, s. 280.* — A conviction of house-trespass by a Subordinate Magistrate was reversed on appeal by the Magistrate of the district, who, moreover, directed the Subordinate Magistrate to take a recognisance bond in the sum of R50 from the accused that he would not for one year enter the house and would not commit a breach of the peace *Held* by the High Court that the order directing the recognisance bond to be taken should be set aside as having been improperly made by the Magistrate in the absence of the accused and upon the assertion of his adversary *Semble,*—The order was also illegal as not authorised by section 280 or any other section of the Criminal Procedure Code. REG. v BHASKAR K. KHARKAR . . . . . **3 Bom., Cr., 1**

12. ——— Order for recognisance in case of rioting.—*Criminal Procedure Code, 1874, s 489.—Personal recognisance.*—No order requiring personal recognisance to keep the peace can be passed under Act X of 1872, section 489, unless the accused has been convicted of rioting or any other offence. SAHEBDI v. KURAN . . **21 W. R., Cr., 37**

13. ——— Order for recognisance to witness in case of rioting.—*Admission of being present at or near scene of riot.*—A witness for the defence in a case of rioting having admitted being present at or near the scene of the riot and denied that the accused took any part in it, the Magistrate, after finding the accused guilty and without further proceedings, called upon both the accused and his witness to enter into bonds to keep the peace for one year. *Held* that this procedure was illegal so far as the witness was concerned. QUEEN v. KADAR KHAN . . . . . **I. L. R., 5 Mad., 380**

14. ——— Order for recognisance in case of criminal intimidation.—*Criminal Procedure Code, 1872, s. 489.—Penal Code, ss. 503, 506.*—The words in section 489 of the Criminal Procedure Code, "taking other unlawful measures with the evident intention of committing a breach of the peace," do not include the offence of intimidation by threatening to bring false charges. Where, therefore, a person was convicted under sections 503 and 506 of the Penal Code of such offence,—*Held* that the Magistrate by whom such person was convicted could not, under section 489 of the Criminal Procedure Code, require him to give a personal recognisance for keeping the peace. EMPRESS OF INDIA v. RAGHUBAR **[I. L. R., 2 All., 351**

15. ——— Order for recognisance on conviction of offence of voluntarily causing hurt.—*Power of Magistrate.—Criminal Procedure Code, 1872, s 489.*—It is in the power of a Magistrate, on conviction of a person of voluntarily causing hurt, to take security from him under section 489 of Act X of 1872. An order under that section requiring security should not direct that the person convicted should execute the engagement to keep the peace at the end of the term of imprisonment to which he may have been sentenced. The person convicted is at liberty to execute the engagement at once or at any time during the term. QUEEN v. BACHU **[7 N. W., 328**

16. ——— Order for recognisance to refrain from collecting cesses.—*Criminal Procedure Code, 1861, s. 282.*—A Magistrate cannot pass an order under section 282 calling on a person to enter into recognisances not to collect certain cesses, though under section 282 the Magistrate may bind him down to keep the peace, if there is sufficient evidence to show that a breach of the peace is imminent through his act. IN THE MATTER OF LUCHMEEPUT SINGH . . . . . **14 W. R., Cr., 3**

17. ——— Order for second recognisance before expiration of first.—*Criminal Procedure Code (Act XXV of 1861), s. 290.—Execution of second recognisance.*—Under section 290 of the Criminal Procedure Code, an order to execute a second recognisance during the time the first recognisance is in force is illegal. QUEEN v. KUMODINI-KANT BANERJEE CHOWDHRY **[9 B. L. R., Ap., 30 : 18 W. R., Cr., 44**

18. ——— *Criminal Procedure Code (Act XXV of 1861), s. 298.—Illegal order.*—*A.* was bound over to keep the peace for a year. Before the expiry of the period he was involved in fresh disputes with other persons. The Deputy Magistrate, instead of referring the case to the Court of Session under section 298 of the Code of Criminal Procedure, directed *A.* to enter into another recognisance for a further period of one year. *Held,* the order was illegal. QUEEN v. KALINATH BISWAS **[6 B. L. R., Ap., 116 : 15 W. R., Cr., 18**

RECOGNISANCE TO KEEP PEACE—*continued.*

4. CREDIBLE INFORMATION.

19. ——— **Nature of information required.**—*Criminal Procedure Code, 1882, s. 107.*—*Held* by the Divisional Bench that "information" of the kind mentioned in section 107 of the Criminal Procedure Code, 1882, must be clear and definite, directly affecting the person against whom process is issued, and should disclose tangible facts and details so that it may afford notice to such person of what he is come prepared to meet. IN THE MATTER OF THE PETITION OF JAI PRAKASH LAL **[I. L. R., 6 All., 26**

20. ——— **Report of police officer.**—The report of a police officer is "credible information" within section 282 of the Code of Criminal Procedure, 1861. IN THE MATTER OF BRINDABUN SHAHA . . . **10 W. R., Cr., 41**

BEHARI PATAK *v.* MAHOMED HYAT KHAN **[4 B. L. R., F. B., 46 12 W. R., Cr., 60**

21. ——— *Criminal Procedure Code, 1872, ss. 491, 530.*—A police report is, under Act X of 1872, section 530 (explanation), sufficient information on which a Magistrate may take action in a case of apprehended breach of the peace under section 491 of that Act. QUEEN *v* RAM CHUNDER ROY . . **21 W. R., Cr., 28**

22. ——— **Statement of complainant on oath.**—*Criminal Procedure Code, 1861, s. 282.*—There is nothing in the Criminal Procedure Code which makes it imperative on a Magistrate to confront the accuser and the accused in a case under section 282 of the Criminal Procedure Code; and if a Magistrate considers a statement on oath of a complainant to be "credible information" under that section, there is no reason why he should not call on the accused to give security, the sufficiency of such "credible information" being ordinarily left to the Magistrate to determine. IN THE MATTER OF THE PETITION OF TARINEE KANT LAHOORY CHOWDHRY **[8 W. R., Cr., 79**

23. ——— **Statement of complainant.**—*Expectation of attack by defendant.*—*Criminal Procedure Code, 1861, s. 282.*—A statement by a complainant (believed by the Magistrate) that he expected the defendant at any time to make an attempt on his person or property, is credible information, within the meaning of section 282 of the Code of Criminal Procedure, of an intended breach of the peace. QUEEN *v.* KRISTENDRO ROY . . **7 W. R., Cr., 30**

24. ——— **Petition not on oath.**—*Criminal Procedure Code, 1861, s. 282.*—A petition unsupported by any complaint or deposition on solemn affirmation cannot be considered "credible information" within the meaning of section 282 of the Code of Criminal Procedure on which to warrant a Magistrate to demand security to keep the peace. CHAMARO MALO *v.* KASHI CHUNDER LALLA **[8 W. R., Cr., 85**

RECOGNISANCE TO KEEP PEACE—*continued.*

4. CREDIBLE INFORMATION—*continued.*

25. ——— **Statement by private person not on oath.**—*Report by Subordinate Magistrate.*—*Criminal Procedure Code, 1861, ss. 282, 288.*—A statement by a private person, not upon oath or solemn affirmation, is not credible information upon which alone a Magistrate should issue a summons under section 282 of the Code of Criminal Procedure. *Semble,*—A report by a Subordinate Magistrate of facts within his knowledge would be credible information upon which such summons might issue, but would not be sufficient ground for a final adjudication under section 288. REG. *v* JIVANJI LIMJI . . . . . **6 Bom., Cr., 1**

26. ——— **Report of Magistrate.**—*Criminal Procedure Code, 1861, s. 282.*—The report of a Subordinate Magistrate is such "credible information" within the meaning of section 282 of the Code of Criminal Procedure as to authorise a Magistrate to summon an individual named in the report, and require him to enter into a recognisance to keep the peace, although the report does not suggest that a recognisance should be required, but suggests other means for the prevention of disputes and the preservation of order. EX PARTE NELLIKEL EDATTHIL ITTI PUNGY ACHEN . . **2 Mad., 240**

REG. *v.* IRAPA BIN BASAPA . **8 Bom., Cr., 162**

27. ——— **Conversations out of Court.**—*Evidence.*—*Criminal Procedure Code, 1882, s. 107.*—Conversations out of Court with persons, however respectable, are not proper or legal material on which Magistrates should adopt proceedings under section 107, Act X of 1882. EMPRESS *v.* BABUA **[I. L. R., 6 All., 132**

28. ——— **Information unsupported by witnesses.**—*Necessity for witnesses.*—It is not necessary to call witnesses in support of an information laid before a Magistrate previous to requiring security for keeping the peace. IN THE MATTER OF MULLICK FUKEERUN . . **11 W. R., Cr., 6**

5. SUMMONS.

29. ——— **Contents of summons.**—*Criminal Procedure Code, 1872, ss. 491, 492.*—In a case in which parties are summoned to show cause why they should not be bound down to keep the peace, the proceedings should be conducted with due regard to the provisions of sections 491 and 492 of the Criminal Procedure Code, and the summons should distinctly specify the amount and nature of the security required and the time for which the security is to run. QUEEN *v.* GUNGA SINGH **[20 W. R., Cr., 36**

30. ——— *Dispute likely to occasion breach of the peace.*—It should appear on the face of a Magistrate's order that he had received credible information that the persons ordered to enter into their recognisances were likely to commit a breach of the peace, or to do any act that might pro-

RECOGNISANCE TO KEEP PEACE—*continued.*

5. SUMMONS—*continued.*

Contents of summons—*continued.*

bably occasion a breach of the peace. IN RE BIRESHUREE PERSHAD . . . 6 W. R., Cr., 93

31. ——— *Criminal Procedure Code, 1861, s. 283.—Separate summons to several persons.*—It is essential to the validity of a summons issued under section 283 that it should contain the substance of the information by which the Magistrate is moved to act. A separate summons should be issued to each person required to furnish security, and a separate bond taken from each, which should be in the form required by the Code, and in the order the Magistrate should state the period for which the person against whom the order is made is to be imprisoned if he fail to comply with it. QUEEN *v.* POWELL . . . . . 3 N. W., 96

32. ——— *Criminal Procedure Code, 1861, s. 282.*—A summons under section 282 of the Criminal Procedure Code, 1861, should set forth the substance of the information. It should also call upon the parties summoned to show cause. QUEEN *v.* NIJABUT HOSSEIN [1 N. W., Ed. 1873, 304

33. ——— *Criminal Procedure Code, 1861, s. 283.*—The summons to a person to show cause why he should not be required to furnish recognisances to keep the peace should, under section 283, Code of Criminal Procedure, set out the substance of the information against him. When the party summoned shows cause, the Magistrate in taking evidence should look not merely to the question of possession, but also whether he is satisfied that there was a probability of a breach of the peace. KOONJBEHARY CHOWDHRY *v.* EKNATH GURAIN [15 W. R., Cr., 43

34. ——— *Criminal Procedure Code (Act X of 1872) s. 492.*—The words of section 492 of the Code of Criminal Procedure are directory and not imperative; and an omission to insert in a summons under that section the amount of the recognisance and security required will not invalidate any subsequent proceedings binding over the parties to keep the peace. ABASU BEGUM *v* UMDA KHANUM . . . I. L. R., 8 Calc., 724

35. ——— **Form of summons.**—*Summons to appear.—Criminal Procedure Code, 1872, s. 491.*—A summons setting out that the person to whom it is directed is charged with an offence under section 491 of the Criminal Procedure Code, and requiring his personal appearance in Court, is not such a summons as is required by that section. IN THE MATTER OF CHAROO CHUNDER MULLICK [10 C. L. R., 430

6. OPPORTUNITY TO SHOW CAUSE.

36. ——— **Omission to issue summons to show cause.**—*Order directing recognisance to be taken.*—An order directing certain persons to enter into recognisances of R500 each, conditioned to keep the peace for the period of one year, without first summoning them to show cause why they should not be required so to do, is irregular, and will be quashed. QUEEN *v.* MOONEE DOOBEY [2 N. W., 189

KALI PERSHAD SIRDAR *v.* FUTTEH CHUND DASS [9 W. R., Cr., 16

37. ——— **Order giving insufficient time to show cause.**—*Irregular order.—Criminal Procedure Code, 1872, s. 491.*—Where parties required on the 1st July to show cause on the 9th under section 491, Criminal Procedure Code, why they should not furnish security for breach of the peace, were served on the 5th and 7th idem, it was held that they had not had sufficient time allowed them for the purpose, and the order requiring security was accordingly set aside. QUEEN *v.* CHEYT SINGH [22 W. R., Cr., 70

38. ——— **Omission to give opportunity to show cause.**—*Criminal Procedure Code, 1872, s. 492.*—On a complaint being lodged of criminal trespass and assault, the Magistrate recorded that, after interrogating the witnesses, he found that a breach of the peace was likely to ensue, and proceeded to examine the complainant and two of his witnesses and the accused, and thereupon ordered that the parties should furnish recognisances to keep the peace,—*Held* that the parties had not had opportunity afforded them under section 492, Criminal Procedure Code, to show cause why they should not be bound. QUEEN *v.* SHUKUR MAHOMED [22 W. R., Cr., 68

39. ——— *Notice to accused giving insufficient time.*—The notice to the accused should give him sufficient time to come in and produce his evidence. QUEEN *v.* ISREEPERSHAD SINGH [20 W. R. Cr., 18

RUN BAHADOOR SINGH *v.* TILESSUREE KOOER [22 W. R. Cr., 79

7. SUMMONING WITNESSES.

40. ——— **Obligation of Magistrate as to summoning witnesses.**—*Criminal Procedure Code, 1872, s. 491.*—A Magistrate is bound to assist both parties in a case under section 491, Criminal Procedure Code, 1872, in bringing in their witnesses by issuing summonses to attend. QUEEN *v.* CHEYT SINGH . . . . 22 W. R., Cr., 70

41. ——— **Right to adjournment to produce witnesses.**—*Criminal Procedure Code, 1872, ss. 491, 496, 497.*—Under the sections (491 and 497) of the Criminal Procedure Code relating to security for breach of the peace, the party charged is

RECOGNISANCE TO KEEP PEACE—*continued.*

7. SUMMONING WITNESSES—*continued.*

Right to adjournment to produce witnesses—*continued.*

not entitled, when sufficient time has already been given him to show cause and to produce his witnesses, to an adjournment in order to produce his witnesses. In such a case, he must either bring his witnesses with him or apply for summons in such time as to enable him to bring them into Court on the day fixed. CHULAN TEWARI *v.* SUKEDAD KHAN [23 W. R., Cr., 9

8. LIKELIHOOD OF BREACH OF PEACE AND EVIDENCE.

42. ——— **Evidence of specific act or conduct likely to cause breach of the peace.**—*Criminal Procedure Code, 1872, s. 491.*—A party cannot be called upon, under Act X of 1872, section 491, to enter into recognisances to keep the peace, unless the evidence points to some specific conduct or act on his part from which a reasonable or immediate inference can be drawn that he is likely to commit a breach of the peace. HURRE MOHUN MULLICK *v.* KALINATH ROY . . 25 W. R., Cr., 15

43. ——— **Mere possibility of breach of peace.**—*Criminal Procedure Code, 1872, s. 491.*—To justify an order under section 491, Act X of 1872, calling on a person to give security to keep the peace, there must be a reasonable probability of a breach of the peace being committed, and not merely a bare possibility of a breach of the peace. QUEEN *v.* ABDOOL HUQ . . . 20 W. R., Cr., 57

QUEEN *v.* HUR KUMARI DASSIA [24 W. R., Cr., 10

44. ——— **Omission to prevent rioting.**—*Criminal Procedure Code, 1861, s. 282.*—Parties who are not stated by a Magistrate to be likely to commit a breach of the peace, or to do any act that may probably occasion a breach of the peace, cannot be called upon to enter into recognisances to keep the peace with a view that they should interfere to prevent riot, simply because they did not interfere when they might have done so between the persons actually quarrelling so as to prevent a riot, their laches in this respect not bringing them within the purview of section 282 of the Code of Criminal Procedure. QUEEN *v.* OMERTO LALL [19 W. R., Cr., 32

45. ——— **Acts of agents of zemindar.**—*Non-resident zemindar, Liability of.*—A non-resident zemindar cannot be bound over to keep the peace because his local agents are committing acts likely to cause a breach of the peace. IN THE MATTER OF CHAROO CHUNDER MULLICK . 10 C. L. R., 430

46. ——— **Probable resistance by ryots.**—*Distraint for arrears of rent—Criminal Procedure Code, 1872, s. 491.*—The petitioner, a tehsildar, applied to the police for assistance to protect him while distraining the crops of certain ryots for arrears

RECOGNISANCE TO KEEP PEACE—*continued.*

8. LIKELIHOOD OF BREACH OF PEACE AND EVIDENCE—*continued.*

Probable resistance by ryots—*continued.*

of rent. On this being reported to the Magistrate, he required the petitioner to furnish security to keep the peace, on the ground that any riot which might result from the resistance of the ryots to the attachment of their crops would be attributable to his act. This order was set aside by the High Court as illegal, because the Magistrate had not found that the petitioner himself was likely to commit a breach of the peace. IN THE MATTER OF SHEO SURN LALL [3 C. L. R., 280

47. ——— **Want of evidence of likelihood of breach of peace.**—A Magistrate cannot bind over a person to keep the peace where there is no evidence to show that such person was likely to commit a breach of the peace, or to do any act that might probably occasion a breach of the peace. QUEEN *v.* KIDAR NATH . . 7 N. W., 233

IN THE MATTER OF THE PETITION OF BROJENDRO KOOMAR RAI CHOWDHRY *alias* DIGHOO BAROO [17 W. R., Cr., 35

48. ——— **Want of adjudication as to security for preservation of peace.**—*Recognisance made on admission of accused.*—A Magistrate has no power to make an order that an accused person should enter into a bond to keep the peace until after an adjudication that it is necessary for the preservation of peace to take a bond from him, and until he is satisfied on that point, unless there is an admission by the party against whom the order is to be made. QUEEN *v.* LALL BEHAREE SINGH [11 W. R., Cr., 50

49. ——— **Evidence of necessity for taking security.**—*Necessity of adjudication by Magistrate.—Onus probnandi.*—In proceedings against persons to show cause why they should not enter into bonds to keep the peace, it is incumbent on the Magistrate to adjudicate judicially on evidence given before him as to the necessity for taking such security; and in such cases the onus of proof lies upon the party on whose complaint the summons was issued. QUEEN *v.* NIRUNJUN SINGH [2 N. W., 431

50. ——— *Inquiry by Magistrate.—Criminal Procedure Code, 1861, s. 282.*—After calling upon a person, under section 282 of the Code of Criminal Procedure, to show cause why he should not enter into recognisances to keep the peace, a Magistrate should not order the defendant to enter into such recognisances without taking evidence, or making inquiry whether the defendant had committed any act which might probably occasion a breach of the peace. QUEEN *v.* DEO NUNDUN SINGH [12 W. R., Cr., 16

QUEEN *v.* HARVEY . . 20 W. R., Cr., 68

51. ——— **Evidence of likelihood of breach of peace.**—*Necessity of adjudication by*

RECOGNISANCE TO KEEP PEACE—*continued.*

8. LIKELIHOOD OF BREACH OF PEACE AND EVIDENCE—*continued.*

Evidence of likelihood of breach of peace —*continued.*

Magistrate.—After summoning a person to show cause why he should not enter into a bond to keep the peace, the Magistrate cannot bind over that person until he adjudicates on evidence before him that such person is likely to commit a breach of the peace. GOSHAIN LUCHMUN PERSHAD POORE *v.* POHOOP NARAIN POORE . . . **24 W. R., Cr., 30**

QUEEN *v.* NIAZ ALI . . . **5 N. W., 80**

QUEEN *v.* ISREEPERSHAD SINGH **[20 W. R., Cr., 18**

RUN BAHADOOR SINGH *v.* TILESSUREE KOOER **[22 W. R., Cr., 79**

52. ——————— *Evidence not taken in presence of accused.—Criminal Procedure Code, 1872, ss. 491, 494.—Necessity for adjudication by Magistrate.*—A Magistrate cannot bind over a person to keep the peace unless he has adjudicated on evidence taken in the presence of that person that a breach of the peace is probable. If such person fails to attend on a summons duly served, a warrant should issue (section 494); the order for security cannot be passed *ex parte.* IN THE MATTER OF OKHIL CHUNDER BISWAS . . **1 C. L. R., 48**

53. ——————— *Criminal Procedure Code, 1872, s. 491.—Necessity for adjudication by Magistrate.—Notice.*—To constitute a proper foundation for an order under section 491 of the Criminal Procedure Code, 1872, it is necessary that the Magistrate should adjudicate upon legal evidence before him that the person against whom the order is made is likely to commit a breach of the peace, and the Magistrate should give notice to the party who is to be affected by the order, of the particular conduct on his part which is complained of. Where such notice was given and the ground of complaint to which such notice had reference was found by the Magistrate to be unfounded, it was held that the Magistrate could not proceed to adjudicate that an entirely different ground existed upon which it was likely that the party charged would commit a breach of the peace. RAM KISSORE ACHARJEE CHOWDHRY *v.* ARIP KHAN . . . **21 W. R., Cr., 6**

54. ——————— *Necessity of judicial investigation and adjudication.*—In order to warrant an adjudication under section 288, Civil Procedure Code, 1861, there should be a judicial investigation, and the order should be passed upon legal evidence duly taken and recorded. REG. *v.* JIVANJI LIMJI . . . . . **6 Bom., Cr., 1**

55. ——————— *Order for recognisance made without evidence duly taken.*—Order of District Magistrate, requiring certain persons to enter into recognisances and find security to keep the peace, reversed, as such order appeared to have been made without any legal evidence having been taken and recorded, as required by section 307 of the Criminal Procedure Code, 1861. REG. *v.* DALPATRAM PEMABHAI . . . . **5 Bom., Cr., 105**

56. ——————— *Presence of accused.—Criminal Procedure Code (Act XXV of 1861), s. 282.—Procedure.*—Before making an order absolute directing a person to enter into a bond to keep the peace, the Magistrate must take the evidence on which he bases the order in the presence of the accused or his agent. (GLOVER, *J., dissenting.*) MAGHAN MISRA *v.* CHAMMAN TELI **[2 B. L. R., A. Cr., 7: 10 W. R., Cr., 46**

QUEEN *v.* NARSING NARAYAN **[2 B. L. R., A. Cr., 7, note: 10 W. R., Cr., 1**

57. ——————— *Presence of accused.—Necessity of adjudicating on evidence.*—A Magistrate is not competent to require persons to give security to keep the peace until he has adjudicated, on evidence taken in their presence, that they have by their conduct rendered this necessary. *Run Bahadoor Singh v Tilessuree Kooer, 22 W. R., Cr., 79,* cited and followed. IN THE MATTER OF UMDA KHANUM . . . . . **3 C. L. R., 72**

58. ——————— *Dispute likely to cause breach of peace.—Report of police officer.*—The existence of a dispute likely to cause a breach of the peace must be first proved by legal evidence before the Magistrate can proceed to call upon the parties to enter into recognisances to keep the peace. The report of a police officer is not such legal evidence. ABHAYA CHOWDRY *v.* BRAE **[6 B. L. R., Ap., 148: 15 W. R., Cr., 42**

59. ——————— *Report of police officer.—Procedure.—Held* (GLOVER, *J, dissentiente*), the report of a police officer, though it justifies the issuing of a summons, is not sufficient ground on which to bind a man over in a recognisance to keep the peace. The Magistrate must adjudicate on the question whether there is reasonable ground for believing that the defendant is likely to commit a breach of the peace, after taking evidence in the presence of the person charged, and giving him an opportunity to cross-examine the witnesses. BEHARI PATAK *v.* MAHOMED HYAT KHAN. DUNNE *v.* HEM CHANDRA CHOWDHRY. GOVERNMENT *v.* BEHARI LALL BRAJABASI. **4 B. L. R., F. B., 46: 12 W. R., Cr., 60**

IN THE MATTER OF PORESH NARAIN ROY **[16 W. R., Cr., 45**

60. ——————— *Report of police inspector.*—A report of an inspector of police and the evidence given by the same inspector are not sufficient to justify an order binding a person to keep the peace. IN THE MATTER OF RAJENDRO KISHORE ROY CHOWDHRY . . . **10 W. R., Cr., 55**

RECOGNISANCE TO KEEP PEACE—*continued.*

8. LIKELIHOOD OF BREACH OF PEACE AND EVIDENCE—*continued.*

Evidence of likelihood of breach of peace—*continued.*

61. ——————— *Criminal Procedure Code, 1861, s. 282.—Inquiry before taking recognisances.—Cross-examination of witnesses.*—The kind of inquiry required to be held by a Magistrate in cases under section 282, Code of Criminal Procedure, is a full judicial inquiry, evidence being taken in the presence of the parties chargd, and opportunity given for the cross-examination of witnesses. NOOR MAHOMED *v.* NIL RUTUN BAGCHEE [18 W. R., Cr., 2

62. ——————— *Criminal Procedure Code, 1861, s. 282.—Inquiry before taking recognisances.—Cross-examination of witnesses.*—A Magistrate is not competent, under section 282 of the Criminal Procedure Code, to order persons to enter into bonds to keep the peace merely upon the statement of the complainant on which the summons was granted, and without taking further evidence, or giving the parties an opportunity of cross-examining the complainant. QUEEN *v.* NUSSEER-OOD-DEEN [2 N. W., 461

QUEEN *v.* MAHOMED AFZUL . 7 W. R., Cr., 59

63. ——————— *Report of Subordinate Magistrate.—Criminal Procedure Code, 1869, ss. 280, 287, 288.*—The report of a Subordinate Magistrate, although it is credible information on which a Magistrate of the district would be justified, under section 280 of the Code of Criminal Procedure, in issuing a summons, is not evidence on which he can properly arrive at a conclusion that the accused is likely to cause a breach of the peace. Sections 287 and 288 of the Code require that evidence in such a case shall be recorded, and if none is forthcoming security to keep the peace should not be demanded REG. *v.* IRAPA BIN BASAPA . 8 Bom., Cr., 162

64. ——————— *Criminal Procedure Code, 1872, s. 490.— Want of evidence.*—In the absence of any evidence rendering a breach of the peace probable, a Magistrate is not justified in calling upon parties to show cause why they should not enter into recognisances, and on their failure, to make an order under Act X of 1872, section 490. QUEEN GOSSAIN MUNRAJ POOREE. QUEEN *v.* GOSSAIN LUCHMEE NARAIN POOREE . 24 W. R., Cr., 23

65. ——————— *Evidence taken as to some only of accused.—Illegal order.*—Where a Magistrate bound down twenty-six persons to keep the peace under section 491 of the Criminal Procedure Code, 1872, after recording evidence as to eleven of them only, the order was set aside as to the persons not affected by the evidence. IN THE MATTER OF KASSIM BISWAS . . . 10 C. L. R., 335

66. ——————— *Criminal Procedure Code, 1882, ss. 107, 112, 115.—Security to keep the peace – Substance of information —Joint inquiry.*—A Magistrate ordered sixty-nine persons to show cause why they should not give security to keep the peace, it having been reported to him by the police and the tehsildar of the pergunnah in which such persons resided that they were likely to commit a breach of the peace at a religious procession which was about to take place, and the holding of which was opposed to their religious tenets. After an inquiry, as against all the accused jointly, the Magistrate, on the evidence of the tehsildar and a sub-inspector of police, ordered that ten of the accused, who were said to be the "ringleaders," should enter into bonds with sureties and the rest should enter into their own recognisances to keep the peace for one year. *Held* that the Magistrate's order, purporting to be prepared under section 112 of the Criminal Procedure Code, did not adequately or properly disclose the substance of the report or information upon which he issued his summons: the parties were entitled to something more than a mere assertion by the Magistrate that he had been informed that a breach of the peace was likely to occur, in order to enable them, if they were in a position to do so, to bring evidence to rebut the truth of such information; that the very loose statements of the tehsildar and the sub-inspector, as to the large majority of the persons summoned, were quite insufficient to justify the wholesale order for security passed by the Magistrate; that as the religious procession would have been over in a fortnight, it was a most excessive exercise of power to require all the parties to give security for one year; and that the Magistrate should have dealt with the cases of the ten alleged "ringleaders" first, and should have required the tehsildar and sub-inspector to give much fuller statements *seriatim*, and particularly as to each individual man; and as to the remaining fifty-nine, there should have been some clear and distinct proof, affecting each of them, and warranting the inference that such person was likely to commit a breach of the peace or to do a wrongful act likely to occasion a breach of the peace. QUEEN-EMPRESS *v.* NATHU [I. L. R., 6 All., 214

67. ——————— *Interference of High Court.—Criminal Procedure Code, 1861, ss. 282, 288.*—Where there is evidence which would justify the finding of a Magistrate that an act likely to cause a breach of the peace had been committed, the High Court will not interfere with the proceedings of the Magistrate. ANONYMOUS . 4 Mad., Ap., 38

68. ——————— *Evidence taken irregularly.*—The High Court declined to interfere with an order passed by a Magistrate in a case in which he ordered security to be taken for the preservation of the peace, where it appeared that the evidence was sufficient to warrant the order, although such evidence was taken in the vernacular and in disregard of the provisions of section 267 of the Code of Criminal Procedure, 1861. QUEEN *v.* PURIAG SINGH [13 W. R., Cr., 20

RECOGNISANCE TO KEEP PEACE—*continued.*

9. SECOND APPLICATION FOR SECURITY.

69. ——— Order for recognisances not passed at decision of case.—*Necessity of subsequent proceedings for valid order.—Criminal Procedure Code, 1861, ss. 280, 281.*—An order calling for recognisances under section 280, or for security under section 281, Code of Criminal Procedure, must be passed at the time of deciding the original case. If no such order is then made, subsequent proceedings must be taken under section 282, and the parties summoned to show cause. IN THE MATTER OF THE PETITION OF GOBIND SOOBOODHEE **[15 W. R., Cr., 56**

70. ——— Subsequent order.—*Criminal Procedure Code, 1861, s. 281.—Evidence of likelihood of breach of the peace.—Separate summons.*—Although it is competent to a Magistrate, upon conviction and sentence for assault, to order the accused to enter into an engagement to keep the peace, yet having omitted to do so he can afterwards only institute proceedings under section 281 of the Criminal Procedure Code, upon receiving some further credible information (other than that which he derived from the previous trial) that the parties are likely to commit a breach of the peace. QUEEN *v.* POWELL . . . . . **3 N. W., 96**

71. ——— Use of evidence formerly taken in other proceedings.—*Criminal Procedure Code, 1872, s. 491.—Evidence Act, s. 33.*—Section 33 of the Evidence Act, 1872, does not justify a Magistrate, in proceedings under section 491 of the Criminal Procedure Code, in using evidence taken in a previous criminal trial in supersession of evidence given in the presence of the accused. QUEEN *v.* PROSONNO CHUNDER GOSSAMI . **22 W. R., Cr., 36**

See DILLOO SINGH *v.* OOTIM SINGH **[22 W. R., Cr., 9**

RUN BAHADOOR SINGH *v.* TILESSUREE KOOER **[22 W. R., Cr., 79**

72. ——— Order for further security.—*Criminal Procedure Code, 1861, s. 290.—Procedure.*—Where a matter in respect of which further security to keep the peace is required is the same as that before the Magistrate on the first occasion, the case can only be dealt with under section 290 of the Code of Criminal Procedure. DE SILVA *v.* JEHANGEER **[7 W. R., Cr., 23**

KALLY CHURN SINGH *v.* BUNKER SINGH **[7 W. R., Cr., 26**

10. EFFECT OF ORDER POSTPONING PROCEEDINGS FOR CIVIL SUIT.

73. ——— Discharge of accused.—*Criminal Procedure Code, 1872, s. 491.*—An order postponing proceedings instituted under section 491 of the Code of Criminal Procedure (Act X of 1872) until the person called upon to show cause shall have established in a Civil Court the title claimed by him

RECOGNISANCE TO KEEP PEACE—*continued.*

10. EFFECT OF ORDER POSTPONING PROCEEDINGS FOR CIVIL SUIT—*continued.*

Discharge of accused—*continued.*

to the property disputed, with reference to which there is a likelihood of a breach of the peace, amounts to a discharge. EMPRESS *v.* DHUNIRAM **[5 C. L. R., 366**

11. ORDER LIMITED BY REQUISITION.

74. ——— Order going beyond terms of requisition.—*Criminal Procedure Code, 1872, ss. 491, 492.—Order for other and further security than originally required.*—Where information of a probable breach of the peace is first laid in general terms and is subsequently supported by evidence, which is given in the presence of the persons who are particularly implicated by it, the case for a demand for recognisances may properly rest on the whole evidence taken in the case; but when a Magistrate calls upon persons to show cause why they should not be bound down in their own recognisances to keep the peace, he cannot go beyond the requisition, and on the adjudication of the matter order them to furnish other securities besides. IN THE MATTER OF THE PETITION OF ABDOOL BARI **[25 W. R., Cr., 50**

12. AMOUNT OF SECURITY.

75. ——— Considerations in fixing amount of security.—*Criminal Procedure Code, 1861, s. 284.*—A Magistrate should have due regard to the circumstances of the case and the means of the parties when fixing the amount in which the sureties should be bound in a case under section 284 of the Code of Criminal Procedure, 1861. IN THE MATTER OF THE PETITION OF NILMADHUB GHOSAL, IN THE MATTER OF THE PETITION OF JUDOONATH ROY . . . . . **19 W. R., Cr., 1**

76. ——— Mode of calculating amount.—*Criminal Procedure Code, 1872, s. 493.—Means of parties called on.*—The High Court reduced the amount of recognisances required in this case, as it was very much in excess of, and out of proportion to, the means of the party accused,—section 493 of the Criminal Procedure Code requiring that the Magistrate should look to the means of the party ordered to find sureties. FUTTEH BAHADOOR *v.* GIBBON. LALL MAHOMED *v.* GIBBON . . **22 W. R., Cr., 74**

77. ——— Statement of amount in summons.—*Power of Magistrate to alter amount and form from what is stated in summons.*—A party was called upon summons to show cause why he should not be required to enter into his own recognisance to keep the peace for six months, the amount specified being R200. On his appearing before the Magistrate he was required to enter into his own recognisance to the amount of R4,000, and to find two sureties for R1,000 each, for a period of one year.

RECOGNISANCE TO KEEP PEACE—*continued.*

12. AMOUNT OF SECURITY—*continued.*

Statement of amount in summons—*continued.*

Held, the order was an illegal one. QUEEN *v.* ISREE PERSHAD SINGH
[9 B. L. R., Ap., 44: 18 W. R., Cr., 61

See IN THE MATTER OF THE PETITION OF ABDOOL BARI . . . . 25 W. R., Cr., 50

78. ——— Power to increase amount.—*Criminal Procedure Code, 1861, s. 290.*—Notwithstanding that a person has been bound down by bond to keep the peace for a stated period, a Magistrate has power, under section 290 of the Code of Criminal Procedure, to increase the amount of the security required before the expiry of that period. IN THE MATTER OF THE PETITION OF GOOROODASS ROY
[18 W. R., Cr., 57

13. EFFECT OF SIGNING WRONG BOND.

79. ——— Bond signed by mistake for security for good behaviour.—*Invalid bond.*—Where a person who had been required to give a bond to keep the peace in the form E to schedule II of the Code of Criminal Procedure, instead of giving such bond, signed a security bond in the form G under section 509 of that Code for good behaviour, it was held that the latter did not constitute a binding obligation. BINDESSUREE PERSHAD *v.* GUJADHUR PERSHAD . . 23 W. R., Cr., 1

14. CANCELLING ORDER.

80. ——— Power of Magistrate to cancel order.—*Criminal Procedure Code, 1861, ss. 282, 291.*—A Magistrate may, under section 291 of the Code of Criminal Procedure, cancel an order passed by him under section 282 of that Code, summoning a person to show cause why he should not enter into a bond to keep the peace. ANUNDEE KOOER *v.* SOONEET KOOER. GOVERNMENT *v.* ANUNDEE KOOER . . . . 10 W. R., Cr., 40

81. ——— Power of Sessions Judge to cancel Magistrate's order for recognisances.—*Power of Appellate Court.*—In a case in which an accused was charged with voluntarily causing grievous hurt, the Magistrate convicted him of that offence, and also ordered him to furnish recognisances to keep the peace. *Held* that as the Magistrate had jurisdiction under Chapter XVIII of the Code of Criminal Procedure to pass the latter order regarding recognisances, the Sessions Judge could not, on appeal, while upholding the conviction for grievous hurt, cancel the order as to take recognisances, the evidence on the record being sufficient for that purpose. QUEEN *v.* IMAMOODEEN BHINA . 13 W. R., Cr., 73

15. DISCHARGE OF RECOGNISANCES.

82. ——— Order as to disposition of property in dispute.—*Illegal order.*—Where a

RECOGNISANCE TO KEEP PEACE—*continued.*

15. DISCHARGE OF RECOGNISANCES—*continued.*

Order as to disposition of property in dispute—*continued.*

Magistrate who apprehended a breach of the peace eventually discharged the recognisances which he had compelled the parties to give, it was held that he exceeded his jurisdiction when he also gave directions as to the disposition of the property in dispute between the parties. CHOWDRY SHEO NUNDUN PROSHAD *v.* CHOWDRY NIL KANTH PROSHAD
[13 W. R., Cr., 44

16. FORFEITURE OF RECOGNISANCES.

83. ——— Proof of forfeiture.—*Criminal Procedure Code, 1872, s. 502.—Evidence on oath.*—A Magistrate has no jurisdiction to call on a person who has entered into a recognisance bond, under section 493 of the Code of Criminal Procedure, to pay the penalty or show cause why he should not do so, without previous *primâ facie* proof, by which is meant evidence on oath, that it has been forfeited. IN RE HARIRAM BIRBHAN . . 11 Bom., 170

84. ——— *Sufficiency of evidence to prove forfeiture.*—Before a recognisance can be forfeited, it must be proved that the person accused has either personally broken the peace or abetted some other person or persons in breaking it. The mere fact that the accused is a servant of one of two rival parties for whose benefit the breach took place is not sufficient. QUEEN *v.* KALLY BHYRUB SANDYAL . . . . 11 W. R., Cr., 52

85. ——— *Necessity to record evidence of forfeiture.*—Before a Magistrate can declare that recognisances to keep the peace have been forfeited, he must record legal evidence in the presence of the accused, proving that he was about to do something which would cause a breach of the peace. IN RE KALIKANT ROY CHOWDRY
[3 B. L. R., Ap., 155: 12 W. R., Cr., 54

86. ——— *Necessity for evidence of forfeiture.*—*Criminal Procedure Code, 1872, s. 502.*—An order estreating a recognisance or a bail bond must be made upon evidence duly recorded in the case, and not upon evidence taken in other cases. Where a Magistrate makes an order forfeiting a recognisance under section 502 of the Criminal Procedure Code, the terms of the section must be strictly followed. It is not competent to direct that in default of payment the person whose recognisance is forfeited should be imprisoned, without first issuing a warrant for the attachment and sale of his immoveable property. IN THE MATTER OF MOHESH CHUNDER ROY . . . 10 C. L. R., 571

87. ——— *Evidence of person bound over.*—*Power of Magistrate to reduce penalty.*—*Per* AINSLIE, *J.*—In a case in which proceedings are taken for forfeiture of recognisances, the person against whom they are held is competent to give

RECOGNISANCE TO KEEP PEACE—*continued.*

16 FORFEITURE OF RECOGNISANCES —*continued.*

Proof of forfeiture—*continued.*

evidence on oath on his own behalf. *Quære,*—When recognisances are forfeited, is a Magistrate bound to forfeit the whole amount of the bond, and is the power of reducing the sum to a penalty corresponding to the breach of the peace confined only to the Government? IN THE MATTER OF THE PETITION OF JEHAN BUKSH . . . **15 W. R., Cr., 87**

88. ——————— *Opportunity to accused for cross-examination of witness.—Proceedings on forfeiture of recognisance.—Criminal Procedure Code (Act X of 1872), s. 502*—A Magistrate is not justified in forfeiting a recognisance under section 502 of Act X of 1872, unless the party charged with a breach of the peace has had an opportunity of cross-examining the witnesses upon whose evidence the rule to show cause why the recognisance should not be forfeited has been issued. EMPRESS *v.* NOBIN CHUNDER DUTT **[I. L. R., 4 Calc., 865 : 4 C. L. R., 243**

89. ——— **Delay in taking steps to forfeit recognisance.**—*Invalid proceedings.*—When a Magistrate has before him the fact that a person convicted by him of an offence attended with violence was under recognisance to keep the peace, and does not nevertheless proceed to forfeit such recognisance, it must be held that he thought it unnecessary to do so. Proceedings taken after the lapse of a considerable period are bad and contrary to the intention of the law. IN RE RAM CHUNDER LALLA **[1 C. L. R., 134**

90. ——— **Liability to forfeiture.**—*Commission of offence.—Theft.*—Where a person has been bound down by recognisance not to commit a breach of the peace, the amount of the recognisance cannot be recovered from him if he is guilty of an offence, such as theft, which does not amount to a breach of the peace, or which is not likely to occasion a breach of the peace. IN THE MATTER OF THE PETITION OF HARAN CHUNDER ROY **[18 W. R., Cr., 63**

91. ——————— *Subsequent offence.*—A person was bound down under recognisances to keep the peace towards all Her Majesty's subjects for a period of one year. Some time afterwards he wrongfully confined and extorted a sum of money from two ryots who were supposed to have committed theft on his lands, he being for such offence fined and his recognisances forfeited. *Held* that the matter ought to have ended with the fine; for the ryots not having offered any resistance, no breach of the peace took place, and the amount of the recognisance could not be taken. IN THE MATTER OF THE PETITION OF ZEARUDDIN HOWALDAR . . **19 W. R., Cr., 48**

92. ——————— *Criminal Procedure Code (Act XXV of 1861), s. 293—Jurisdiction.*—*A.* executed in district T. a recognisance to keep the peace towards *B.* *A.* was afterwards convicted in district S. of having assaulted *B.* in that district. *Held, A.* had forfeited his recognisance, and the Magistrate in district T. could proceed against him under section 293 of the Criminal Procedure Code. QUEEN *v.* SHAM SUNDER CHOWDRY **[2 B. L. R., A. Cr., 11**

93. ——————— *Assault.*—On the application of *A.*, a recognisance was taken from *B.* that he would keep the peace for six months under a penalty of R500. Before the expiry of the period *B.* assaulted *C.* *Held* that there was a forfeiture of the recognisance. JAHU BAX *v.* GOVERNMENT **[6 B. L. R., Ap., 66 : 15 W. R., Cr., 14**

94. ——————— *Criminal Procedure Code, 1872, s. 502.*—Where certain persons were bound over to keep the peace and were subsequently convicted of voluntarily causing grievous hurt, and at the time of conviction the Magistrate made an order estreating their recognisances, as part of his judgment in the case, without in any way fulfilling the provisions of section 502 of Act X of 1872, and the convictions were quashed by the Court of Session, the High Court cancelled the order of forfeiture. QUEEN *v.* GHISA . . . **7 N. W., 375**

95. ——————— *Criminal Procedure Code, 1872, s. 502.—Forfeiture of recognisances.—Fresh recognisances.*—On the 20th of April 1877 *A.* was bound down to keep the peace for one year. On the 14th of January 1878 he was convicted of an offence, and sentenced therefor to fine and imprisonment, but no order was made for the recovery of the penalty, though the Magistrate knew that the recognisance had been forfeited. On the 2nd of April 1878 the Magistrate, at the instance of a third party, called upon *A.* to show cause why the penalty of the recognisance should not be paid, and a warrant for its recovery was issued on the 6th of June 1878. *Held* that the warrant must be quashed, on the ground that the Magistrate having inflicted a sentence of fine and imprisonment with the knowledge that the recognisance was forfeited, he was not competent to inflict a further penalty on a reconsideration of the circumstances. IN THE MATTER OF PARBUTTI CHURN BOSE . . . . . **3 C. L. R., 406**

96. ——— **Forfeiture of portion of recognisances.**—*Criminal Procedure Code, 1861, s. 293.*—Under the provisions of section 293 a Magistrate cannot direct the forfeiture of a portion of the penalty. Where the amount of the recognisances were wholly out of proportion to the nature of the dispute and to the means of the parties, the High Court held they could not interfere, but the Government might be moved in the matter. IN THE MATTER OF THE PETITION OF NILMADHUB GHOSAL. IN THE MATTER OF THE PETITION OF JUDOONATH ROY . . . . . **19 W. R., Cr., 1**

RECOGNISANCE TO KEEP PEACE— *continued.*

16. FORFEITURE OF RECOGNISANCES —*continued.*

97. ——— Reduction of penalty.— *Power of Magistrate to enforce only portion of penalty.*—A Magistrate has no power to mitigate the penalty entered in a recognisance bond, which must be enforced to its full amount, unless Government forego a portion of the penalty. ANONYMOUS [1 Bom., 138

98. ——— *Power of Court to reduce amount of penalty.* —The High Court has no power to reduce the amount of recognisances which have been forfeited, but in a case of hardship the matter should be referred to Government. EMPRESS *v.* NURAL HUQQ [I. L. R., 3 Calc., 757: 2 C. L. R., 408

IN THE MATTER OF THE PETITION OF NILMADHUB ROY . . . . 19 W. R., Cr., 1

IN THE MATTER OF NAKI HAZI . 8 C. L. R., 72

99. ——— Mode of enforcing penalty. —*Surety.—Imprisonment on forfeiture of recognisance to keep the peace*—Section 294 of the Code of Criminal Procedure, 1861, did not authorise the imprisonment of sureties. ANONYMOUS [4 Mad., Ap., 69

RECORD.

See PRACTICE—CRIMINAL CASES—RECORD IN SESSIONS CASES . 14 W. R., Cr., 46
[15 W. R., Cr., 16
7 W. R., Cr., 112
8 W. R., Cr., 30, 57

——— Signature to—

See PRACTICE—CRIMINAL CASES—SIGNATURE OF MAGISTRATE. [I. L. R., 6 Mad., 396

——— of Proceeding in Small Cause Court.

See EVIDENCE—CIVIL CASES—MISCELLANEOUS DOCUMENTS — SMALL CAUSE COURT, PROCEEDINGS IN— [6 B. L. R., 729; 730, note
7 B. L. R., Ap., 61

——— of rights, Entries in—

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS, N.-W. P. [I. L. R., 1 All., 613

——— office, Report from—

See EVIDENCE—CRIMINAL CASES—PREVIOUS CONVICTIONS. [6 B. L. R., Ap., 15

RECORDER OF MOULMEIN.

See ADMINISTRATION . 10 W. R., 86

See PARTIES—ADDING PARTIES TO SUITS —GENERALLY . . 10 W. R., 86

RECORDER OF MOULMEIN—*continued.*

See CASES UNDER RECORDERS ACT, 1863.

See SUPERINTENDENCE OF HIGH COURT—CHARTER ACT, S. 15—CIVIL CASES. [6 B. L. R., 180

1. ——— Jurisdiction of Recorders.— *Execution of decree made by Town Assistant Commissioner.*—The Court of the Recorder of Moulmein has no jurisdiction to execute a decree made by the late Court of the Town Assistant Commissioner. KYANPETTEE *v.* NGA SHA LAW . 14 W. R., 386

2. ——— *Trespass to personalty in foreign State.—Judicial cognisance.—Question of title.*—Trespass to personalty in a foreign State (the title to such personalty depending upon the right to land in such foreign State) is cognisable by the Recorder's Court, so as to rebut a *primâ facie* title to such personalty acquired within the Court's jurisdiction. The Recorder's Court cannot take judicial cognisance of the fact that the country in which the rights of the party attempting to rebut such *primâ facie* title accrued is lawless and unsettled, and possesses no tribunal capable of pronouncing a decision on the rights of the parties which the Recorder's Court could consider as the decision of a Court of competent jurisdiction. Although the foreign State might be civilised, and have Courts competent to try the title, the Recorder's Court would have a right in a suit against a party subject to his jurisdiction to try incidentally the question of title to the land for the purpose of determining the right to the personalty. SAYA LOO *v.* NGA PAW LOO . . 6 W. R., Civ Ref., 4

RECORDER OF RANGOON.

See CASES UNDER RECORDERS ACT, 1863.

See SUPERINTENDENCE OF HIGH COURT—CHARTER ACT, S. 15—CIVIL CASES. [15 W. R., 351

——— *Cause of action.—Defendant out of the jurisdiction.*—The Court of the Recorder of Rangoon had no jurisdiction in a suit brought against a defendant dwelling in Surat, though the cause of action arose in Rangoon. ANONYMOUS CASE . . . . . 18 W. R., 397

RECORDERS ACT (XXI OF 1863).

1. ——— *Jurisdiction of Recorder.—Recorder of Moulmein.—District of Amherst.*—Under Act XXI of 1863, the Recorder of Moulmein had no power to order execution to issue on a judgment of the late Court of the First Class Assistant Commissioner of the district of Amherst. IN THE MATTER OF RYAW PETEE . . . 6 B. L. R., Ap., 15

2. ——— *Minors Act, IX of 1861.—Jurisdiction of Recorder.*—Recorders appointed under Act XXI of 1863 possess all the jurisdiction relative to minors referred to in section 1, Act IX of 1861, or intended to be given by that Act. IN RE HUTTON [3 W. R., Rec. Ref., 5

3. ——— *Jurisdiction of Recorder.—Jurisdiction of Judge in cases of Bank in which he is*

RECORDERS ACT (XXI OF 1863)—*continued.*

a shareholder.—A Recorder, under Act XXI of 1863, being the holder of Bank of Bengal shares, has power to dispose of a suit to which the Bank is a party, in a case of necessity, as when the Commissioner also has shares in the Bank. BANK OF BENGAL *v.* GOLAM AZIM . . . . . 12 W. R., 185

——— s. 11.—*Jurisdiction of Recorder.—Suit on judgment of Court of Queen's Bench.*—In a suit to make a judgment passed in the Court of Queen's Bench in London a judgment of the Recorder's Court in Rangoon, and to enforce the said judgment in due form of law within the jurisdiction of the Court last mentioned, it was held, with reference to section 11, Act XXI of 1863, that the Recorder had no jurisdiction to entertain the suit, it not being a suit for land, and the defendant not dwelling, carrying on business, or personally working for gain within the local limits of the Court's jurisdiction, and the cause of action not having arisen within those limits. SIEVEKING, DROOP, & Co., *v.* FOCKE [9 W. R., 215

——— s. 17.—*Withdrawal of license to practise as a pleader.*—The Recorder of Moulmein, under section 17 of Act XXI of 1863, had no power to withdraw a license granted by him to plead in the Court of Moulmein, "except for any sufficient reason." IN THE MATTER OF THOMSON [6 B. L. R., 180 : 14 W. R., 257

——— ss. 22, 25.—*Reference to High Court.—Execution of decree.*—The Recorders could not, under Act XXI of 1863, refer for the opinion of the High Court questions arising in execution of a decree. The question must be one in the trial of a suit. DACOSTA *v.* CURRIE . 4 B. L. R., A. C., 50

S. C. ASHBURNER *v.* CURRIE . 13 W. R., 27

IN THE MATTER OF SUTHERLAND . 9 W. R., 478

1. ——— s. 27.—*Appeal to High Court.—Valuation of suit.*—Where the plaintiff sued to establish his right to a quantity of timber, the value of which he stated in his plaint to be R1,590, but on appeal to the High Court valued his appeal at R3,100, and made no claim for damages,—*Held* that no appeal lay to the High Court under section 27, Act XXI of 1863. MUTU *v.* VERRAPAH CHETTY [8 B. L. R., Ap., 91 : 17 W. R., 243

2. ——— s. 27 and s. 39.—*Appeal.—Valuation of suit.*—The Recorder of Moulmein, in trying an administration suit, valued at R13,000, found as to R6,000 in value of the property claimed that it did not exist. The value of the amount decreed by him amounted to R7,000. *Held* that, under Act XXI of 1863, sections 27 and 39, the appeal lay in the first instance to the High Court, and not to the Privy Council. HAWADI *v.* IBRAHIM SALI BHAY DAPTI . . . . . 5 B. L. R., 305

S. C. HOWAH BEE *v.* IBRAHIM SALEE BHOY DUPLEE . . . . . 13 W. R., 393

RECORDS, LOSS OF—

——— *Appeal case to High Court.—Procedure.*—Where the records of a case in appeal were not forthcoming, the High Court ordered the return of whatever papers had been sent up, together with such papers as the parties had respectively filed, with a direction to the lower Court to summon both parties, and to take such further evidence as either of them might think fit to adduce in support of his case, and to return such evidence with its own opinion for final disposal by the High Court. BUNWARRY LALL *v.* FURLONG . . . . 8 W. R., 38

——— **in Mutiny by burning.**

See POSSESSION—EVIDENCE OF TITLE. [4 B. L. R., Ap., 21

REDEMPTION.

See CASES UNDER MORTGAGE—REDEMPTION.

——— **Conditional decree for—**

See DECREE—FORM OF DECREE—MORTGAGE . I. L. R., 1 All., 344, 524

——— **Decree for—**

See SET-OFF—SET-OFF ALLOWED. [I. L. R., 4 Calc., 742

——— **Right of—**

See CASES UNDER EQUITY OF REDEMPTION.

See CASES UNDER MORTGAGE—REDEMPTION—RIGHT OF REDEMPTION.

——— **Suit for—**

See DECREE—FORM OF DECREE—MORTGAGE . . I. L. R., 7 Bom., 11

See JURISDICTION—SUITS FOR LAND—GENERAL CASES . I. L. R., 1 All., 431

See LIMITATION ACT, 1877, s. 2. [I. L. R., 9 Bom., 475

See CASES UNDER LIMITATION ACT, 1877, ART. 148 (1871, ART. 148).

See CASES UNDER MORTGAGE—REDEMPTION.

——— **of usufructuary mortgage.**

See DECREE—FORM OF DECREE—MORTGAGE . I. L. R., 1 All., 344, 524

See CASES UNDER MORTGAGE—REDEMPTION.

See MUNSIF . I. L. R., 1 All., 620

REFERENCE FROM SUDDER COURT AT AGRA.

——— *Establishment of High Court.—Letters Patent, N.-W. P., 1866, s. 27.*—The Sudder Court, being equally divided, referred a case for the opinion of the High Court of Calcutta The High Court at Agra having been established in the meanwhile,—*Held* that the Chief Justice of that Court

REFERENCE FROM SUDDER COURT AT AGRA—*continued.*

had power to hear and determine the case. UDEY KUNWAR *v.* LADU

[6 B. L. R., 283: 15 W. R., P. C., 16: 13 Moore's I. A., 585

REFERENCE TO FULL BENCH.

1. ——— **Power of one Judge to refer.**—When the senior Judge of a Division Bench of the High Court composed of two Judges passes an order which he intends as a final judgment in a case, the junior Judge cannot of his own authority refer the case to a Full Bench. IN THE MATTER OF THE PETITION OF CHUNDER KANT BHUTTACHARJEE

[B. L. R., Sup. Vol., Ap., 43

S. C. CHUNDER KANT BHUTTACHARJEE *v.* BINDABUN CHUNDER MOOKERJEE . 7 W. R., 277

2. ——— **Refusal to answer question when found not to arise in the case.**—The majority of the Judges of a Full Bench refused to answer the question referred, on the ground that it did not arise in the case. INDRA CHANDRA DUGAR *v.* BRINDABUN BIHARA

[7 B. L. R., F. B., 251: 15 W. R., F. B., 21

3. ——— Question referred not answered on the ground that it did not arise in the case. GIRISH CHANDRA LAHURY *v.* FAKIR CHAND

[B. L. R., Sup. Vol., 503

GOPAL CHUNDER ROY *v.* GOOROO DOSS ROY

[B. L. R., Sup. Vol., 764, note

See also RAM KANTH CHOWDHRY *v.* BHUBAN MOHAN BISWAS, *per* PEACOCK, *C. J.*

[B. L. R., Sup. Vol., 25: W. R., F. B., 183

See KIRTEE NARAIN CHOWDHRY *v.* PROTAP CHUNDER BUROOAH . W. R., F. B., 129

4. ——— KEMP and MACPHERSON, *J. J.*, were of opinion that the first question referred did not arise in the case, and therefore should not have been answered. PROSONNO COOMAR PAL CHOWDHRY *v.* KOYLASH CHUNDER PAL CHOWDHRY

[B. L. R., Sup. Vol., 759
2 Ind. Jur., N. S., 327: 8 W. R., 428

5. ——— **Difference of opinion between individual Judges.**—*Practice.*—A question arising from a conflict of opinion between individual Judges is not, properly speaking, the subject of reference to a Full Bench. RAJ KOOMAR SINGH *v.* SAHEBZADA ROY . I. L. R., 3 Calc., 20

6. ——— **Practice.**—*Regular appeal.*—*Special appeal.*—On a reference to a Full Bench from a special appeal, the Full Bench will decide the special appeal; but on a reference from a regular appeal the Full Bench will only decide the point referred, and send the case back to be dealt with by the Bench which made the reference. SUFDAR REZA *v.* AMZAD ALI

[I. L. R., 7 Calc., 703: 10 C. L. R., 121

7. ——— **Matter not decided in order of reference.**—*Limitation Act, XV of 1877, sch.*

REFERENCE TO FULL BENCH.—Matter not decided in order of reference—*continued.*

11, art. 64.—Statement of account unsigned.—Cause of action.—The plaintiffs claimed on a statement of account in writing dated the 18th October 1877; this statement of account was not signed by the defendant. The date of the institution of the suit was the 30th September 1880. A Division Bench of the High Court held on the appeal on the case coming up before them on the 18th October 1877, that the suit was not based upon any express contract made between the parties; that the transaction which took place on that date did not constitute an implied contract; and that, therefore, these contentions were not open to the plaintiffs; but the Court referred the question whether the plaintiffs' claim, so far as it was based on the statement of account on the 18th October 1877, fell within article 64 of schedule II of Act XV of 1877. *Held* by MITTER, PRINSEP, and MCDONELL, *J. J.*—That the question referred was a matter of limitation arising in the case which had not been decided in the order of reference, and without such a decision the case could not be disposed of; and as to that point, that the statement of account, not being signed by the defendant, did not fall within the terms of article 64 of schedule II of Act XV of 1877. *Held* by GARTH, *C. J.*, and TOTTENHAM, *J.*—That the Division Bench having held that the transaction afforded no basis for a suit, had disposed of the case, and the question referred was therefore immaterial. DUKHI SAHU *v.* MAHOMED BIKHU

[I. L. R., 10 Calc., 284: 13 C. L. R., 445

8. ——— **Matter not decided in or made the subject of reference.**—*Matter for decision by Full Bench.—Per* TYRRELL, *J.*, that in a reference to the Full Bench the only matters which can legally be attended to are the cases referred, and it is not competent for the Full Bench to review or pronounce judicial opinions upon the Court's judgment in cases which have been finally decided and not made the subject of reference. *Jagram Das* v. *Narain Lal, I. L. R., 7 All., 857;* and *Afzal-un-nissa Begam* v. *Al Ali, I. L. R., 8 All., 85,* followed and explained. JADU RAI *v.* KANIZAK HUSAIN

[I. L. R., 8 All., 576

REFERENCE TO HIGH COURT—CIVIL CASES.

See RECORDERS ACT, 1863, ss. 22, 25.

[4 B. L. R., A. C., 50
13 W. R., 27
9 W. R., 478

See REVIEW—POWER TO REVIEW.

[I. L. R., 10 Bom., 68

See RIGHT TO BEGIN . 13 B. L. R., 142

See CASES UNDER SMALL CAUSE COURT, MOFUSSIL—PRACTICE AND PROCEDURE—REFERENCE TO HIGH COURT.

See CASES UNDER SMALL CAUSE COURT, PRESIDENCY TOWNS—PRACTICE AND PROCEDURE—REFERENCE TO HIGH COURT.

REFERENCE TO HIGH COURT—CIVIL CASES—*continued.*

1. ——— **Question for reference.**—*Act XXIII of 1861, s. 28.—Question arising on application for review.*—Section 28, Act XXIII of 1861, merely authorised the reference of such questions as might arise in the trial of the suit, and not of questions arising on an application for a review of judgment, which cannot in any sense be considered as the trial of a suit. BONOMALLY DEO *v.* RAM SODOY CHUCKERBUTTY . . . . . **17 W. R., 95**

2. ——— *Question arising on application for review.*—A reference cannot be made upon an application for a review of judgment. TALIM MUNDAL *v.* WATSON & CO. . **17 W. R., 94**

3. ——— *Order made on application for probate.—Court of concurrent jurisdiction.—Succession Act (X of 1865), ss. 182, 264.—Code of Civil Procedure (Act X of 1877), s. 617.*—The order made by a District Judge on an application for probate not being a final order, cannot be referred for the opinion of the High Court under section 617 of the Code of Civil Procedure. But the Court will, under certain circumstances, entertain such an application, as a Court of concurrent jurisdiction, under section 264 of the Succession Act. IN THE MATTER OF MONOHUR MOOKERJEE
[I. L. R., 5 Calc., 756 : 7 C. L. R., 228

4. ——— *Criminal Procedure Code, 1877, s. 617.—Case in which there is no appeal.*—It is only when a matter cannot come before the High Court as a Court of Appeal that a reference can be made under section 617 of the Civil Procedure Code (Act X of 1877). KRISHNA NATH SIRCAR *v.* RAM KUMAR DE . . **7 C. L. R., 144**

5. ——— *Civil Procedure Code, 1882, s. 617.—Final decree or order.*—A Munsif, being of opinion that he had no jurisdiction to entertain a particular suit, made an order returning the plaint for presentation to the proper Court. An appeal was preferred under section 588 of the Civil Procedure Code, to the District Judge, who, entertaining doubts upon the question of jurisdiction, referred the matter to the High Court, under section 617. *Held* that, inasmuch as the order of the Munsif was not a final decree in the suit, and any order of the Judge in appeal disposing of the plea of jurisdiction would not amount to a "final" decree within the meaning of section 617 of the Civil Procedure Code, the High Court had not jurisdiction to entertain the reference. RAMPHUL *v.* DURGA
[I. L. R., 7 All., 815

REFERENCE TO HIGH COURT—CRIMINAL CASES.

See COUNSEL . . **9 B. L. R., 417**
[I. L. R., 1 Bom., 64

See PLEADER—APPOINTMENT AND APPEARANCE . **6 B. L. R., Ap., 46**
[17 W. R., Cr., 37

See RIGHT TO BEGIN . **9 B. L. R., 417**
[20 W. R., Cr., 33
I. L. R., 8 Bom., 200

REFERENCE TO HIGH COURT—CRIMINAL CASES—*continued.*

——— **For confirmation of sentence of death.**

See CRIMINAL PROCEDURE CODE, 1882, s. 374 (1872, s. 287, PARA. 1).
[5 N. W., 130

See CRIMINAL PROCEDURE CODE, 1882, s. 376 (1872, s. 288).
[I. L. R., 1 Bom., 639
19 W. R., Cr., 57

——— **Right of—**

See OFFENCE COMMITTED BEFORE PENAL CODE . . **I. L. R., 1 All., 599**

1. ——— **Discretion of Magistrate.**—*Criminal Procedure Code, 1872, s. 296.*—A Magistrate should, under section 296, Criminal Procedure Code, exercise a discretion as to whether he will refer a case to the High Court, and is not bound to refer every case in which he may detect an error. *3 W. R., Cr., Let. 5,* explained. NIBARUN CHUNDER DASS *v.* BHUGGOBUTTY CHURN CHATTERJEE
[20 W. R., Cr., 40

2. ——— **Power to refer.**—*Power of Joint Magistrate.—Criminal Procedure Code, 1861, s. 434.*—A Joint Magistrate of a district had no power to make a reference to the High Court under section 434 of the Code of Criminal Procedure. Such references can be made only by the Sessions Judge or by the Magistrate of a district. QUEEN *v.* CHOORAMONI SANT. . . **14 W. R., Cr., 25**

3. ——— *Power of Magistrate.—Case heard by Sessions Judge.*—One of two prisoners, who were tried jointly before a Bench of Magistrates on the complaint of the District Magistrate, appealed to the Sessions Judge and was acquitted. The District Magistrate thereupon, under sections 296 and 297 of the Criminal Procedure Code, 1872, transmitted the proceedings in the case to the High Court, and asked that they might be quashed on the ground that there had been a failure of justice. *Held* that the Magistrate was not competent to refer the proceedings of a superior Court to the High Court. IN THE MATTER OF DAVID
[6 C. L. R., 245

4. ——— *Power of Magistrate.—Order of Appellate Court.—Criminal Procedure Code (Act X of 1872), ss. 295, 296, and 297.*—A District Magistrate, being of opinion that the Sessions Judge had, on appeal, improperly set aside a conviction made by a Cantonment Magistrate, referred the matter to the High Court under section 297 of the Code of Criminal Procedure. *Held* that the Magistrate had no power to make such a reference. IN THE MATTER OF THE PETITION OF RAM LALL. EMPRESS *v.* RAM LALL
[I. L. R., 8 Calc., 875

5. ——— **Mode of reference.**—*Criminal Procedure Code, 1861, s. 434.—Reasons for reference by Judge.*—A Sessions Judge, in referring a

REFERENCE TO HIGH COURT—CRIMINAL CASES.—Mode of Reference— *continued.*

case under section 434 of the Code of Criminal Procedure, should state reasons of his own for the reference, and not merely send up the reasons which may have been left by his predecessor. BATOOL NASHYO *v.* BHUGLOO CHOWKEEDAR [10 W. R., Cr., 50

6. ——— **Question as to validity of commitment.**—*Criminal Procedure Code, 1872, s. 296.—Power of Sessions Court to set aside commitment.*—The Court of Session has no power to set aside a commitment made under its direction. If it doubts the legality of the commitment, it should make a reference to the High Court. IN THE MATTER OF THE PETITION OF HASSAN RAZA KHAN [7 N. W., 211

7. ——— **Order contrary to law.**—*Sessions Judge.—Criminal Procedure Code, 1872, s. 296.*—Where a Sessions Judge considers that a judgment or order is contrary to law, or that the punishment is too severe, he should report the proceedings to the High Court in the manner prescribed by the circular order of 15th July 1863, which is applicable to references under section 296 of the Code of Criminal Procedure, 1872. RAJKISTO PAUL *v.* NITYANUND PAUL . . . **20 W. R., Cr., 50**

8. ——— **Question of jurisdiction pending trial.**—*Reference under s. 296 of Act X of 1872 by Court of Session.*—A Court of Session, after it had asked the assessors their opinion in a case which was being tried by it, suspended the trial of the case and made a reference to the High Court under section 296 of Act X of 1872, on a question of jurisdiction which had arisen in the trial of the case. *Held* that it was not intended that that section should be so used, and the Court of Session must dispose of such question itself. EMPRESS OF INDIA *v.* BHUP SINGH . . . **I. L. R., 2 All., 771**

9. ——— **Question of sufficiency of evidence.**—*Criminal Procedure Code, 1861, s. 434.*—Section 434 of the Code of Criminal Procedure, 1861, contemplated reference to the High Court in cases where the sentence or order is contrary to law. A case where a Magistrate had convicted of an offence on the evidence of one witness whom he considered credible was held not a proper subject of reference to the High Court. QUEEN *v.* BINDU [8 W. R., Cr., 60

10. ——— **Power of High Court on reference.**—*Criminal Procedure Code, 1882, s. 434.*—The power exercised by a Court sitting as a Court to decide questions of law reserved in criminal cases under section 434 of the Criminal Procedure Code (X of 1882) is the power of review, and the Court is a Court of Reference and Revision. QUEEN-EMPRESS *v.* APPA SUBHANA MENDRE [I. L. R., 8 Bom., 200

11. ——— *Illegality in proceedings.—Criminal Procedure Code, 1861, s. 434.*—

REFERENCE TO HIGH COURT—CRIMINAL CASES.—Power of High Court on reference— *continued.*

The Court can only interfere under section 434, Code of Criminal Procedure, when there is some illegality in the proceedings of a lower Court. QUEEN *v.* JOY KISHEN LALL . . . **12 W. R., Cr., 46**

12. ——— *Criminal Procedure Code, s. 307.—Trial by jury.—Verdict of acquittal.—High Court's power of interference with the verdict of a jury.*—In a case referred under section 307 of the Criminal Procedure Code (Act X of 1882), the High Court will not, as a rule, interfere with the verdict of a jury, except when it is shown to be clearly and manifestly wrong. QUEEN-EMPRESS *v.* MANIA DAYAL . . **I. L. R., 10 Bom., 497**

13. ——— *Question as to credibility of witnesses.—Criminal Procedure Code, 1861, s. 434.*—Section 434 gave the High Court no power to interfere in a case where the difference of opinion between the Magistrate and the Judge was as to the credibility of witnesses. The Magistrate's order may be an improper one, but if passed on legally sufficient evidence it cannot be called illegal. OODLA *v.* BARKAT . . . . **18 W. R., Cr., 7**

IN THE MATTER OF RAMDHUN MUNDLE [18 W. R., Cr., 39

14. ——— *Criminal Procedure Code, 1872, s. 296.—Acquittal by Magistrate.*—When a Magistrate, having called on the prisoners for their defence, takes the evidence of a witness and finally acquits them of the charge, the High Court had no power to interfere upon a reference made to it under section 296, Act X of 1872. OKHOY TELI *v.* MODHOO SHEIKH . . **19 W. R., Cr., 55**

15. ——— *Criminal Procedure Code, 1872, s. 296.—Order of Magistrate rejecting application for restitution of forfeited property.*—The High Court declined, on a reference under section 296, Code of Criminal Procedure, to interfere with the order of a Magistrate rejecting an application for the restitution of property which had been sold some years ago under the provisions of sections 183 and 184 of the Code. The proper mode of raising the question as to the propriety of the order would be by a regular suit against the Government. IN THE MATTER OF THE PETITION OF GHUMUNDEE SINGH . . . . . **23 W. R., Cr., 30**

16. ——— *Taking up on reference case where sentence of imprisonment had expired.*—Where the imprisonment awarded on a summary conviction before a Magistrate had already expired, the High Court declined to go into the case on a reference from the Sessions Judge, because it would be no advantage to the prisoner to do so, and because, if the Magistrate's proceedings were quashed, the prisoner would be put to the risk of being tried again for the offence with which he had been charged. KOPIL DOLAI *v.* KANHAI JENNA [24 W. R., Cr., 71

REFERENCE TO HIGH COURT—CRIMINAL CASES—*continued.*

17. ——— Right of counsel to be heard.—*Criminal Procedure Code, 1872, s. 296.*—Counsel cannot claim as of right to be heard on a reference to the High Court under section 296 of the Criminal Procedure Code. REG. *v.* DEVAMA [I. L. R., 1 Bom., 64

See ANGELO *v.* CARGILL . 9 B. L. R., 417

REFUND OF STAMP DUTY.

See STAMP-DUTY, REFUND OF—

REFUSAL TO GIVE RECEIPT FOR SUMMONS.

See PENAL CODE, s. 173.
[I. L. R., 3 Calc., 621
5 Bom., Cr., 34
I. L. R., 5 Mad., 199, 200, note

REFUSAL TO PERFORM SERVICES.

See SERVICE TENURE.
[I. L. R., 4 Calc., 67

REFUSAL TO REGISTER.

See CASES UNDER REGISTRATION ACT, 1877, s. 35 (1871, s. 35).

See CASES UNDER REGISTRATION ACT, 1877, s. 73 (1866, s. 84; 1871, s. 73).

REGIMENTAL DEBTS ACT.

——— 26 & 27 Vict., c. 57, ss. 5, 7, 8, 10, 12, 22, & 35.—*Committee of adjustment.*—*Royal Warrant, c. 17.*—*"Surplus."*—*"Person."*—*Bona fides.*—The president of a committee of adjustment, appointed under the provisions of 26 and 27 Victoria, Cap. 57 (Regimental Debts Act, 1863), wrote to the Agra Bank at Bombay a letter enclosing the order by which the committee had been appointed, stating that he had given over to the widow of a deceased officer the whole of the estate of her husband by direction of the Military Secretary to Government, and requesting the bank to conform to her instructions concerning the amount of deposit receipts then in charge of the bank in the name of the deceased officer. The widow had taken out no letters of administration to the estate of her husband, nor had she a preferential claim or any preferential charge against it, but she paid all the preferential charges. On receipt of the letter from the president of the committee of adjustment, the bank paid over all the moneys of the deceased officer in their hands to his widow. In a suit brought against the bank by the first plaintiff (the granddaughter of the deceased officer), who had taken out letters of administration to his estate on 6th June 1873, and her husband, the second plaintiff, to recover two thirds of the moneys so paid by the bank to the widow, with interest,—*Held* that, on the payment, by the widow, of the preferential charges, the whole of the property remaining in the hands of the committee was "surplus," within the meaning of section 5 of the Regimental Debts Act of 1863, and that, assuming the Agra Bank at Bombay to be

REGIMENTAL DEBTS ACT, 26 & 27 Vict., c. 57, ss. 5, 7, 8, 10, 12, 22, & 35—*continued.*

"within the command," within the meaning of section 7, the moneys of the deceased officer in the hands of the bank, as being part of such "surplus," should have been dealt with by the committee in accordance with the provisions of section 10 of the Regimental Debts Act, 1863, and clause 17 of the Royal Warrant, and should have been remitted to the Military Secretary to Government. *Held*, also, that the Military Secretary to Government had no authority to pay or order the payment of such "surplus" to any person except in accordance with the provisions of section 12 of the Regimental Debts Act of 1863. *Held*, also, that section 8 of the Regimental Debts Act of 1863 did not render it incumbent on the widow, for the purpose of ousting the jurisdiction of the committee of adjustment, to pay the preferential charges before the committee had taken any steps under section 7. The true construction of section 8 is that, on payment of the preferential charges, the committee of adjustment must be regarded as *functi officio*, except for the purpose of reporting, and should make over whatever property they have, which comes under the denomination of "surplus," in accordance with the terms of section 10. *Held*, also, that the letter of the president of the committee of adjustment was a sufficient notice to the bank that the committee were *functi officio*, and that the period had arrived when the civil law stepped in to regulate the case. *Quære*,—Whether the bank could be held to be a "person" within the meaning of section 22 of the Regimental Debts Act of 1863; but even if it could,—*Held* that the bank were not protected by that section, the payment by them not having been made to a "representative" as defined in the Act. *Held*, also, that the bank were not protected by section 35 of the Regimental Debts Act, the payment not having been made "in pursuance" of the Act and the carelessness of the bank in paying the money having been such as to amount to positive negligence, and debar them from pleading that they acted under the *bonâ fide* belief that the payment was made in pursuance of the Act. *Pemberton* v. *Chapman*, 7 *E. & B.*, 210, distinguished. SARSTEDT *v.* AGRA BANK . . 12 Bom., 268

REGISTRAR, OFFENCE COMMITTED IN PROCEEDING BEFORE—

See CRIMINAL PROCEDURE CODE, 1882, ss. 480, 481, 482 (1872, ss. 435 & 436).
[13 B. L. R., Ap., 40

REGISTRAR OF HIGH COURT.

——— *Examination of stamps.*—The examination of stamps is a fiscal duty belonging to a revenue officer, and the Registrar of the High Court is not responsible for it. BHIKOO MOLLAH *v.* RASH MONEE DOSSEE . . . . 9 W. R., 357

REGISTRATION.

——— Beng. Reg. XXXVI of 1793, s. 17.—*Document registered by Kazi.*—This Regulation did not apply to registration by Kazis. SREEMUNT KOWAR *v.* AKBUR MUNDUL . 8 W. R., 438

REGISTRATION—*continued.*

——— Mad. Reg. XVII of 1802, s. 3.

—*Instrument of hypothecation.*—An instrument of hypothecation is a mortgage instrument, and may as such be registered under Regulation XVII of 1802, section 3. KADARSA RAUTAN *v.* RAVIAH BIBI [2 Mad., 108

REGISTRATION ACT XIX OF 1843.

See CASES UNDER REGISTRATION ACT, 1877, s. 50.

1. ——— s. 2.—"*Satisfied,*" *Meaning of.*—*Held* that the term "satisfied" as used in section 2, Act XIX of 1843, did not merely signify that the mortgage-money might be realised by sale, but that all the stipulations of the mortgage-deed were to be performed, and its terms and conditions fulfilled. PURSIDH NARAIN RAI *v.* MAHOMED SHOOKOOL HUQ . . . 1 N. W., 38: Ed. 1873, 35

2. ——— *Construction.—Mortgages.*—*Deed of sale.—Deed tainted by fraud.*—The words, "any knowledge or notice of any such unregistered deed or certificate alleged to be had by any party to such registered deed or certificate notwithstanding," in section 2, Act XIX of 1843, referred not only to the mortgages and certificates mentioned in that part of the section which immediately precedes these words, but extended also to the deeds of sale or gift which were mentioned in the earlier part of the section. The words "provided its authenticity be established to the satisfaction of the Court" in the same section, pointed not merely at the exclusion of a forged deed from the benefit of the Act, but also of a deed tainted by fraud, although in other respects genuine. SREENATH BHUTTACHARJEE *v.* RAM COMUL GANGOOLY [3 W. R., P. C., 43: 10 Moore's I. A., 220

3. ——— *Construction.—Effect of registration.*—The words in Act XIX of 1843, "provided its authenticity be established to the satisfaction of the Court," were introduced in order to prevent any supposition that registration would give to a merely fictitious transaction any effect which it would not otherwise possess. NARASANNA *v.* GAVAPPA . . . . . 3 Mad., 270

REGISTRATION ACT, XVI OF 1864.

——— s. 13.

See CASES UNDER REGISTRATION ACT, 1877, s. 17.

——— and ss. 17 & 68.—*Admissibility in evidence.—Priority of registered over unregistered deed.*—A deed creating an interest in immoveable property exceeding in value R100 executed prior to 1st January 1865 was not affected by Act XVI of 1864, section 13, although it might have been registered under section 17. All former Acts and Regulation having been repealed except in respect of registered instruments, an unregistered deed, creating an interest in immoveable property exceeding in value R100 executed prior to 1st January 1865, was not, by any provision of Act XVI of 1864, postponed to a registered instrument executed subsequently to that date. CHUTTERDHAREE MISSER *v.* NURSINGH DUTT SOOKOOL . . . . . 3 Agra, 371 [S. C. Agra, F. B., Ed. 1874, 163

Section 13 did not apply to deeds executed before 1st January 1865, and section 17 contained no penalty for non-registration. BAMA SOONDUREE DOSSIA *v.* MADHUB CHUNDER GOOHOO . 8 W. R., 269

——— s. 15.

See PLEADER—REMUNERATION. [9 W. R., 101

See CASES UNDER REGISTRATION ACT, 1877, s. 77.

——— s. 16.

See PROMISSORY NOTE, FORM OF— [6 B. L. R., Ap., 40

——— s. 17.—*Construction.—Inducement to register old deeds.*—Section 17, Act XVI of 1864, did not say that deeds executed prior to the passing of the Act should not be received as evidence in Courts. It was intended merely to encourage parties to register old deeds at once. KAROOLALL THAKOOR *v.* DHOONAL MUNDUL . . . 8 W. R., 86

——— s. 29.

See REGISTRATION ACT, 1877, ss. 34, 35.

——— s. 51.

See BOND . . . 3 Mad., 88 [5 B. L. R., 167

——— *Record of agreement by Registrar.—Signature of Registrar.*—Section 51, Act XVI of 1864, did not require a Registrar to record the agreement there spoken of entirely with his own hand. The signature of the Registrar was sufficient. HOBEEBO SOBAIR *v.* HOSSEIN ALI [5 W. R., S. C. C. Ref., 14

——— s. 52.

See BOND . . . 3 Mad., 88 [5 B. L. R., 167

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—REGISTRATION ACT. [4 W. R., S. C. C. Ref., 11

——— s. 68.

See REGISTRATION ACT, 1877, s. 50.

REGISTRATION ACT, XX OF 1866.

——— s. 2.

See REGISTRATION ACT, 1877, s. 3. [3 B. L. R., A. C., 394 S. C. 12 W. R., 366 3 Agra, 157

REGISTRATION ACT, XX OF 1866, s. 17.

See REGISTRATION ACT, 1877, s. 17.

——— s. 21.

See REGISTRATION ACT, 1877, s. 21.
[4 Mad., 91

——— s. 22.

See REGISTRATION ACT, 1877, s. 23.
[15 B. L. R., 228
24 W. R., 75
L. R., 2 I. A., 210

——— s. 24.

See REGISTRATION ACT, 1877, s. 23.
[15 B. L. R., 228
24 W. R., 75
L. R., 2 I. A., 210

——— s. 32.

See APPEAL—ACTS—REGISTRATION ACT.
[6 B. L. R., 578, note

——— s. 36.

See REGISTRATION ACT, 1877, s. 34.
[15 B. L. R., 228
24 W. R., 75
L. R., 2 I. A., 210

——— s. 40.

See REGISTRATION ACT, 1877, s. 39.
[4 Mad., 91

——— ss. 44 & 46.

See REGISTRATION ACT, 1877, s. 57.
[3 Bom., O. C., 135

——— s. 48.

See CASES UNDER REGISTRATION ACT, 1877, s. 48.

——— s. 49.

See CASES UNDER REGISTRATION ACT, 1877, s. 49.

——— s. 50.

See CASES UNDER REGISTRATION ACT, 1877, s. 50.

——— s. 52.

See APPEAL—ACTS—REGISTRATION ACT.
[I. L. R., 1 All., 377, 583
7 W. R., 130

See LIMITATION ACT, 1877, ART. 179 (1871, ART. 167)—LAW APPLICABLE TO APPLICATION FOR EXECUTION.
[I. L. R., 1 All., 586

See REGISTRATION ACT, 1871, s. 2.
[6 Mad., 351

REGISTRATION ACT, XX OF 1866, ss. 52 & 53.

See APPEAL—ACTS—REGISTRATION ACT.
[I. L. R., 3 Calc., 517
7 W. R., 115, 130
4 N. W., 29
I. L. R., 1 All., 377, 583
I. L. R., 5 Bom., 673
I. L. R., 11 Calc., 169
I. L. R., 12 Calc., 511

See LIMITATION ACT, 1877, ART. 178 (1859, s. 22) . . 18 W. R., 512
[I. L. R., 10 Calc., 196
I. L. R., 5 Bom., 673
I. L. R., 1 All., 586

See LIMITATION ACT, 1877, ART. 179 (1871, ART. 167)—LAW APPLICABLE TO APPLICATION FOR EXECUTION.
[I. L. R., 1 All., 586

See CASES UNDER MORTGAGE—SALE OF MORTGAGED PROPERTY—MONEY-DECREES ON MORTGAGES.
[I. L. R., 9 Calc., 651
I. L. R., 1 All., 236
3 N. W., 123
14 B. L. R., 408
19 W. R., 83
I. L. R., 2 Mad., 108

See REGISTRATION ACT, 1871, s. 2.
[6 Mad., 351

See RES JUDICATA—CAUSE OF ACTION.
[14 B. L. R., 408
8 B. L. R., Ap., 92

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—REGISTRATION ACT.
[I. L. R., 11 Calc., 169
18 W. R., 199

See SMALL CAUSE COURT, PRESIDENCY TOWNS—JURISDICTION—REGISTRATION ACT . . . 6 B. L. R., 177

See SPECIAL APPEAL—ORDERS SUBJECT TO APPEAL . I. L. R., 1 Mad., 401
[I. L. R., 11 Calc., 169

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, s. 622.
[I. L. R., 1 Mad., 401

1. ——— and s. 54.—*Bond for delivery of paddy.—Money-bonds.*—Sections 52 to 54, Act XX of 1866, contemplated money-bonds only. A bond for the delivery of paddy without specification of its money value, or of the amount to be paid in case of non-delivery, could not be summarily enforced under section 53 of that law. JADUB MUNDUL *v.* BISHOO SIRDAR . 15 W. R., 369

2. ——— *Bonds hypothecating immoveable property.* Bonds containing hypothecation of immoveable property were not excluded from the provisions of sections 52 and 53 of Act XX of 1866. GOBIND SHUNKERJEE *v.* GIRDHAREE SING
[1 N. W., 90: Ed. 1873, 142

REGISTRATION ACT, XX OF 1866, ss. 52 & 53—*continued.*

WOOMA CHURN MOOKERJEE *v.* HURRY CHURN BOSE . . . . . **11 W. R., 60**

3. ——————— *Bond.—Instalment.*—A bond, payable by instalments, stipulated that, in case of default in payment of two successive instalments, the whole amount secured should become due. *Held* that a petition in a summary way could not be presented under section 53 of Act XX of 1866. IN THE MATTER OF THE INDIAN REGISTRATION ACT, 1866. IN THE MATTER OF LACHMIPAT SING DUGAR ROY

[2 B. L. R., O. C., 151 : 11 W. R., O. C., 24

VENITHITHAN CHETTY *v.* MOOTHIROOLANDI CHETTY . . . . . **6 Mad., 4**

GRISH CHUNDER CHOWDHRY *v.* KRISTO SOONDUR SANDYAL . . . . **14 W. R., 277**

4. ——————— *Bond payable by instalments.—Agreement that on non-payment of interest amount of bond should become due.*—A bond payable two years after date contained a stipulation that in case of default being made in payment of interest on the principal sum secured, the principal sum, with interest up to the due date of the bond, should at once become payable. The bond was specially registered under section 52 of the Registration Act, 1866. *Held* that such an agreement did not come strictly within the words of sections 52 and 53 of the Act, and could not, therefore, be summarily enforced by petition under section 53. IN THE MATTER OF THE PETITION OF GANPUT MANIKJI PATIL

[6 Bom., O. C., 64

5. ——————— *Summary application.—Representative of obligee.*—The summary remedy under section 53 of the Registration Act, 1866, was made applicable only as between the immediate parties to the registered obligation. Such remedy, therefore, could not be enforced by the representative of an obligee. IN THE MATTER OF THE PETITION OF SUBBUVIYAN . . . . . **4 Mad., 233**

RAMNARAIN DOSS BISWAS *v.* SREEMUNTH PODDAR

[9 W. R., 498

Nor by an assignee of the bond. GAUR MOHUN DASS *v.* RAMRUP MAZOOMDAR

[1 B. L. R., A. C., 42
S. C. 10 W. R., 84

6. ——————— *Proceeding against heirs of obligor.*—An agreement recorded on a bond or obligation under section 52, Act XX of 1866, binds the obligor only, and not his heirs, who cannot be summarily called upon to show cause why a decree should not be passed against them. RAM NARAIN DOSS BISWAS *v.* SREEMUNTH PODDAR . **9 W. R., 498**

So with his personal representative. PUDIYAPORAYIL MAMY *v.* MADAKARATH AMMAN KUTTI

[3 Mad., 199

BOSITUB CHURN DIGPUTTY *v.* GOBIND PERSHAD TEWAREE . . . **13 W. R., 203**

And so with a partner. The petitioner was held to be only entitled to a decree against the partner who actually signed the note and special agreement. IN THE MATTER OF THE PETITION OF BAKATRAM BADRINATH . . . **6 Bom., O. C., 131**

7. ——————— *Procedure.—Summoning defendant.*—In cases of application to the Court under section 53 of the Registration Act, XX of 1866, the Court ought not to summon the defendant, but the applicant was entitled to a decree merely on production of the obligation and the record duly signed. KRISTO KISHORE GHOSE *v.* BROJONATH MOZOOMDAR

[6 W. R., Civ. Ref., 11

8. ——————— *Application to enforce bond.—Copy of obligation and record.*—In an application to a Small Cause Court, under section 53, Act XX of 1866, to enforce the agreement recorded by the registering officer under section 52 on the bond,—*Held* that the applicant would be entitled to a decree only on production of the original obligation and of the record signed, but not on a copy of the same. SREERAM ROY CHOWDHRY *v.* KOLEMOODDEE MOLLAH . . . . . **9 W. R., 477**

9. ——————— *Application to enforce mortgage-bond.—Money-decree.*—The obligee of a simple mortgage-bond was only entitled, under section 53, Act XX of 1866, to a money-decree. AKHE RAM *v.* NAND KISHORE . . **I. L. R., 1 All., 236**

10. ——————— *Decree on mortgage-bond.—Enforcement of lien.*—A decree obtained under the summary procedure prescribed by the Registration Act, 1866, could be for money only, and not for the enforcement of a lien. JUGGUN NATH *v.* KOMAL SINGH . . . . . **3 N. W., 123**

ASMA BIBEE *v.* RAM KANT ROY CHOWDHRY

[19 W. R., 251

GRISH CHUNDER CHOWDHRY *v.* KRISTO SOONDUR SANDYAL . . **14 W. R., 277**

BOSITUB CHURN DIGPUTTY *v.* GOBIND PERSHAD TEWAREE . . . **13 W. R., 203**

11. ——————— *Form of decree on obligation enforceable under Act.*—The only jurisdiction given to the Court under section 53, Act XX of 1866, so far as the terms of the decree are concerned, was to give a decree for the sum mentioned in the obligation, with interest and costs. A prayer for a declaration of right to sell property pledged by the obligation cannot be given. RAJMOHUN MOOKERJEE *v.* NIL MONEE MITTER. . . . **11 W. R., 222**

Nor any declaration against the property pledged, nor to make the sureties of the bond liable. POORNOO CHUNDER GHOSE *v.* GOBIND CHUNDER MOOKERJEE . . . . **22 W. R., 28**

12. ——————— *Suit for instalments due more than a year before suit.*—In a suit on a bond registered under section 53, Act XX of 1886, one instalment of which had fallen due more than a year before the institution of the suit, the plaintiff sued for that instalment, and also included another instal-

REGISTRATION ACT, XX OF 1866, ss. 52 & 53- *continued.*

ment which he might have recovered in a summary way. The Judge came to the conclusion on the evidence that the bond had not been executed by the defendant, nor duly registered. *Held* that the plaintiff was not entitled to waive the first instalment and get a decree for the second, as if he had enforced the summary remedy on the bond. DHUNUNJOY GHOSE *v.* BEMAL DHARA BAGDEE [17 W. R., 514

13. ——————— *Decree on bond.—Interest*—No sum as interest from the date of decree to the date of realisation could be awarded by a decree under section 53, Act XX of 1866: a decree under that section could only award a sum not exceeding that mentioned in the bond, together with interest at the rate specified (if any) to the date of decree, and a sum for costs to be fixed by the Court. MAHCUM CHUND *v.* MAHTAB . . . . . 3 Agra, 318

BHAIRO SINGH *v.* BECHOO . 3 Agra, 393

14. ——————— *Bond specially registered.—Interest.*—Where a bond was especially registered under the provisions of Act XX of 1866, the creditor was entitled, on observing the procedure there prescribed, summarily to have a decree for the amount specified, including interest up to the date of such decree. If the creditor intended to secure interest at the rate stipulated after suit and decree, it was not enough to insert the customary phrase "date of realisation" in the instrument, as such phrase must be held controlled by other parts of the agreement as expressed in the bond. ADUR MONEE DEBIA *v.* KOOLO CHUNDER CHATTERJEE . 21 W. R., 140

15. ——————— *Effect of decree on registered bond.*—A decree under section 53 of Act XX of 1866 had all the effect of a decree in a regular suit under the Code of Civil Procedure. GUNGA NARAIN CHATTERJEE *v.* RADHA KRISHNA DUTT [25 W. R., 322

16. ——————— and s. 55.—*Specially registered bond.—Setting aside of summary decree.*—A decree obtained by the plaintiff upon a specially registered bond under section 53 of Act XX of 1866, and set aside under section 55 of that Act,—*Held* not to bar a regular suit upon the bond. UTSHAB NARAYAN CHOWDRY *v.* CHITTRA RAKA GUPTA [8 B. L. R., Ap., 92

S. C. OOTSHUB NARAIN CHOWDHRY *v.* CHITTRA RECKA GOOPTA . . . 17 W. R., 154

17. ——————— *Bond.—Appeal.*—A petition for payment of a bond, which had been specially registered under Act XVI of 1864, was presented on the 3rd April 1866. *Held* that it must be considered as having been presented under section 53 of Act XX of 1866, by virtue of the 3rd section of that Act, which repealed Act XVI of 1864; consequently the decision of the Principal Sudder Ameen, to whom the petition was presented, was, under section 55 of Act XX of 1866, final. There could be no appeal from that decision; therefore the Judge had no jurisdiction to reverse the Principal Sudder Ameen's decision. GRISH CHUNDRA DUTT *v.* BUZUL-UL-HUQ . 3 B. L. R., A. C., 68: 11 W. R., 412

REGISTRATION ACT, XX OF 1866, ss. 52 & 53—*continued.*

——— s. 55.

See APPEAL—ACTS—REGISTRATION ACT.
[18 W. R., 512
I. L. R., 12 Calc., 511
23 W. R., 328
24 W. R., 225
I. L. R., 1 All., 377

See MANAGER OF ATTACHED PROPERTY.
[15 W. R., 477

1. ——————— *Setting aside or staying execution of decree.*—Under section 55, Act XX of 1866, the Court might, after decree, on a representation by the judgment-debtor, set aside the decree, and stay or set aside execution. KRISTO KISHORE GHOSE *v.* BROJONATH MOZOOMDAR [6 W. R., Civ. Ref., 11

2. ——————— *Suit to set aside decree on registered bond.—Grounds for setting aside decree under s. 55, Act XX of 1866.*—Decrees on two specially registered bonds were obtained against plaintiff under section 53 of the Registration Act, XX of 1866. He petitioned the Civil Court, under section 55, to set aside these decrees, on the ground that the bonds were executed on consideration of something to be done by the obligee, who had wholly failed to perform his part. The Judge dismissed the petitions, because he thought the matter was a more proper one for investigation in a regular suit. His successor dismissed the suit when brought, because, in his opinion, it did not lie. *Held* on appeal (by the majority of the Court) that no suit lay. The effect of sections 52 to 55 was to make a decree under them of precisely the same validity as any other decree, to make it enforceable by the same process, but to render it impeachable on the special grounds referred to in section 55. *Held*, also, that the matters alleged were not such as, if proved, would have justified the setting aside of the decree. The special circumstances must be such as to show a vice in the mode in which the contract to submit to decree and the special registration were obtained, and an infirmity in the original obligation will not do. SINIA TEVAR *v.* RANGASAMI AIYANGAR . . 7 Mad., 112

3. ——————— *Right to sue to cancel deed and enforce it.*—The powers conferred on the Courts under the Registration Act, 1866, for enforcement by process of execution of the payment of a bond are not inconsistent with the right to sue to cancel and annul the deed as fraudulent. SEEERAM *v.* HOKOOM SINGH . . . . . 2 N. W., 467

The summary procedure provided for in sections 52 to 55 of this Act has been omitted in the later Acts.

——— s. 66.

See ADMISSION—MISCELLANEOUS CASES.
[15 W. R., 280

REGISTRATION ACT, XX OF 1866, ss. 66-69.

See REGISTRATION ACT, 1877, s. 49 (1866, s. 49) . . 22 W. R., 319

——— s. 68.

See REGISTRATION ACT, 1877, s. 60.
[I. L. R., 4 All., 384

——— s. 80.

See REGISTRATION ACT, 1877, s. 69.
[16 W. R., 180

——— s. 83.

See REGISTRATION ACT, 1877, s. 77.
[1 B. L. R., F. B., 58
S. C. 10 W. R., F. B., 51
24 W. R., 320
2 B. L. R., A. C., 105
S. C. 10 W. R., 483
3 Agra, 407

——— s. 84.

See REGISTRATION ACT, 1877, s. 3.
[6 B. L. R., 576

——— ss. 83 & 84.

See APPEAL—ACTS—REGISTRATION ACT.
[6 B. L. R., 578, note
7 W. R., 130

See REGISTRATION ACT, 1877, s. 35.
[3 B. L. R., O. C., 60: 12 W. R., 386, note

——— s. 84.

See APPEAL—ACTS—REGISTRATION ACT.
[3 Bom., A. C., 104
8 W. R., 266
9 W. R., 122

——— s. 88.

See REGISTRATION ACT, 1877, s. 34.
[15 B. L. R., 228
S. C. 24 W. R., 75
L. R., 2 I. A., 210
10 Bom., 98
7 N. W., 119

See REGISTRATION ACT, 1877, s. 49.
[15 B. L. R., 228
24 W. R., 75
L. R., 2 I. A., 210

——— s. 91.

See JURY—JURY IN SESSIONS CASES.
[14 W. R., Cr., 32

See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—REGISTRATION ACT, 1866.
[5 Bom., Cr., 7

——— s. 93.

See FALSE PERSONATION.
[2 B. L. R., A. Cr., 25

See REGISTRATION ACT, 1877, s. 82.

REGISTRATION ACT, XX OF 1866, s. 94.

See FALSE PERSONATION.
[7 W. R. Cr., 99
2 B. L. R., A. Cr., 25

See REGISTRATION ACT, 1877, s. 82.

See SENTENCE—GENERAL CASES.
[8 W. R., Cr., 16

——— s. 95.

See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—REGISTRATION ACT, 1866.

See REGISTRATION ACT, 1877, s. 83.
[10 W. R., Cr., 5
6 B. L. R., 692: S. C. 15 W. R. Cr., 58
6 B. L. R., 693, note
S. C. 10 W. R., Cr., 21
4 B. L. R., Ap., 69
S. C. 13 W. R., Cr., 21

REGISTRATION ACT, VIII OF 1871.

See GENERAL CLAUSES CONSOLIDATION ACT, s. 6 . I. L. R., 4 Calc., 536
[I. L. R., 3 Calc., 727

See LIMITATION—STATUTES OF LIMITATION—LIMITATION ACT, 1871, ART. 168.
[24 W. R., 372

——— s. 2.—*Stamps on petitions under s. 53, Registration Act, 1866.—Court Fees Act, 1870, sch. I, art, 3.*—The effect of the first and fourth clauses of section 2 of the Registration Act of 1871, read with the provision in the first schedule as to the extent of the repeal of Act VII of 1870, was to keep in force all the provisions of Act XX of 1866 relating to the procedure for the recovery in a summary way of the amount of an obligation upon agreements recorded under section 52 of that Act before the 1st day of July 1871. PACHAIPERUMAL CHETTI *v.* SAVAYYAR AUDONI KURUSU RAVVEL
[6 Mad., 351

The sections of this Act correspond substantially with those of the present Act III of 1877, under which, therefore, the cases will be found. A few references at the end of the Act where the sections do not correspond are given below.

——— s. 76.

See APPEAL—RIGHT OF APPEAL, EFFECT OF REPEAL ON— I.L.R., 3 Calc., 727

See REGISTRATION ACT, 1877, s. 77.
[I. L. R., 2 Calc., 131
S. C. 26 W. R., 50
L. R., 3 I. A., 221

——— s. 80.

See REGISTRATION ACT, 1877, s. 82.
[23 W. R., Cr., 55

See SENTENCE—IMPRISONMENT—IMPRISONMENT GENERALLY.
[18 W. R., Cr., 3

REGISTRATION ACT, VIII OF 1871, s. 82.

See REGISTRATION ACT, 1877, s. 84.
[13 B. L. R., Ap., 40
22 W. R., Cr., 10

——— s. 85.

See REGISTRATION ACT, 1877, s. 31.
[I. L. R., 6 Bom., 96

See REGISTRATION ACT, 1877, s. 58
[I. L. R., 4 All., 40

See REGISTRATION ACT, 1877, s. 28.
[I. L. R., 7 All., 590

REGISTRATION ACT, 1877.

See APPEAL—RIGHT OF APPEAL, EFFECT OF REPEAL ON—
[I. L. R., 3 Calc., 727

——— **Operation of Act.**—The provisions of Act III of 1877 apply to all documents tendered in evidence on or after 1st April 1877. RAJU BALU *v.* KRISHNARAV RAMCHANDRA
[I. L. R., 3 Bom., 273

But *see* OGHRA SING *v.* ABLAKH KOOER
[I. L. R., 4 Calc., 536

1. ——— s. 3 (1871, s. 3).—*Lease.*—The expression "an undertaking to cultivate or occupy" used in section 3 of Act VIII of 1871 in defining the word "lease," means an accepted undertaking giving to the lessee a right or interest in the thing let. APU BUDGAVDA *v.* NARHARI ANNAJEE
[I. L. R., 3 Bom., 21

2. ——— (1866, s. 2).—*Moveable property.—Trees.*—Trees are to be held moveable property for the special purposes of the Registration Act, but they are not ordinarily so regarded in Indian Acts. CHOWDHRY ROOSTUM ALI *v.* DHANDOO
[3 Agra, 157

3. ——— *Lease to take juice from date trees.*—The right to take juice from date trees is not, according to section 2, Act XX of 1866, a right to immoveable property, but falls under the definition of moveable property. JALU NAMDAR *v.* BEICHA NAMDAR . 3 B. L. R., A. C., 394

S. C. JANOO MUNDUR *v.* HUCHA MUNDUR
[12 W. R., 366

4. ——— and s. 84.—*District Court.—Jurisdiction of High Court, North-West Provinces.*—For the purposes of Act XX of 1866, "District Court" meant "the principal Court of original jurisdiction in a district, and included the High Court in its ordinary original civil jurisdiction." The High Court of the North-West Provinces, which has no ordinary original civil jurisdiction, was not a "District Court" to which a petition might be presented under section 84 of the Act, and an order passed by that Court on such a petition, directing the registration of a deed, was made without jurisdiction. MUKHUN LALL PANDAY *v.* KOONDUN LALL . 15 B. L. R., P. C., 228: 24 W. R., 75: L. R., 2 I. A., 210

REGISTRATION ACT, 1877, s. 3 (1866, s. 2)—*continued.*

——— and s. 84—*continued.*

5. ——— *District Court.—Jurisdiction of High Court.*—Where the property, the subject of a deed presented for registration, was without the jurisdiction of the High Court, but the order of refusal was made by the Registrar General, who was within such jurisdiction,—*Held* the High Court was the District Court under section 84 of Act XX of 1866 to which the petition should be made. IN THE MATTER OF THE INDIAN REGISTRATION ACT (XX OF 1866). IN THE MATTER OF WYNDHAM . . . . 6 B. L. R., 576

6. ——— *District Court.—Regulation provinces.*—The Registration Act of 1871 gives power to the Government to appoint districts and sub-districts for the purposes of registration; but the "District Courts" mentioned in the Act (except where the High Court when exercising its local jurisdiction is said to be a District Court within the meaning of the Act) must, in the case of a regulation province, be taken to import the ordinary Zillah Courts. IN THE MATTER OF THE PETITION OF ABDOOLLAH. REASUT HOSSEIN *v.* ABDOOLLAH
[I. L. R., 2 Calc., 131
S. C. 26 W. R., 50: L. R., 3 I. A., 221,

——— s. 17 (1864, s. 13; 1866, s. 17; 1871, s. 17).

See CASES UNDER s. 18.

See CASES UNDER s. 49.

1. ——— *Kabuliat.—Act XVI of 1864, s. 13.*—Neither section 17 of Act III of 1877, nor the similar sections of the preceding Acts had the effect of rendering a document, which was not compulsorily registrable under Act XVI of 1864, inadmissible in evidence under the succeeding Acts without registration. RAM KOOMAR SINGH *v.* KISHARI
[I. L. R., 9 Calc., 68: 11 C. L. R., 318

2. ——— *Document executed before Act XVI of 1864 came into operation.—Hibbanama.*—A hibbanama executed before Act XVI of 1864 came into operation was admissible as evidence, though not registered. Section 13 did not apply to deeds executed before 1st January 1865, and section 17 contained no penalty for non-registration. BAMA SOONDUREE DOSSIA *v.* MADHUB CHUNDER GOOHOO
[8 W. R., 269

3. ——— *Kabuliat executed when registration was unnecessary.*—An unregistered kabuliat is not inadmissible as evidence if it was executed at a time when the law did not require registration. SHEO RAM SINGH *v.* SEWAK RAM
[20 W. R., 83

4. ——— (cl. a).—*Deed of gift.—Immoveable property.*—All instruments of gift of immoveable property must be registered, whatever be the value of the property. PUTONA KOLITA *v.* MUTIA KOLITA . . 2 B. L. R., Ap., 46

S. C. PROTONA KOLITA *v.* MOTTEA KOLITA
[11 W. R., 334

REGISTRATION ACT, 1877, s. 17, (cl. a) —*continued.*

5. ——————— *Deed of gift.—Hibba-bil-awaz.—Nominal consideration.*—A hibba-bil-awaz, although made on the nominal consideration of "a thân of cloth and natural love and affection," is merely a deed of gift, and as such must be registered. GOLAM MOSTOFA *v.* GOBURDHUN MULLA [8 C. L. R., 441

6. ——————— (cl. b).—*Determination of necessity for registration.*—The necessity for registration must be determined by the value of the consideration stated in the deed. ROHINEE DEBIA *v.* SHIB CHUNDER CHATTERJEE . 15 W. R., 558

7. ——————— *Computation of value for purposes for registration.—Deed of sale.—Consideration.*—The consideration mentioned in a deed of sale by the parties thereto must be regarded as showing the value of the interest conveyed for the purposes of registration under Act XX of 1866. *Rohinee Debia* v. *Shib Chunder Chatterjee, 15 W. R., 558,* followed. VASUDEV MORESHVAR GUNPULE *v.* RAMA BABAJI DANGE . . . 11 Bom., 149

8. ——————— *Consideration.—Assignment of mortgage.—Stamp.*—*A.* executed to *B.* an assignment of a mortgage. It was stamped with a stamp of R168, and recited that *B.* had instituted a suit against *C.* to recover R3,000, interest and costs, and that an agreement had been come to between *B.* and *C.*, that, on *C* getting *A.* to execute the assignment of the mortgage and on his paying R500, the suit should be dismissed and settled. It further recited that R5,000 was due to *A.* on the mortgage, and that *A.* had, at *C.'s* request, agreed to assign it to *B.* By the operative part, *A.*, in consideration of R5 paid to *A.* by *B.*, and "in consideration of the premises," assigned the mortgage to *B.* *Held* that the consideration for the deed of assignment was not merely R5 paid to *A.*, but the assignee's agreement to withdraw the suit if *A.* assigned the mortgage to him upon the instrument; that the money value of the latter part of the consideration was the amount covered by the stamp put by the parties themselves; and as it exceeded R100, the deed of assignment was inadmissible in evidence for want of registration (section 17 of Act VIII of 1871). NAGO KANATURIA *v.* BABAJI KATARI . . I. L. R., 8 Bom., 610

9. ——————— *Agreement relating to family arrangement.—Valuation for purpose of registration.*—Where a document was in the nature of a family arrangement, and drawn up mainly for the purpose of settling a widow's maintenance, though some right in immoveable property was created or declared by such instrument, and it was proved that the actual value of the whole of the immoveable property mentioned in the document exceeded R100, but there was no evidence to show that the value of the widow's right exceeded that sum,—*Held* that, for the purpose of registration under Act XX of 1866, the actual value of the whole immoveable property named in the document must not be taken to be the value of the right so created or declared. NILAVA KOM RACHAPPA *v.* RUDRAYA BIN RACHAPPA [12 Bom., 141

REGISTRATION ACT, 1877, s. 17 (cl. b) —*continued.*

10. ——————— *Bond creating charge on immoveable property.—Larger sum payable on contingency.*—The words in section 17 of the Registration Act (VIII of 1871) "present or future," "vested or contingent," point, not to the value or its ascertainment, but to the right or interest in the land which is to be created as a security. If the charge or interest created is of a value less than R100, registration is needless. NARASAYYA CHETTI *v.* GURUVAPPA CHETTI . . I. L. R., 1 Mad., 378

11. ——————— *Valuation of right, title, and interest created by mortgage.*—The value of the right, title, or interest created by a mortgage is estimated by the amount of the principal money thereby secured. The words "or in future" in section 17 of Act XX of 1866 and section 17 of Act VIII of 1871 have reference to estates in remainder or in reversion in immoveable property, or to estates otherwise deferred in enjoyment, and not to interest payable in future on principal moneys lent on the security of immoveable property. NANA BIN LAKSHMAN *v.* ANANT BABAJI . . I. L. R., 2 Bom., 353

12. ——————— *Bond creating interest in land.—Mode of testing value.*—For the purpose of registration, the value of the interest created in immoveable property by a mortgage-bond is that sum by the payment of which the interest could be determined. TIYAGARAJA PADYACHI *v.* RAMANUJAM PILLAI . . . I. L. R., 6 Mad., 422

13. ——————— and s. 49.—*Mortgage.*—The value of the interest created by a mortgage of immoveable property is estimated, for the purposes of the Registration Act of 1871, not by the amount of the principal money thereby secured, but by the amount of such money and the interest payable thereon. Consequently, a bond, dated the 9th August 1873, which charged certain immoveable property with the payment on the 31st May 1874 of R98, and interest thereon at the rate of one per cent per mensem, should have been registered. *Darshan Singh* v. *Hanwanta, I. L. R., 1 All., 274,* followed. *Nanabin Lakshman* v. *Anant Babaji, I. L. R., 2 Bom., 353,* differed from. RAJPATI SINGH *v.* RAM SUKHI KUAR . . . . I. L. R., 2 All., 40.

14. ——————— *Bond hypothecating immoveable property.*—The registration of a bond hypothecating immoveable property to secure the repayment of R95-14-0, with interest at eighteen per cent. per annum, the principal to be paid in four annual instalments, three of R23-5-4 and the fourth of R25-14-0, and the whole of the interest to be paid on the date of the last instalment, without any provision that the debtor should be at liberty to anticipate the payment of any instalment, is compulsory, inasmuch as the lowest sum which the debtor could compel the creditor to accept is in excess of R100. The proper test for determining the value of the interest created by a mortgage for the purpose of registration is the amount of the least sum recoverable and not the consideration for the bond. Although an unregistered mortgage-bond which creates an interest

REGISTRATION ACT, 1877, s. 17 (cl. b) —*continued.*

in land in excess of R100 is of no effect as a mortgage, it may be received as evidence of the personal obligation. *Seshathri Ayyengar* v. *Sankara Ayen, 7 Mad., 296,* followed. KATTAMURI JAGAPPA *v* PADALU LATCHAPPA . . . **I. L. R., 5 Mad., 119**

15. ——————— *Bond creating interest in immoveable property.*—The registration of a deed which does not necessarily create an interest in immoveable property of the value of R100 is not compulsory. *Darshan Singh* v. *Hanwanta, I. L. R., 1 All., 274;* and *Rajpati Singh* v. *Ram Sukhi Kuar, I. L. R., 2 All., 40,* dissented from. *Nana bin Lakshman* v. *Anant Babaji, I. L. R., 2 Bom., 353;* and *Narasayya Chetti* v. *Guruvappa Chetti, I. L. R., 1 Mad., 380,* approved. A bond for R99-8-0, with interest at 12 per cent. per annum, payable twelve months after date, by which immoveable property is hypothecated to secure repayment of the debt, need not be registered. SADAGOPA AYYANGAR *v.* DORASAMI SASTRI . **I. L. R., 5 Mad., 214**

16. ——————— *Bond creating charge on immoveable property.—Mortgage.*—A bond which charged immoveable property with the payment on a day specified therein of R99, the principal amount, and R6, interest thereon, should have been registered under the provisions of clause (*b*), section 17, Act VIII of 1871. DARSHAN SINGH *v.* HANWANTA **[I. L. R., 1 All., 274**

DEOJIT *v.* PITAMBAR . **I. L. R., 1 All., 275**

17. ——————— *Bond under R100.—Compulsory registration.—Priority.—Mortgage-bond.*—A mortgage-bond for R99, repayable in nine months and eleven days, with interest at the rate of 2 per cent. per mensem, does not require registration, but a registered mortgage-bond for R195, subsequently executed, will have priority over it. KORBAN ALLY MIRDHA *v.* SHARODA PROSHAD AICH **[I. L. R., 10 Calc., 82**

S. C. KORBAN ALLY MIRDHA *v.* PITUMBARI DASI **[13 C. L. R., 256**

18. ——————— *Bond.—Principal and interest.*—A bond for the payment of R83-8-0 on demand, together with interest thereon at the rate of 2 per cent. per mensem, which charges immoveable property with such payment, does not, though the amount due on it may in time exceed R100, purport to create an interest of the value of R100 within the meaning of the Registration Act, and its registration is therefore optional. KARAN SINGH *v.* RAM LAL . . . . **I. L. R., 2 All., 96**

19. ——————— *Bond hypothecating immoveable property.—Amount together with interest over R100.*—A bond which secures by the hypothecation of immoveable property the repayment, after four months from the date thereof, of a loan of R96-15-0, with interest at the rate of 12 per cent. per annum, is an instrument requiring to be registered under section 17 of Act XX of 1866. DHURMDEO NARAIN SINGH *v.* NUND LALL SINGH **[6 N. W., 257**

REGISTRATION ACT, 1877, s. 17 (cl. b) - *continued.*

20. ——————— *Mortgage.—Suit on unregistered bond charging immoveable property.*—The obligor of a bond bearing date the 20th January 1873 agreed to pay the obligee R80, together with interest on that amount at the rate of 2 per cent. per month, between the 2nd April 1874 and the 1st May 1874, and hypothecated immoveable property as collateral security for such payment. On the 15th February 1879 the obligee sued the obligor on the bond to recover R196-8-0, being the principal amount and interest, from the hypothecated property. *Held* by the majority of the Full Bench (STUART, *C. J.*, dissenting) that, for the purpose of registration, the value of the right assigned by the bond to the obligee in the property should be estimated by the amount secured for certain by the hypothecation, and, that amount exceeding R100, the bond should have been registered. *Per* STUART, *C. J.* - That, for that purpose, the value of that right should be estimated by the principal amount of the bond, and, that amount being under R100, the bond did not require to be registered. *Nana bin Lakshman* v. *Anant Babaji, I. L. R., 2 Bom., 353;* and *Narasayya Chetti* v. *Guruvappa Chetti, I. L. R., 1 Mad., 378,* followed. *Per* PEARSON, *J.*, OLDFIELD, *J.*, and STRAIGHT, *J.*—That a suit on a bond for money charged thereby on immoveable property, must, where the bond is not admissible in evidence because it is unregistered, fail. HIMMAT SINGH *v.* SEWA RAM **[I. L. R., 3 All., 157**

Overruled by HABIBULLAH *v.* NAKCHED RAI **[I. L. R., 5 All., 447**

21. ——————— **and s. 49.**—*Occupancy tenancy.—"Immoveable property"—Mortgage.—Act I of 1868 (General Clauses Act), s. 2 (5).*—The obligee of a bond, dated the 29th October 1869, sued to recover the amount due thereunder from the property hypothecated therein. By the terms of the bond the obligor agreed to pay the sum of R75, with interest at 2 per cent. per mensem, on the 12th May 1873. The amount thus secured exceeded R200. The property mortgaged was the tenant-holding of the obligor. *Held* that the interest of a tenant in his holding was right or interest to or in immoveable property; that consequently such bond, which affirmed as a security a right of which the value, estimated by the amount secured, exceeded R100, ought to have been registered; that being unregistered it could not affect the "immoveable property comprised therein," or "be received in evidence of any transaction affecting" the same; and that the suit brought on the basis of such bond for the enforcement of the lien must, in the absence of the bond, fail. *Himmat Singh* v. *Sewa Ram, I. L. R., 3 All., 157,* followed. NABIRA RAI *v.* ACHAMPAT RAI . . **I. L. R., 3 All., 422**

22. ——————— *Bond charging immoveable property.—Interest.*—The obligors of a bond for the payment of money charging land agreed to pay the principal amount, R99, within six months after the execution of the bond, and to pay interest every month on the principal amount at the rate

REGISTRATION ACT, 1877, s. 17 (cl. b) —*continued.*

of 2 per cent., and that in the event of default of payment of the interest in any month, the whole amount mentioned in the bond should become due at once. There was no stipulation preventing the obligors from repaying the loan at any time within the six months after which it was reclaimable. *Held* that the only amount certainly secured by the bond was the principal, and the bond did not therefore need to be registered. AHMAD BAKHSH *v.* GOBINDI [I. L. R., 2 All., 216

23. ——————— *Bond.—Mortgage.*—The immoveable property charged by a bond payable by instalments, dated the 17th December 1866, was charged for both principal and interest, and the first instalment was payable within three years from the date of the bond with the accumulated interest, and the amount then becoming due exceeded R100. *Held,* in a suit on the bond, that it was an instrument creating an interest in immoveable property of the value of R100 and upwards, and under section 17 of Act XX of 1866 required registration. *Rajpati Kuar* v. *Ramsukhi Kuar, I. L. R., 2 All., 40,* followed. BANNO *v.* PIR MUHAMMAD . I. L. R., 2 All., 688

24. ——————— *Mortgage of immoveable property.—Registered and unregistered documents.—Held* by the majority of the Full Bench (STRAIGHT and OLDFIELD, *JJ.,* dissenting) that the principal sum secured by a mortgage of immoveable property is alone to be considered for the purpose of deciding whether the registration of the instrument of mortgage is optional or compulsory under the Registration Act, 1877. The ruling of the Full Bench in *Himmat Singh* v. *Sewa Ram, I. L. R., 3 All., 157,* overruled. *Held,* therefore, where an instrument of mortgage by way of conditional sale, dated the 2nd July 1871, secured the payment of a principal sum of R72, with interest at R2 per cent. per mensem, on the 12th May 1873, the whole amount thus secured exceeding R100, that the registration of such instrument was optional and not compulsory. HABIBULLAH *v.* NAKCHED RAI . I. L. R., 5 All., 447

25. ——————— *Mortgage for sum just under R100 with interest.*—Where the plaintiff sued upon a mortgage to secure R98 with interest at R2-8 per month, it was objected that the mortgage was inoperative as being unregistered. *Held* that the mortgage was one to secure a sum under R100 and did not require registration. PANCHI DASSI *v.* AHMEDULLA . . . . 12 C. L. R., 444

KORBAN ALI MIRDHA *v.* PITUMBARI DASI [13 C. L. R., 256

S. C. KORBAN ALI MIRDHA *v.* SHARODA PROSHAD AICH . . . I. L. R., 10 Calc., 82

26. ——————— and s. 18.—*N.* agreed by an instrument in writing called a "sattah," in consideration of a loan of R99-8-0, that *B.* should have the right of cultivating indigo on certain land from a certain date for a certain period; that if she failed to make over to him any portion of such land, or interfered with his cultivation of any portion of it, she should be responsible in damages for the loss occasioned to *B.* in respect of such default or interference at the rate of R40 per bigha, and for the repayment of such loan; "that if she failed to pay, *B.* was at liberty to recover from her person and property; and that until the conditions of the agreement were fulfilled, she hypothecated her 4-anna share in mouzah *B.*" *B.* sued *N.* upon the "sattah" to recover R1,059-6-0, being the amount of such loan and damages, by the sale of such 4-anna share, such suit being founded on a breach of the agreement. *Held per* STUART, *C. J.,* that, inasmuch as the value relating to the immoveable property hypothecated in the "sattah" was simply R99-8-0, without any stipulation as to interest or any other payment by which that sum might be augmented, the damages stipulated for depending upon a contingency which might or might not happen, and respecting which nothing could be anticipated at the time of registration, the instrument did not, under Act VIII of 1871, section 17, require registration. *Darshan Singh* v. *Hanwanta, I. L. R., 1 All., 274,* observed on. *Per* OLDFIELD, *J.*—That the only certain sum secured by the "sattah" being R99-8-0, the instrument did not require registration under that Act, but it could not be used to enforce a lien to any greater extent than R99-8-0 against the property in suit. BASANT LALL *v.* TAPESHRI RAI [I. L. R., 3 All., 1

27. ——————— *Bond for money to be advanced.*—Where a bond pledges land for sums to be hereafter advanced not exceeding R100, and the sums actually advanced exceed that amount, the bond becomes an instrument of which the registration is necessary under section 17, Act XX of 1866. PERRIN *v.* LEDLIE . . . 15 W. R., 364

28. ——————— *Bond by which land is pledged as collateral security.*—A bond for money in which land is pledged as a mere collateral security is not one of the instruments defined in clause 2, section 17, Act XX of 1866, the registration of which is compulsory, but is one of which registration is optional. WOODOY CHAND JANA *v.* NITYE MUNDUL [9 W. R., 111

29. ——————— *Mortgage-deed.—Evidence.—A.* executed an instrument in favour of *B.,* thereby covenanting to repay *B.* the amount of a loan, together with interest, and mortgaging certain immoveable property as security for repayment of the same. *B.* sued *A.* for the debt. *Held* that the instrument did not directly create, declare, transfer, or extinguish any right or title in immoveable property; the land was mentioned as a collateral security, and therefore the instrument was not inadmissible in evidence under section 13 of Act XVI of 1864. GOPAL PRASAD *v.* NANDARANI [1 B. L. R., A. C., 192 : 10 W. R., 252

30. ——————— *Document giving future right in immoveable property.*—An agreement for the purchase and sale of certain immoveable pro-

REGISTRATION ACT, 1877, s. 17 (cl. b) —*continued.*

perty provided that the completion of the contract should be "subject to the approval of the purchaser's solicitors" (naming them), and that, if they should not approve of the title, the vendor should refund the earnest-money and pay all costs incurred by the purchaser in investigating the title. *Held* that the agreement did not require registration. SEEEGOPAL MULLICK *v.* RAM CHURN NUSKUR

[I. L. R., 8 Calc., 856 : 12 C. L. R., 152

31. ——————— *Deposit of title-deeds.—Memorandum of deposit on promissory note.—Admissibility in evidence.*—The defendant deposited certain title-deeds with the plaintiff as security for the repayment of R1,200 lent him by the plaintiff at the time when the deposit was made. On the evening of the same day, the defendant, by way of further security, gave to the plaintiff a promissory note for the amount of the loan, and endorsed thereon the following memorandum: "For the repayment of the loan of R1,200 and the interest due thereon of the within note of hand, I hereby deposit with" the plaintiff, "as a collateral security by way of equitable mortgage, title-deeds of my property," &c. *Held* that the memorandum did not require registration. KEDARNATH DUTT *v.* SHAMLOLL KHETTRY

[11 B. L. R., 405 : 20 W. R., 150

32. ——————— *Instrument intending to create charge on immoveable property.*—Where the parties had agreed upon a sale of certain property, and the terms were settled but the seller took an advance of R100, the instrument which was drawn up showing that the intention was that the purchaser should have a security upon the property for the money advanced,—*Held* that the instrument operated as a charge upon the property to the extent of R100, and came within the terms of Act VIII of 1871, section 17. JOY RAM GOSSAIN BUTTACHARJEE *v.* KALEE NARAIN ROY . . **20 W. R., 291**

33. ——————— *Deed covenanting to pay sum for immoveable property.—Admissibility in evidence.*—A deed by which a defendant covenanted to pay monthly a certain sum "for the use and hire of a steam-engine, boiler, and machinery, sheds, and a bungalow," is one relating to immoveable property, and therefore not admissible in evidence without registration. WINTERSCALE *v.* GOPAL CHANDRA SEAL . . . . **3 B. L. R., O. C., 90**

34. ——————— *Agreement as to land.—Suit for specific performance.*—The plaintiff lent defendant R20,000, and received a document in the following terms: "On demand we promise to pay S. V. Mutu Ramen Chetty and C. T. A. Chiniah Chetty the sum of rupees twenty thousand, value received. Memo.—"For the above promissory note, the grant of the dockyard and offices to be deposited in three days, and a proper agreement drawn out. The time of credit to be one year or eighteen months, the interest at R1-10 per cent. per mensem." In a suit to compel specific performance and for damages for breach of the agreement contained in the above memo.,—*Held* that the document did not contain an agreement creating an interest in land, and registration was not therefore necessary to render it receivable in evidence under the Registration Act of 1866. CURRIE *v.* MUTU RAMEN CHETTY

[3 B. L. R., A. C., 126 : 11 W. R., 520

35. ——————— *Document concerning right of use of growing trees.*—A document creating and transferring a right of use of growing trees for a term of years is a document which purports to create or transfer an interest in immoveable property within the meaning of section 13 of the Registration Act of 1864; and therefore such document, if not registered, is inadmissible in evidence. SUKRY KURDEPPA *v.* GOONDAKULL NAGIREDDI . . **6 Mad., 71**

36. ——————— *Assignment of decree obtained by mortgagee.*—Where a mortgagee obtained a decree against his mortgagors for the payment of the mortgage-money, and in default for the sale of the mortgaged property, and his heir afterwards executed an assignment of the decree for valuable consideration to the plaintiff, who proceeded to execute the decree by sale of the mortgaged property,—*Held* that the assignment was a document of which the registration was compulsory. GOPAL NARAIN *v.* TRIMBAK SADASHIV . . **I. L. R., 1 Bom., 267**

37. ——————— *Assignment of mortgage.—Extrinsic evidence.—Evidence Act (I of 1872), s. 91.—Title to sue.—Amendment of plaint.*—An equitable mortgage by deposit of title-deeds was created on 15th August 1862. In March 1873 the mortgagee, *P. D.*, executed an assignment of all his property and of all debts due to him, and all the securities therefor, to the plaintiff. The assignment also contained a power of attorney from the mortgagee to the plaintiff, "in the name of the said *P. D.*, his executors, &c., but for the sole use and benefit of the said *A. D.* (the plaintiff), to ask, demand, sue for, recover and receive of and from all and every the person or persons liable in that behalf all and every (*inter alia*) the sum and sums of money and debts hereby assigned or intended so to be or any of them or any part of any of them, to hold the same unto and to the use and behoof of the said *A. D.*, his executors, &c." Some days after the execution of the assignment, the title-deeds, which had been deposited in 1862 with the mortgagee, were handed to the plaintiff, in accordance with the terms of an agreement to that effect contained in the assignment. The deed of assignment was not registered. On 13th August 1874 the plaintiff, as the assignee of the equitable mortgage, sued for foreclosure. The Court of first instance held that, as an assignment, the deed required registration, and that not being registered it could not be received in evidence; that under section 91 of the Evidence Act (I of 1872) no evidence, other than that contained in the document itself, could be given to prove the fact of the assignment; and that, therefore, the plaintiff had failed to show a title to sue as assignee of the equitable mortgage. The Court, however, permitted an amendment of the plaint by which the plaintiff was described as suing "in his own name

REGISTRATION ACT, 1877, s. 17 (cl. b) —*continued.*

and as the constituted attorney of *P. D.*," and then allowed the deed of assignment to be put in as evidence of the power thereby conferred on the plaintiff to sue for and recover all debts due to *P. D.*, and therefore, to maintain the present suit in respect of the equitable mortgage. On appeal,—*Held* that, if the suit were regarded as the suit of *P. D.*, the power of attorney contained in the deed did not enable the plaintiff to maintain the suit for *P. D.*, inasmuch as it purported to enable the plaintiff to recover the debts mentioned in the deed on his own account only, and not on account of *P. D.*; and, on the other hand, if the suit were regarded as that of the plaintiff, the Court, by treating the power in the deed as enabling him to recover on his own account, virtually gave to that power the full effect of an assignment, and for that purpose such an assignment, whether legal or equitable, should be registered under sections 17 and 49 of Act VIII of 1871. The Court, however, being of opinion that there had not been any deliberate intention, on the part of the parties to the deed, to evade the law of registration, granted the plaintiff an adjournment of the case, in order to complete his title as an equitable mortgagee, by obtaining, registering, and putting in evidence a fresh assignment to himself from *P. D.* GANPAT PANDURANG *v.* ADARJI DADABHAI

[I. L. R., 3 Bom., 312

38. ——————— *Certificate of sale.*—*Sale of immoveable property.*—A certificate of sale of immoveable property of the value of more than one hundred rupees must be registered, and the fact of sale cannot be proved except by the production of such certificate. MULJI BECHAR *v.* ANUPRAM BECHAR . . . . . 7 Bom., A. C., 136

PADU MALHARI *v.* RAKHMAI . 10 Bom., 435

ANONYMOUS CASE . . 6 Mad., Ap., 40

39. ——————— *Certificate of sale.*—*Priority of registered over unregistered deeds.*—*Bom. Reg. IX of 1827, s. 3, cl. 2.*—*Held* that a certificate of sale was not a document of such a character as to be entitled by law to priority, by virtue of its being registered, over an unregistered lease, but that it came within the class of documents described in Regulation IX of 1827, section 3, clause 2, as judicial process, which may, at the option of the holder, be registered, but the force and effect of which is in no wise to depend on their being registered. FAKIRCHAND GOVINDRAM *v.* KAHANDAS BHAGVANDAS . . . . 3 Bom., A. C., 167

40. ——————— *Certificate of sale.*—A certificate of sale requires registration under section 17 of the Registration Act in order to make it admissible in evidence under section 49. HARKISANDAS NARANDAS *v.* BAI ICHHA

[I. L. R., 4 Bom., 155

41. ——————— *Certificate of sale.*—*Civil Procedure Code, 1882, s. 316.*—*Held* that a sale certificate granted under section 316 of the Civil Procedure Code is not a document the registration of which is compulsory under the Registration Act, 1877, section 17 (*b*). MASARAT-UN-NISSA *v.* ADIT RAM . . . . . I. L. R., 5 All., 568

42. ——————— *Certificate of sale.*—*Construction of Act.*—*Maxim "Optimus legis interpres consuetudo."*—Sale certificates granted under the provisions of section 259 of Act VIII of 1859 are not documents the registration of which is compulsory under the provisions of section 17 of the Registration Act of 1871. PROKASH CHUNDER DASS *v.* TARACHAND DASS

[I. L. R., 9 Calc., 82: 12 C. L. R., 1

43. ——————— *Certificate of sale.*—*Admissibility in evidence.*—*Evidence to prove sale.*—A certificate of sale, issued under section 259 of the Code of Civil Procedure, 1859, is an "instrument" requiring registration within the meaning of Act XX of 1866, section 17. Where such a certificate is not registered, other evidence is not admissible to prove the sale. *Per* NANABHAI HARIDAS, *J.*—An unregistered certificate of sale is not only inadmissible in evidence but invalid. PADU MALHARI *v.* RAKHMAI

[10 Bom., 435

LALBHAI LAKHMIDAS *v.* KAMALUDIN HUSEN KHAN . . . . . 12 Bom., 247

See HARKISANDAS NARANDAS *v.* BAI ICHHA

[I. L. R., 4 Bom., 155

44. ——————— *Certificate of sale.*—*Civil Procedure Code, 1877, s. 316.*—*Semble,*—That a certificate granted under section 316 of the Civil Procedure Code is not an instrument the registration of which is compulsory. HUSAINI BEGUM *v.* MULO

[I. L. R., 5 All., 84

45. ——————— *Certificate of sale.*—*Certificate of payment.*—*Receipt.*—*Beng. Reg. VIII of 1819, s. 15, cl. 1.*—*Civil Procedure Code, VIII of 1859, s. 259 (X of 1877, s. 316).*—A certificate of payment granted under the provisions of clause 1, section 15 of Regulation VIII of 1819, is admissible in evidence without being registered. *Quære,*—Whether a sale certificate granted under Act X of 1877, section 316 (corresponding to section 259 of Act VIII of 1859), is admissible in evidence without being registered. ABDOOL AZIZ BISWAS *v.* RADHA KANT KOBIRAJ . . I. L. R., 5 Calc., 226

46. ——————— *Certificate of sale.* *Quære,*—Does a certificate of sale need registration? BENODI LAL GHOSE *v.* TAMIZUDDIN

[7 C. L. R., 115

See RAJKISHEN MOOKERJEE *v.* RADHA MADHUB HALDAR . . . . . 21 W. R., 349

47. ——————— *Certificate of sale.*—*Memorandum declaring person to be purchaser at sale.*—What operates to create the property recognised as a right of occupancy is the revenue sale and consequent entry of the occupant's name in the Collector's books. A memorandum, therefore, declaring a person to be the successful bidder at the sale is not an instrument creating or declaring an

REGISTRATION ACT, 1877, s. 17 (cl. b) —*continued.*

interest in immoveable property and requiring registration under section 17 of Act XX of 1866. GHELABHAI BHIKARIDAS v. PRANJIVAN ICHHARAM [11 Bom., 218

48. ——————— *Certificate of sale.—Civil Procedure Code, 1859, s. 259.*—Under Act VIII of 1859, section 259, and Act XX of 1866, section 17 and section 42, it was necessary to register the certificate of sale itself, and not merely the memorandum of the certificate of sale. SRINIVASA SASTRI v. SESHAYYANGAR . I. L. R., 3 Mad., 37

49. ——————— *Certificate of sale.—Mortgage.*—Where the Subordinate Judge of Dehra Dun made and signed the following endorsement on a deed of mortgage of immoveable property: "This deed was purchased on the 1st December 1875 at a public sale in the Court of Dehra Dun by *N.* and *K.*, plaintiffs, for R2,400, under special orders passed by the Court on the 23rd November 1875, in the case of *N.* and *K.*, plaintiffs, against *R.*, for self, and as guardian of the heir in possession of the estate left by *M.*,"—*Held per* SPANKIE, *J.*, that this instrument operated as a sale certificate, and consequently, as it related to immoveable property of the value of R100 and upwards, it required to be registered. *Held per* OLDFIELD, *J.*—That as the instrument operated to assign the deed of mortgage to the auction-purchasers, it for the same reason required to be registered. KANAHIA LAL v. KALI DIN - [I. L. R., 2 All., 392

50. ——————— *Certificate of sale.—Property sold in lots.—Single sale-certificate for lots each under R100.*—In compliance with an application for the sale of land to satisfy a decree the Civil Court put up certain land to auction in four lots. One lot was purchased by the plaintiff for R88, and each of the other three were bought by him for less than R100, the price for the whole amounting to R111-8-0, for which amount the Court granted a single certificate of sale dated 10th February 1874. This certificate was never registered. The plaintiff applied to be put in possession, but, the defendant resisting him, his application was rejected. On the 16th of November 1879 the plaintiff brought this suit to have his right declared to the piece bought for R88, and to recover its possession. Along with the plaint the plaintiff produced the unregistered certificate of sale of the 10th February 1874. On the application of the plaintiff, another certificate for the same property was issued by the Court to the plaintiff on the 31st of October 1877,—that is, three years after the confirmation of sale. This was registered on the 20th of December 1877 and was produced by the plaintiff in the proceedings which gave rise to the present suit. It was obtained by the plaintiff on the 23rd of February 1880 and tendered in evidence, but was rejected under section 63 of the Code of Civil Procedure (XIV of 1882). *Held* that, although the four lots purchased by the plaintiff at the auction sale were included in one certificate of sale, such certificate, although one instrument in form, should, for the purpose of registration, be regarded as four separate certificates of the four several lots, each of which did not require registration. DEVIDAS JAGJIVAN v. PIRJADA BEGAM [I. L. R., 8 Bom., 377

REGISTRATION ACT, 1877, s. 17 (cl. b) —*continued.*

51. ——————— *Deed of compromise.*—*R. S. R.*, a Hindu, died in 1811, leaving a will, by which he gave his property to his four sons subject to certain charges, and among other things directed that the profits of a portion of it should be dedicated to a certain idol. After his death his sons partitioned the property. In 1857, *B.*, one of the sons, brought a suit in the late Supreme Court to establish the will and to have the trusts carried into execution. The decree in that suit ordered that the portion so dedicated by the testator should be conveyed to *N. C.*, *B. D. N.*, and *K. R. M.*, as trustees for the idol. In pursuance of this decree a conveyance was settled by the Master, but it was never executed, the parties having come to an agreement to compromise, and executed a deed to that effect on 15th March 1866. The deed recited that the parties now agreed to compromise certain suits and to execute mutual releases, &c., as thereinafter declared and then witnessed that the real property belonging to the idol, which the trustees were entitled to hold under the will, was set forth in a schedule, and that it had been agreed that a conveyance should be executed to the plaintiff and others in trust for the idol, and that the same should be duly registered; provision was then made for the settlement of the dedicated portion, when for more than one year, and extending beyond the term of the turn of worship of any one of the parties; and there was a declaration that all leases, &c., made without consent of the parties should only be valid for the turn of worship of such party; that the rents and profits were to pass to and remain with the party or parties who should for the time being be entitled to the turn of worship; and that a house of worship should be built for the idol on the land mentioned in the schedule: provision was also made for the forfeiture of interest of any party who should renounce the Hindu religion; and it was declared that a certain portion was not to be considered divided as theretofore, but that it belonged to the plaintiff, and was not liable to be sold. *Held* (reversing the decision of MARKBY, *J.*) that the document was one which required registration under section 13 of Act XVI of 1864. RAJKUMAR ROY v. KALIKRISHNA ROY . . . . . 7 B. L. R., 197

52. ——————— *Covenant for title running with the land.*—A covenant for title, running with the land, would seem to be in itself a transaction affecting the land, and the instrument containing it, if coming within clauses (*a*) to (*d*) of section 17 of Act III of 1877, must be registered, unless it comes within the exceptive clauses (*e*) to (*l*) of the same section. RAJU BALU v. KRISHNARAV RAMCHANDRA . . . I. L. R., 2 Bom., 273

53. ——————— *Contract of mortgage.—Letter stating terms of equitable mortgage, Effect of.—Equitable mortgagee, his proper remedy.*—*A.* and *B.* executed a joint and several promissory

REGISTRATION ACT, 1877, s. 17 (cl. b) —*continued.*

note in favour of the plaintiff. On the same day *A.* deposited with the plaintiff the title-deeds of his property as collateral security, and received conjointly with *B.* a part of the consideration-money for the promissory note. Shortly afterwards *A.* addressed a letter to the plaintiff to this effect: "As collateral security for the due payment of R2,000 secured by a promissory note of even date . . I herewith hand you the title-deeds of my property . . money borrowed and received in pledge of house," and obtained the balance. In a suit on the basis, of the documents for foreclosure or for sale of the property, or in the alternative for a conveyance of the legal estate,—*Held* that the letter itself was not a contract of mortgage, and was without registration admissible in evidence of the equitable mortgage which had been completed upon deposit of the title-deeds. *Held*, also, that the fact of the existence of the letter would not prevent the plaintiff from giving any other evidence in proof of his claim. *Kedar Nath Dutt* v. *Sham Lall Khettry, 11 B. L. R., 405*, followed. OO NOUNG *v.* MOUNG HTOON OO

[I. L. R., 13 Calc., 322

54. ——————— *Endorsement on deed of sale of immoveable property.*—*D.* sold a house to *P.* and executed a deed of conveyance which was duly registered. *P.* did not pay the purchase-money, and therefore did not get possession. Shortly after the conveyance had been registered, *P.* returned it to *D.*, with an endorsement thereon to the effect that it was returned because *P.* was unable to pay the purchase-money. The right, title, and interest in the house were subsequently attached and sold under a decree obtained against him by the plaintiff. The plaintiff became the purchaser. *Held* in a suit by him against *D.* for possession, that the endorsement on the conveyance not having been registered could not affect the property. UMED MAL MOTIRAM *v.* DAVU BIN DHONDIBA . . . I. L. R., 2 Bom., 547

55. ——————— *Letter depositing title-deeds.*—*Admissibility in evidence of unregistered document.*—The defendant deposited certain title-deeds with the plaintiff as security for money due on a bond executed by the defendant in favour of the plaintiff. The deeds were sent with the following letter from the defendant to the plaintiff's attorney: "I have the pleasure of handing to you the title-deeds of a house, 56, Lower Circular Road, as a collateral security for R20,000, which falls due this day. Please accept them from my manager." In a suit for an account of what was due to the plaintiff on the security of the deeds,—*Held* that the letter needed registration as being a document which created an interest in land, and therefore being unregistered was inadmissible in evidence. DWARKANATH MITTER *v.* SARAT KUMARI DASI . . 7 B. L. R., 55

56. ——————— *Letters containing contract.*—*Acknowledgment of receipt of consideration.*—*Evidence Act, s. 91.*—*Oral evidence, Admissibility of.*—"*Instruments.*"—An advertisement appeared in the *Bombay Gazette* newspaper of the 9th March 1874, advertising for sale certain moveable and immoveable

REGISTRATION ACT, 1877, s. 17 (cl. b) —*continued.*

property situate in the village of Angur, near Junnar, in the district of Poona. On reading that advertisment plaintiff entered into a negotiation with the solicitors of the widow and administratrix of the owner of the said property for the purchase of a certain portion of it. On the 26th May 1874 the plaintiff wrote a letter to the solicitors, offering to purchase the said property for R14,000 on certain conditions, and proposing to pay a deposit of R1,000 as earnest-money if the offer was accepted. On the following day the solicitors informed plaintiff, in writing, that the widow accepted his offer, and requested him to deposit the earnest-money offered by him in his letter. Plaintiff accordingly deposited the earnest-money (R1,000) with the solicitors on the same day, and obtained from them a receipt, bearing a one-anna receipt stamp. The receipt mentioned the money as being in part payment of the sum of R14,000, the amount for which the plaintiff had agreed to purchase the property. Instead of completing the contract of sale with the plaintiff, and putting him in possession of the property, the widow sold it to other persons. In a suit of the nature of a suit for specific performance brought by the plaintiff, as first purchaser, against the widow and the other purchasers to set aside the subsequent sale of the property, and to compel the widow to execute a conveyance thereof to the plaintiff, the following documents were produced and tendered in evidence, *viz.*, the advertisement of the 9th March, the plaintiff's letter of the 26th May (exhibit No. 3), the solicitors' reply (exhibit No. 4), and their receipt of the 27th May 1874 (exhibit No. 5), and it was contended that three of the four documents—*viz.*, exhibits Nos. 3, 4, and 5—required registration under the Registration Act (VIII of 1871), section 17. *Held* that the plaintiff's letter (exhibit 3) offering to purchase the property in question, and the letter of acceptance (exhibit 4) written on behalf of the vendor (defendant No. 1) by her attorneys, did not fall within clause (*b*) of the 17th section of the Registration Act (VIII of 1871), and were admissible in evidence to prove the contract of sale, although not registered. The acceptance of the plaintiff's offer was conditional on his payment of the R1,000 as earnest-money, and therefore, until that sum was paid, no estate, legal or equitable, in the property passed to the plaintiff. *Quære,*—Whether the letters between the parties (exhibits Nos 3 and 4) even if they did constitute a complete contract for sale, unincumbered by the necessity for the payment of the deposit by way of earnest, could be regarded as "instruments" within the meaning of section 17 of the Registration Act (VIII of 1871). WAMAN RAMCHANDRA *v.* DHONDIBA KRISHNAJI

[I. L. R., 4 Bom., 126

57. ——————— *Deed of partition.*—section 17 of Act XX of 1866 extended to a deed of partition, and this was not prevented by such an instrument being enumerated in section 18 amongst those which were optionally registrable. SHANKAR RAMCHANDRA *v.* VISHNU ANANT

[I. L. R., 1 Bom., 67

REGISTRATION ACT, 1877, s. 17 (cl. b) —*continued.*

58. ——————— *Deed of division of immoveable property.*—The registration of a deed of division of immoveable property of the value of more than R100, executed by members of an undivided Hindu family, was optional under clause 2, section 17 of Act XX of 1866, and a suit will not lie to compel registration. ANONYMOUS **[6 Mad., Ap., 9**

59. ——————— *Deed of partition.*—A deed of partition need not be registered. NEM ROY *v.* LALMUN ROY . . **25 W. R., 376**

Instruments of partition made by revenue officers require registration under section 17, clause (*k*), of the Registration Act of 1877.

60. ——————— **and cl. (c) and s. 49.**—*Unregistered document.—Document to contradict witness.—Meaning of word "declare" in section 17 of Act III of 1877.—Acknowledgment, Necessity for registration of.*—*S.* and *R.* sued their brothers *M.* and *V.* in 1880 for partition of the family property. The defendants pleaded that the property had been partitioned in 1870, and that the various members of the family had been ever since in possession and enjoyment of their respective shares. At the hearing a document was produced by the defendant *M.*, dated the 13th January 1877, which was proved to have been signed by his three brothers, *S.*, *R.* and *V.*, on the occasion of *M.'s* effecting a mortgage of part of the property. This document contained the following words: "Our eldest brother *M.* has built houses and is building new houses on property appertaining to his share . . . . To the same we three persons and our heirs and representatives have no interest of any kind whatever. If we or they should prefer any claim, then the same is to be null. This release paper we have duly passed in writing jointly and severally and in sound mind." This document had not been registered, and was, therefore, inadmissible as evidence of the alleged partition. In cross-examination of the plaintiff *R.*, he was interrogated as to the circumstances under which the mortgage was made by *M.* on the 13th January 1877. He said: "I was present when the mortgage was made, but I was ill in bed. . . . This was on the 13th January 1877. . . . I did not say on that day that I had no claim to the property." He was then shown the above document, and admitted his signature. The document was then tendered in evidence, not as a release, but to contradict the witness. *Held* that the document was admissible for that purpose, as it was not a document which itself declared a right in immoveable property in the sense intended by section 17 of the Registration Act, III of 1877. It was an acknowledgment that there had, in time past, been a partition between the brothers who signed it and the defendant *M.*, but it was not itself the instrument of partition. That an acknowledgment of a partition is distinct from the instrument of partition, is to be gathered from clause (*c*) of section 17 of the Registration Act, III of 1877. Had the terms of clause (*b*) of that section been satisfied by a mere acknowledgment, clause (*c*) would have been superfluous. Its operation is to require an acknowledgment in the form of a receipt to be registered, but not an acknowledgment in any other shape as distinguished from the instrument of the transaction. The word "declare" in section 17 of the Registration Act, III of 1877, is to be taken in the same sense as the words "create, assign, &c." used in the same section,—*viz.*, as implying a definite change of legal relation to the property by an expression of will embodied in the document referred to. It implies a declaration of will, not a mere statement of a fact, and thus a deed of partition which causes a change of legal relation to the property divided amongst all the parties to it, is a declaration in the intended sense; but a letter containing an admission, direct or inferential, that a partition once took place, does not "declare" a right within the meaning of the section. It is not the expression or declaration of will by which the right is constituted. *Quære,*—Whether, if the above document were itself a release operating or intended to operate as a declared volition constituting or severing ownership, it could be received even for the purpose of contradicting a witness who had denied that he had previously made a statement inconsistent with his evidence. SAKHARAM KRISHNAJI *v.* MADAN KRISHNAJI . . . **I. L. R., 5 Bom., 232**

61. ——————— *Release*—In June 1875 *L.* executed a bond in favour of *S.*, in which he mortgaged, amongst other property, a village called Chand Khera, as security for the payment of certain moneys. He subsequently sold such village to *A.*, concealing the fact that it had been mortgaged to *S.* On this fact coming to the knowledge of *A.*, he threatened *L.* with a criminal prosecution, whereupon *L.* proposed to *S.* in writing that the security of a share in a village called Kelsa, which he alleged was his property, should be substituted for the security of Chand Khera. *S.* accepted this proposal by a letter in which he referred to *L.'s* proposal in terms. It subsequently appeared that the share in Kelsa did not belong to *L*, but to another person. *S* having sued upon his bond, claiming to enforce thereunder a lien upon Chand Khera, *A.* set up as a defence to the suit that *S.* had agreed to substitute Kelsa for Chand Khera in the bond, producing *S.'s* letter as evidence of the agreement. *Held* that such letter operated as a release, and should therefore have been stamped and registered. SAFDAR ALI KHAN *v.* LACHMAN DASS . . **I. L. R., 2 All., 554**

62. ——————— *Release from mortgage.—Agreement for fresh consideration, between mortgagee and third person, for release of property from mortgage.—Release not required to be in writing and registered.*—The mortgagee of immoveable property under a hypothecation bond entered into an agreement with one who was not a party to his mortgage to release part of the property from liability under his mortgage. This agreement was not in writing and registered. The mortgagee sub-

REGISTRATION ACT, 1877, s. 17 (cl. b) —*continued.*

sequently sought to enforce the hypothecation against the whole of the mortgaged property. *Held* that the agreement, being a new contract for a fresh consideration between persons who were not parties to the mortgage, was not, as between the parties to the mortgage, a release which the law required to be in writing and registered. GURDIAL MAL *v* JAUHRI MAL . . . . **I. L. R., 7 All., 820**

63. ——————— *Widow's right to maintenance, Release of.—Releases affecting property.*—A widow's right to maintenance constitutes no interest, vested or contingent, in the immoveable property of an undivided Hindu family within the meaning of the Registration Act XX of 1866, and a release thereof did not require to be registered under clause 2, section 17 of that Act. *Semble,*—Under Act XX of 1866, section 17, clauses 2 and 3, releases affecting immoveable property above R100 in value had to be registered, and the releases mentioned in clause 7 of section 18 are releases relating to moveables. The ruling in *Anonymous Case, 6 Mad., Ap., 9,* dissented from. KALPAGATHACHI *v.* GANAPATHI PILLAI **[I. L. R., 3 Mad., 184**

64. ——————— **and s. 49.**—*Deed of conditional sale.—Admissibility of evidence.*—A deed of bye-bil-wafa, or conditional sale, is a deed which, under section 17 of Act XX of 1866, requires registration before it can become admissible as evidence. But so far as it is a covenant or agreement for the repayment of the money lent on a particular day, it is not an instrument requiring registration; and therefore, for such purposes, notwithstanding section 49, it is admissible in evidence. NILMADHUB SING DAS *v.* FATTEH CHAND SAHA **[3 B. L. R., A. C., 310: 12 W. R., 222**

65. ——————— *Shebaitnamah.* — A shebaitnamah which conveyed no right or interest, but merely declared that a particular portion of the thakoor's income should be expended through the instrumentality of the shebait in the worship of the thakoor, was not a deed requiring to be registered under Act XVI of 1864. GIREEDHUR DASS *v* NITTO GOPAL DASS . . . . **19 W. R., 291**

66. ——————— *Suleh-namah.—Agreement creating a charge on immoveable property.—Suit for money charged on immoveable property* —Certain immoveable property having been attached in the execution of a decree held by *S*, *B* and *L.* objected to the attachment. An arrangement was subsequently effected between the objectors and the parties to the decree which resulted in all parties jointly filing a "suleh-namah" in Court, in which *B.* and *L.*, who had purchased the rights of the judgment-debtor in the attached property, agreed to pay the amount of the decree, which exceeded one hundred rupees, within one year, and hypothecated such property as security for the payment of such amount. *S.* having sued upon this document claiming to recover the amount of the decree by the sale of such property,—*Held* that the document required to be registered, and not being registered the suit thereon was not maintainable.

REGISTRATION ACT, 1877, s. 17 (cl. b) —*continued.*

Cases decided by the High Court in which the "suleh-namah," having been relied on, not as containing the hypothecation itself but as evidence only of a separate parol agreement, or in which a decree, having been made in accordance with the terms of the document, was held not to require registration, remarked upon and distinguished by SPANKIE, *J.* SURJU PRASAD *v.* BHAWANI SAHAI . . **I. L. R., 2 All., 481**

67. ——————— **and s. 18.**—*Deed of surrender.—"Acknowledgments."*—An istifanamah, or deed of surrender, surrendering pledged property of which the party executing it was in possession, on receiving back the amount of a bond-debt, comes under clauses 2 and 3, section 17, of Act XX of 1866, and must be registered to be admissible in evidence. "Acknowledgments," in clause 7 of section 18, refer to transactions of quite a different description BHYRUB CHUNDER DASS *v.* KALEECHUNDER CHUCKERBUTTY **[16 W. R., 56**

68. ——————— *Surrender of interest by tenant to landlord.—Act XVI of 1864, ss. 13, 14.* —A document, which was substantially a surrender by a tenant of his interest in land to his landlord, and, as such, was exempted from stamp duty by Act X of 1862, under the general exemption clause, did not require registration under Act XVI of 1864, sections 13 and 14. JADAV RUGHNATH *v.* RAIJI HIMMAT **[9 Bom., 246**

69. ——————— **(cl. c.)**—*Document acknowledging receipt of consideration-money for conveyance.*—A document which acknowledges the receipt of consideration-money for the conveyance of immoveable property cannot be received as evidence unless it is registered. SREENATH CHURN SOOR *v.* NIKANTO DEY. . . . . **22 W. R., 309**

70. ——————— *Acknowledgment of receipt of consideration.—J. T.* passed a writing to *V*, under date 28th April 1874, stipulating that the deed of sale of *J. T.'s* bungalow to *V.* for R4,300, which was to have been made that day, owing to certain circumstances therein mentioned, should be made and delivered by *J. T.* to *V.* twenty days thereafter. The writing further acknowledged the receipt, by *J. T.* from *V.*, of R100 as earnest-money for the purchase of the bungalow, and concluded with certain penalties in the event of a default by either party. In a suit in the nature of a suit for specific performance brought by *V.* to compel *J. T.* to execute the deed of sale to *V.*, and to register the same as promised in the writing of 28th April 1874,—*Held* that the writing required registration under Act VIII of 1871, section 17, clauses 2 and 3, as it distinctly acknowledged the receipt of R100 as part of the consideration for the sale of the house to the plaintiff for the sum of R4,300, and operated to create an interest in the house of the value of R100 and upwards. *Mahad* v. *Dari, I. L. R., 1 Bom., 196,* approved and followed. *Jusab Haji Jafar* v. *Haji Gul Mahammad, 12 Bom., 175; Hargovandas* v *Balkrishna, 7 Bom., O. C., 67;* and *Kedarnath Dutt* v. *Shamlal Khettry, 11 B. L. R., 405,* distinguished. VALAJI ISAJI *v.* THOMAS . . . . **I. L. R., 1 Bom., 190**

REGISTRATION ACT, 1877, s. 17 (cl. c) —*continued.*

71. ——————— *Receipt for earnest-money.—Consideration.*—Where the plaintiff proposed to purchase property, moveable and immoveable, for R14,000 and to pay a sum of R1,000 as earnest-money, and his offer was accepted and the earnest-money deposited, a receipt was given for it stamped with a one-anna receipt stamp. The receipt mentioned the money as being in part payment of the sum of R14,000 the amount for which the plaintiff had agreed to purchase the property. Instead of completing the contract of sale with the plaintiff and putting him in possession, the defendant sold it to other persons. In a suit to set aside the sale to them and to compel the defendant to execute a conveyance to the plaintiff,—*Held* that the receipt for R1,000 earnest-money (exhibit No. 5) fell within clause (3) of section 17 of the Registration Act (VIII of 1871), as being an acknowledgment of the receipt or payment of consideration on account of the creation of a right, title or interest in immoveable property of the value of upwards of R100, and was, therefore, inadmissible in evidence, not having been registered; but that under section 91 of the Evidence Act (I of 1872) oral evidence was admissible to prove the payment, notwithstanding the existence of the written receipt. The third clause of section 17 of the Registration Act (VIII of 1871) includes within its scope a payment of a part of the consideration as well as a payment of the whole of it. WAMAN RAM CHANDRA *v.* DHANDIKA KRISHNAJI [I. L. R., 4 Bom., 126

72. ——————— and s. 20.—*Receipt.—Declaration of title.*—The defendant passed to the plaintiff a document worded, in substance, as follows: "Your fields . . . . are entered in my name. Ever since they came into your possession I have received from you the assessment due upon them. I have now no claim upon you for any balance of assessment. . . . . I will cause the aforesaid two fields to be entered in your name. Nothing remains due by or to either of us in respect of the produce of these fields." The document was stamped as a receipt with a stamp of one anna.—*Held* that, for the purpose of establishing satisfaction of all claims which the plaintiff and the defendant had upon one another, the document was admissible in evidence; but that, if used as evidence of title, it came within the provisions of section 17 of the Registration Act (XX of 1866), and the corresponding provisions of the Registration Act (III of 1877), and was inadmissible unless duly registered. FAKI *v.* KHOTU [I. L. R., 4 Bom., 590

73. ——————— *Receipt.—Release of claim secured by mortgage.—Held,* that a document, called a receipt, but intended to be used to prove the release of a claim secured by mortgage, required registration under section 49 of Act VIII of 1871, inasmuch as it affected immoveable property. BASAWA *v.* KALKAPA . . I. L. R., 2 Bom., 489

Contra GUGUNFUR ALI *v.* MAHOMED YASEEN [20 W. R., 334

74. ——————— *Receipt by mortgagee.—Admissibility of evidence.*—The defendant tendered in evidence a receipt for R250, to show that the interest of his co-mortgagee (the plaintiff) in the mortgage had been extinguished. The receipt was objected to on the ground that it had not been registered. *Held* that the receipt being tendered to show that the interest of the plaintiff in the mortgage had been extinguished, required registration, and was inadmissible without registration. *Shidlingapa* v. *Chenbasapa, I. L. R., 4 Bom., 235,* distinguished. RAMAPA *v.* UMANNA . I. L. R., 7 Bom., 123

75. ——————— *Document acknowledging receipt of consideration.—Parol evidence.*—In a suit for possession where plaintiff's case was that a kut-mirash (usufructuary mortgage-deed) had been granted to defendant, who had promised upon repayment of the money consideration to surrender the pottah and give back the land, and where plaintiff produced a receipt in proof that such repayment had been effected,—*Held* that the receipt, being an instrument acknowledging receipt of the consideration on account of extinction of interest in land, came within the terms of Act VIII of 1871, section 17, clause 3, and was not admissible as evidence without registration. But oral evidence was receivable in proof of the receipt of the money. SOORJO COOMAR BHUTTACHARJEE *v.* BHUGWAN CHUNDER ROY [24 W. R., 328

76. ——————— *Memorandum.—Receipt.—Extinction of mortgagee's lien, Evidence of.*—A document purporting to have been passed by a mortgagee to his mortgagor, and reciting the demand of the former for re-payment of his mortgage-money before the due date of the mortgage, and the compliance with that demand by the latter by means of a fresh loan upon a second mortgage of the same property; and reciting also the fact of the delivery of possession of the property by the original to the second mortgagee; and purporting, in conclusion, to contain a declaration by the original mortgagee that nothing remained due to him in respect of his mortgage, is a document which, under clauses 2 and 3 of section 17 of Act XX of 1866, as well as under clauses 2 and 3 of section 17 of Act VIII of 1871, requires registration, and, if unregistered, is, by section 49 of the same two Acts, inadmissible as evidence of any transaction affecting any property comprised therein. The fact of the extinction of the original mortgagee's lien may, however, be proved by other documentary or proper oral evidence. MAHADAJI *v.* VYANKAJI GOVIND . I. L. R., 1 Bom., 197

77. ——————— *Receipt for sums paid on bond hypothecating immoveable property.*—A receipt for sums paid in part liquidation of a bond hypothecating immoveable property must be registered under the provisions of section 17 of Act VIII of 1871 to render it admissible as evidence under section 49 of the said Act. DALIP SINGH *v.* DURGA PRASAD . . . . I. L. R., 1 All., 442

78. ——————— *Receipt for money paid under an hypothecation-bond.*—A receipt acknowledging as a fact part-payment of a sum due

REGISTRATION ACT, 1877, s. 17 (cl. c) —*continued.*

under an hypothecation bond does not require registration under section 17, clause (c) of the Registration Act, unless the fact is referred to as a consideration for a contractual engagement, whereby the interest created by the prior registered instrument is limited or extinguished. A mere receipt does not acknowledge the receipt or payment of a consideration. *Dalip Singh* v. *Durga Prasad, I. L. R., 1 All., 442,* dissented from. *Venkatarama Naik* v. *Chinnathambu Reddi, 7 Mad., 1,* approved. VENKAYYAR *v.* VENKATASUBBAYYAR . . . **I. L. R., 3 Mad., 53**

79. ——————— **and cl. b.**—*Receipts by mortgagee.*—Receipts passed by a mortgagee for sums paid on account of the mortgage-debt, and exceeding R100 each, are not inadmissible in evidence for want of registration under Act III of 1877, section 17. The technical term "consideration" implies that the person to whom the money is paid himself limits or extinguishes his interest in the land in consideration of such payment. Such limitation or extinction (if there can be said to be any) as results from the payment on account of the mortgage-debt is the legal consequence of such payment, and not the act of the mortgagee. The payment reduces the sum due at the time on the mortgage, and thus modifies the account between the mortgagor and mortgagee. But it does not operate to limit or confine within narrower limits the right or interest of the mortgagee in the land, which is simply to have the payment of the principal and interest secured on the mortgaged premises by some one or other of the remedies available for that purpose. Money paid on account of a mortgage-debt is not the consideration for the limitation or extinction of so much of the interest in the land created by the mortgage, and a receipt for such a payment need not, therefore, be registered under section 17, clause (*b*), of the Registration Act III of 1877. *Dalip Singh* v. *Durga Prasad, I. L. R., 1 All, 442,* dissented from. SHIDLINGAPA *v.* CHENBASAPA . . . . **I. L. R., 4 Bom., 235**

80. ——————— *Receipts given by mortgagee for payments on account of the mortgage-debt.*—Unregistered receipts given by a mortgagee to a mortgagor for sums paid on account of the mortgage-debt are not inadmissible in evidence under clause (*c*), section 17, of the Registration Act III of 1877. *Shidlingapa* v. *Chenbasapa, I. L. R., 4 Bom., 235,* followed. ANNAPA *v.* GANPATI **[I. L. R, 5 Bom., 181**

81. ——————— *Receipt for payment of mortgage-money.*—The payment of money by a mortgagor to a mortgagee in satisfaction of the mortgage-debt, is a payment of consideration on account of the extinction of the mortgagee's right, within the meaning of clause (*c*), section 17 of Act VIII of 1871 (Registration Act). A receipt for such payment is therefore a document of which the registration is compulsory, and which, if unregistered, is inadmissible in evidence under section 49. *Dalip Singh* v. *Durga Prasad, I. L. R., 4 All, 442; Basawa* v. *Kalkapa, I. L. R., 2 Bom, 489; Mahadaji* v. *Vyankaji Govind, I. L. R., 1 Bom., 197;* and *Ramapa* v. *Umanna, I. L. R., 7 Bom., 123,* followed. *Shidlingapa* v. *Chenbasapa, I. L. R., 4 Bom., 235,* dissented from. *Mattongeny Dassee* v. *Ramnarain Sadkhan, I. L. R., 4 Calc., 83,* referred to. IMDAD HUSAIN *v.* TASADDUK HUSAIN **[I. L. R., 6 All., 335**

82. ——————— **(cl. d).** — *Unregistered lease.*—By Act XVI of 1864 no unregistered lease for a term exceeding a year could be received in evidence in any civil proceeding, however small the value of the property leased. OMAR *v.* ABDOOL GUFFOOR . . . . . **9 W. R., 425**

83. ——————— *Kabuliat.—Lease.*—A kabuliat was not a "lease" within the meaning of section 13, Act XVI of 1864. AMJED ALI *v.* ALA BUKSH . . . . . **9 W. R., 537**

HUR CHUNDER GHOSE *v.* WOOMA SOONDUREE DOSSEE . . . . **23 W. R., 170**

84. ——————— *Lease for more than a year.—Liability under unregistered lease.*—Where a house is let for a term exceeding a year, the registration of the kabuliat is compulsory; and no action will lie for the recovery of the rent stipulated to be paid under the kabuliat if that document is unregistered. A party who retains and holds a building under such unregistered kabuliat is nevertheless bound to pay a reasonable compensation for the use and occupancy thereof. PUROMA SOONDUREE DOSSEE *v.* PROLLAD CHUNDER DASS **[12 W. R., 289**

85. ——————— *Agreement between landlord and tenant.—Pottah.—Mad. Act VIII of 1865.*—An agreement between a landlord and tenant in the Presidency of Madras for more than one year is a pottah within the meaning of Act VIII of 1865, and consequently exempted from registration under Act XX of 1866. VAKATY RAMAREDDY *v.* DUVVURU AYAPPAREDDY . . **7 Mad., 234**

86. ——————— **and s. 49.**—*Agreement for lease.—Evidence.*—Under clause (*d*), section 17, of the Registration Act III of 1877, an agreement for a lease needs registration if the parties to such agreement intend to create a present demise. Although the agreement may contemplate a formal document being subsequently executed, the paramount intention as gathered from the whole of the instrument must prevail. PURMANANDDAS JIWANDAS *v.* DHARSEY VIRJI **[I. L. R., 10 Bom., 101**

87. ——————— *Lease.—Agreement for lease.—Doul durkhast.—Proposal.—Acceptance.—Contract.*—Every lease, or agreement for a lease, in writing, must be registered before being given in evidence. But a proposal in writing to take a lease of certain lands on certain terms, made by one person to another, need not be registered, unless the proposal in writing has been so accepted that the proposal and acceptance constitute a contract in writing SUFDAR REZA *v.* AMZAD ALI **[I. L. R., 7 Calc., 703: 10 C. L. R., 121**

REGISTRATION ACT, 1877, s. 17 (cl. d) —*continued.*

LUCHMISSUR SINGH *v.* DAKHO. LUCHMISSUR SINGH *v.* RUNGLAL
[I. L. R., 7 Calc., 703 : 10 C. L. R., 127

88. ——————— *Proposal to pay rent.—Doul darkhast.—Lease.—Agreement to lease*—Where a *doul darkhast* amounts to nothing more than a proposal by a tenant to pay a certain rent for certain land, it does not amount to a lease or to an agreement for a lease, and does not, therefore, require registration. But if the proposal has been so accepted, that the proposal and acceptance constitute a contract in writing, then such contract must be registered. *Choonee Mundur* v. *Chundee Lall Dass, 14 W. R., 178;* and *Meheroonissa* v. *Abdool Gunee, 17 W. R., 509,* distinguished. LALL JHA *v.* NEGROO
[I. L. R., 7 Calc., 717

89. ——————— *Agreement to execute lease.*—Where defendants had contracted to execute a maurasi pottah of certain land at a given rent for a consideration of which a portion was paid as earnest-money, and the balance was to be paid within fifteen days, and had agreed that, if they failed to execute the pottah, the bacena-pottro was to be considered a pottah, and plaintiff on allegation of failure sued the defendants for possession on the footing that the bacena-namah was a mirasi pottah,—*Held* that the deed under which the plaintiff sued was a pottah, and under clause 2, section 17 of Act XX of 1866, an instrument the registration of which was compulsory. As an unregistered document, it could not hold its ground against a registered pottah put in by intervenors. NUND RAM GHOSE *v.* MAUNOO BIBEE . . . 10 W. R., 177

90. ——————— *Lease or agreement to lease.*—In a suit for possession of certain property and for the execution of a pottah, it appeared that two of the defendants had executed an agreement which was duly registered, by which they acknowledged the receipt of a portion of the salami, and covenanted to execute a pottah on a certain day. This agreement was afterwards confirmed by two of the defendants who were minors when it was entered into: the confirmation was by deed which was duly registered. Subsequently all the defendants executed a document, which provided for the payment of a portion of the salami on the day when possession should be given as provided in the first agreement, and for the payment of the remainder by instalments which were to carry interest. This document was not registered. *Held* that it was not a "lease or agreement to lease" within the meaning of section 17 of the Registration Act, and was admissible in evidence. KEDARNATH MITTER *v.* SURENDRO DEB ROY . I. L. R., 9 Calc., 865 : 13 C. L. R., 58

91. ——————— *Lease.—Usufructuary mortgage.—Act XVI of 1864, ss. 13, 14.*—*B* sued for possession of certain lands, on a contract embodied in a document which purported to grant *B.* possession of these lands for a period of six years, on payment of R99. *Held* that the document in question was not a lease, but a usufructuary mortgage, and that the consideration-money being less than R100, its registration under Act XVI of 1864 was merely optional. ISHAN CHANDRA *v.* SUJAN BIBI
[7 B. L. R., 14 : 15 W. R., 331

92. ——————— *Lease.—Agreement to lease.—Contract of special nature.—Held* that certain letters forming a correspondence which had passed between the parties did not require registration, for they did not amount to a lease, or an agreement for a lease; but were evidence of a contract of a special character not coming within any of the definitions in the Registration Act. PORT CANNING LAND COMPANY *v.* SMITH
[21 W. R., 315 : L. R., 1 I. A., 124

93. ——————— *Settlement papers given by ryots.*—Settlement papers prepared at the beginning of each year, and signed by the ryots setting forth the quantity of nugdee lands to be held and the amount of rent to be paid by each tenant during the year, are admissible in evidence, and do not require registration, provided the amount of rent therein agreed to be paid is under R100, and the term is for only one year. NUSRUN *v.* RAM DEBUL SINGH . . . . . 17 W. R., 273

94. ——————— *Lease at an annual rent.*—A lease for no definite time, but fixing an annual rent (sone-bosone) falls within clause 4 of section 17 of Act XX of 1866, and must be registered in order to be admissible in evidence. RAMKUMAR MANDAL *v.* BRAJAHARI MRIDHA
[2 B. L. R., A. C., 75 : 10 W. R., 410

95. ——————— *Lease for more than a year.—Condition which may shorten term.*—A lease for more than a year is not the less a lease because a condition is attached to the consideration, and because its term may be lessened on the payment of a sum of money by the lessor. Such a lease cannot be used in evidence unless it is registered. BUKSH ALI BOOHEAN *v.* NUBOTARA . 13 W. R., 468

96. ——————— *Lease with provision extending term.*—Where a kabuliat for one year contains a provision extending its term to more than that period, it cannot be admitted in evidence without registration. KISTO KALEE MOONSHEE *v.* AGHMONA BEWA . . . . 15 W. R., 170

97. ——————— *Lease with agreement for renewal on expiration.*—A kabuliat in which a ryot agreed to hold land under a pottah for a specified year, the agreement between the parties being that at the close of that period a fresh settlement would be made, was held to be a lease for one year, and not to need registration under Act XX of 1866 as being a lease for more than a year, although a clause intervened between the above clauses to the effect that year by year the ryot would pay rent at the above rate. JUGDESH CHUNDER BISWAS *v.* ABEDOLLAH MUNDUL . . 14 W. R., 68

98. ——————— *Lease for more than a year.—Lease with option of renewal.*—Where a

REGISTRATION ACT, 1877, s. 17 (cl. d) —*continued.*

lease is only for one year with option to the lessor to allow the lessee to continue his tenure on the old conditions after expiration of the year,—*Held* that the absolute right of the lessee is restricted to one year; and that the lease is therefore a one year's lease, the registration of which is not necessary. SOUTHO PURSAD DASS *v.* PARASU PADHAN. SOUTHO PURSAD DASS *v.* RUGHOO PADHAN . . **26 W. R., 98**

99. ——————— *Lease for so long as tenant continues to pay.*—A lease for so long as the lessee or tenant continues to pay the stipulated rent is a lease not limited to a year, and must be registered under section 17 of the Registration Act of 1866, and not being registered cannot be received in evidence under section 49 of that Act. SHEOGHOLAM *v.* BUDDREE NATH . . . . **4 N. W., 36**

100. ——————— *Zur-i-peshgi lease.*—"*Leases not exceeding one year,*" *Meaning of.*—Leases which were exempted from the operation of section 17, clause 2, Act XX of 1866, were leases the term of which was one year certain. Where a zur-i-peshgi lease was granted for one year, but with a stipulation that unless the loan were repaid within that time it should continue in force,—*Held* that such a lease came within the words of section 17, clause 4, Act XX of 1866, "leases of immoveable property for any term exceeding one year" of which registration was compulsory. BHOBANI MAHTO *v.* SHIBNATH PARA . . . . **I. L. R., 13 Calc., 113**

101. ——————— *Kabuliat or lease.*—*Lease for so long as landlord might leave land with tenant.*—A kabuliat or lease, under which the tenant might claim possession of the land for one year, but was to pay rent to the landlord so long as the landlord might leave the land with the tenant, did not require registration. JAGJIVANDAS JAWHERDAS *v.* NARAYAN LAKSHMAN PATIL **[I. L. R., 8 Bom., 493**

102. ——————— *Bhadekhat.*—*Lease.*—*Held* that a bhadekhat is an agreement between a lessee and a lessor in the nature of a counterpart of a lease, and that an instrument of this character must, for the purposes of the Registration Act, be treated as a lease. *Held,* also, that a provision in the bhadekhat, that the lessee might after six months remain in occupation at a monthly rent, till the lessor called upon him to vacate, did not extend the term for which the lease was granted, as to the conclusion of that term the lessee would be only a monthly tenant of the lessor, and therefore it did not require registration under section 17 of Act XX of 1866. MORO VITHAL *v.* TUKARAM VALAD MALHARJI **[5 Bom., A. C., 92**

103. ——————— **and s. 49.**—*Lease.*—*Lease from year to year.*—In a suit for possession of a piece of land, and for rent of the same, the plaintiff produced in support of his claim two sarkhats or kabuliats purporting to be executed in his favour by the defendants, and dated respectively in January 1875 and June 1876. These documents were not registered. The first after reciting that the executant had taken the land from the plaintiff, on a specified yearly rent, and promised to pay the same yearly, proceeded as follows: "If the owner of the land wishes to have it vacated, he shall give me fifteen days' notice, and I will vacate without making objection: if I delay in vacating the land the owner can realise, by recourse to law, rent from me at the rate of R8 per annum." The second sarkhat, after reciting that the executants had taken the land from the plaintiff on a yearly rent specified, for six years, and promised to pay the same year by year, proceeded thus: "And if the said Shaikh wishes to have the land vacated within the said term, he shall first give us fifteen days' notice, and we will vacate it without objection." The lower Courts held that the sarkhats were not admissible in evidence, as they required registration under section 17 (4) of the Registration Act VIII of 1871, being leases of immoveable property from year to year or reserving a yearly rent. *Held* that the two sarkhats created no rights except those of tenants-at-will, inasmuch as the clause common to both to the effect that at any time, at the will of the lessor, the lessees were to give up the land at fifteen days' notice, governed all the previous clauses, and the defendants could be asked to quit at any time before the lapse of the term at fifteen days' notice. *Held,* therefore, that the leases did not fall under section 17 (4) of Act VIII of 1871; that their registration was not compulsory; and that they could not be excluded from evidence under section 49 of Act III of 1877, which governed the question of admissibility, while Act VIII of 1871 governed the question whether registration was or was not compulsory. KHUDA BAKHSH *v.* SHEO DIN **[I. L. R., 8 All., 405**

104. ——————— *Lease.*—*Exemption from registration by Government.*—Leases for a term not exceeding five years, with a rent reserved not exceeding R50, being exempted by the local Government from registration,—*Held* that a pottah for one Fasli to remain in force until another pottah is granted, with a rent reserved of R110 did not fall within the exemption. *Held* also that such a pottah was a lease for a term exceeding one year and not a lease for a year, and therefore subject to the general provision of clause *d*, section 17, of the Registration Act, 1877. VENKATACHELLAM CHETTI *v.* AUDIAN **[I. L. R., 3 Mad., 358**

105. ——————— *Exemption from registration.*—*Lease for one year and till another lease is executed.*—A muchalka executed for one Fasli to remain in force until the execution of a fresh muchalka, for a rent less than R50, is exempted from registration by virtue of the notification of the local Government under section 17 of the Registration Act, which exempts from registration leases the terms granted by which do not exceed five years, and the annual rents reserved by which do not exceed R50. VIRAMMAL *v.* KASTURI RUNGAYYANGAR **[I. L. R., 4 Mad., 281**

REGISTRATION ACT, 1877, s. 17—*continued.*

106. ——————— (cl. h).—*Agreement for a lease.*—An agreement for a lease does not require registration. BHAIRABNATH KHETTRI *v.* KISHORI MOHUN SHAW . . . 3 B. L. R., Ap., 1

ABDUL VIDONA JONAS *v.* HARONE ESMILE [7 B. L. R., Ap., 21

107. ——————— *Dowl-durkast.*—*Document preliminary to lease.*—A dowl-durkast, being only a preliminary to a lease, does not require registration. MEHEROONISSA *v.* ABDOOL GUNEE [17 W. R., 509

108. ——————— *Dowl or amulnama.*—The registration of a dowl or an amuldaree, which are mere preliminaries to a lease, was not compulsory under section 13, Act XVI of 1864. GOLUCK KISHORE ACHARJEE CHOWDHRY *v.* NUND MOHUN DEY SIRCAR . . . . 12 W. R, 394

109. ——————— *Dowl-durkast.*—*Proposal by tenant to pay rent.*—Where a dowl-durkast amounts to nothing more than a proposal by a tenant to pay a certain rent for certain land, it does not amount to a lease or an agreement for a lease and does not therefore require registration. But if the proposal has been so accepted, that the proposal and acceptance constitute a contract in writing, then such contract must be registered. *Choonee Mundur* v. *Chundee Lall Doss, 14 W. R., 178*; and *Meheroonnissa* v. *Abdool Gunee, 17 W. R., 509,* distinguished. LALL JHA *v.* NEGROO [I. L. R., 7 Calc., 717

SUFDAR REZA *v.* AMZAD ALI [I. L. R., 7 Calc., 703: 10 C. L. R., 121

LUCHMISSUR SINGH *v.* DAKHO. LUCHMISSUR SINGH *v.* RUNGLAL [I. L. R., 7 Calc., 708 : 10 C. L. R., 127

110. ——————— *Intention to create present demise.—Intention to execute more formal document.*—An agreement for a lease needs registration if the parties to such agreement intend to create a present demise. Although the agreement may contemplate a formal document being subsequently executed the paramount intention as gathered from the whole of the instrument must prevail. PURMANAND DAS JIWANDAS *v.* DHARSEY VIRJI [I. L. R., 10 Bom., 101

111. ——————— *Petition asking for lease.*—Section 17, Act XX of 1866, does not provide for the registration of a petition asking for a lease. CHOONEE MUNDUR *v.* CHUNDEE LALL DOSS [14 W. R., 178

S. C. on review . . . 14 W. R., 334

112. ——————— *Agreement to mortgage.—Equitable mortgage.*—Documents amounting to an equitable mortgage when creating an interest in land of the value of R100 or upwards, require registration under section 17 of the Registration Act; but documents when amounting merely to an agreement to mortgage do not require registration under that section. Such documents are therefore available in evidence as agreements to mortgage without registration, but for the purpose of proving an equitable mortgage they must be registered before they are available in evidence. BENGAL BANKING CORPORATION *v.* MAKERTICH I. L. R., 10 Calc., 315

REGISTRATION ACT, 1877, s. 17 (cl. h)—*continued.*

113. ——————— *Agreements preliminary to main contract.*—It was not intended that compulsory registration under section 13, Act XVI of 1864, should apply to deeds, like amuldustuks, which are merely preliminary to the main contract or engagement, or that deeds which are steps in, or mere parts of, a transaction, should be registered before they can be used as evidence. BUNWAREE LAL *v.* SUNGUM LAL. . . . 7 W. R., 280

See RAMTONOO SURMAH SIRCAR *v.* GOUR CHUNDER SURMAH SIRCAR . . 3 W. R., 64

and SHIBKISHEN DOSS *v.* ABDOOL SOBHAN CHOWDHRY . . . . 3 W. R., 103

114. ——————— *Deed of agreement to sell at future time.—Act XIX of 1843.*—A deed of agreement to sell at some future period may be registered under Act XIX of 1843. SHIBKISHEN DOSS *v.* ABDOOL SOBHAN CHOWDHRY . 3 W. R., 103

See RAMTONOO SURMAH SIRCAR *v.* GOUR CHUNDER SURMAH SIRCAR . . 3 W. R., 64

NUDDEAR CHAND SEIN *v.* KISHOREE LALL CHUCKERBUTTY . . . 7 W. R., 463

115. ——————— "*Bargain-paper.*"—*Agreement for sale of land contemplating future deed.*—A "bargain-paper" for the purchase of immoveable property above the value of R100, which contemplates the execution of a future conveyance, does not require registration. JUSAB HAJI JAFAR *v.* GUL MUHAMMAD . . . 12 Bom., 175

116. ——————— *Document not itself creating an interest in immoveable property —"Bargain-paper."*—An agreement, or "bargain-paper," in writing, for the sale of a house by the defendants to the plaintiff, stated that the defendants had agreed to sell, and the plaintiff to buy, the house in question for R15,225, on the following conditions,—that the plaintiff should, on the execution of the bargain-paper, pay R1,000 as earnest-money, and that the defendants were duly to make out a good title to the house, and get approved by the plaintiff's solicitors, "as being of good title," a deed of sale thereof, prepared according to law, within two months, the cost incidental to the preparation of the deed to be borne jointly by vendor and vendee; that, on the execution of such deed and delivery of possession of the house to the plaintiff, the balance of the purchase-money was to be paid; that, in case a good title to the house could not be made out, the bargain-paper was to be null, and the earnest-money was then to be returned to the plaintiff with interest, and any solicitors' charges incurred were to be paid by the defendants. *Held* that the document was admissible in evidence, though unregistered, as coming within the provisions of clause (*h*) of section 17 of the Registration Act III of 1877. CHUNILAL PANALAL *v.* BOMANJI MANCHERJI . . . I. L. R., 7 Bom., 310

REGISTRATION ACT, 1877, s. 17 (cl. h) *continued.*

117. ——————— **and cl. b.**—*Document creating a right to obtain another document.—Pleading.—Admission.—Effect of admission in pleading of execution of contract.—Evidence to prove an admitted document not necessary.—Evidence.*—By an agreement, dated 2nd August 1880, the defendant agreed to sell to the plaintiff a certain piece of land with a dwelling-house for R1,900. At the time of the execution of this agreement the plaintiff paid the defendant R100 earnest-money, and the agreement provided that the remaining R1,800 should be paid within a month from the date of the agreement when the deed of conveyance of the property should be executed. The material part of the agreement was as follows: "I have received from you R100, namely, rupees one hundred, as earnest (*i e*) at the time of the execution of this bargain-paper. And as to the remaining R1,800, namely, one thousand and eight hundred, the same are duly to be paid to me within one month from this day, when you will get the deed (or) document made in your favour. And all the expenditure in respect of the deed (or) documents and transferring (the property) to your name you are duly to make on your account . . . . On these terms this informal bargain-paper having been written, is agreed to and delivered." The plaintiff sued for specific performance, and tendered the agreement in evidence, although unregistered. *Held* that the document, although unregistered, was admissible in evidence under clause (*h*) of section 17 of the Registration Act III of 1877. Being unregistered it could not create or assign the interest intended by the parties to be transferred, and being thus incapable of carrying out the primary intention of the parties, the agreement became one "merely creating a right to obtain another document which would, when executed," effect the desired purpose if the execution were accompanied with registration. The right given by the agreement was merely a right *in personam*, and the agreement was admissible in evidence to show the contract entered into for another conveyance, though not as a conveyance itself. BURJORJI CURSETJI PRATHAKA *v.* MUNCHERJI KUVERJI **[I. L. R., 5 Bom., 143**

118. ——————— *Ikrar agreeing to execute deed.—Optional registration.—Admissibility of evidence.*—Where a party borrowing money gave the lender an ikrar agreeing to execute a conveyance of certain landed property,—*Held* that the instrument was in substance an agreement the registration of which was optional, and which might be given in evidence in a suit for specific performance of the agreement to execute the conveyance for which it stipulated. ASGUR ALI SHIKDAR *v.* MOTHOORA NATH GHOSE . . **15 W. R., 354**

119. ——————— *Letter acknowledging payment of consideration on account of creation of interest in land.*—*A.* wrote a letter to *B.* stating that an agreement had been made between them that *A.* should sell certain land to *B.* for R4,500, that *A.* had received R500 of this sum and was only entitled to receive the balance after executing the sale-deed within a certain date, and had no connection whatever with the land. *Held* that the letter, not being registered, was not admissible in proof of the agreement to convey. RAMASAMI *v.* RAMASAMI **[I. L. R., 5 Mad., 115**

REGISTRATION ACT, 1877, s. 17 (cl. h) *—continued*

120. ——————— *Document containing covenants for title.—Suit for breach of covenant.*—A document containing covenants for title, though, no doubt, embodying "a transaction affecting immoveable property," is admissible in a suit for damages for breach of such covenants, provided the document conform to the requirements of the exceptive clause of section 17 of Act III of 1877; but where, as in the present case, the evidence of the covenant is contained in a document *itself* purporting to assign an interest in immoveable property,—the covenant being ambiguous and uncertain without reference to such assignment,—the document is not excepted from the necessity of registration. RAJU BALU *v.* KRISHNARAV RAMCHANDRA . . **I. L. R., 2 Bom., 273**

——————— s. 18 (1871, s. 18; 1866, s. 18).

See CASES UNDER S. 17, CL. (*b*) AND CL. (*d*).

1. ——————— *Deed of assignment of mortgage.—Consideration less than R100.—Mortgage for R100 or more.*—A deed of assignment, for a consideration of less than R100, of a mortgage for a consideration of R100 or upwards, does not need registration. SATRA KUMAJI *v.* VISRAM HASGAVDA **[I. L. R., 2 Bom., 97**

2. ——————— *Lease expressing tenant's willingness to continue tenant after a year.—Lease.*—A lease for one year certain, containing an expression, on the tenants' part, of readiness to hold the land longer at the same rent if the landlord should desire it, is a lease for a term not exceeding one year, the registration of which is optional under section 18 of the Registration Act (VIII of 1871). APU BUDGAVDA *v.* NARHARI ANNAJEE **I. L. R., 3 Bom., 21**

3. ——————— *Lease for one year.—Lease exceeding one year.*—A kabuliat dated the 6th May 1880, and executed by the lessee of a house in favour of the lessors, set forth that the house was let to the former at an annual rent of R3 for a term of one year. It also contained this stipulation: "I (the lessee) do declare that I shall continue to pay the annual rent every year, and that if I should fail to pay the rent in any year, the owners of the house shall be at liberty to recover the rent through the Court." The lease was not registered. In a suit by the lessors against the lessee for possession of the house and for R7-8 arrears of rent, the defendant pleaded that, according to the right construction of the lease, he was entitled to occupy the house and the lessors were not entitled to eject him therefrom, so long as he paid the annual rent of R3; that he had duly paid rent at the agreed rate from the 6th May 1880 to the 6th May 1884; and that, under these circumstances, the plaintiffs were not entitled to either of the reliefs claimed. *Held* that the lease was for one year only, and thus falling under section 18

REGISTRATION ACT, 1877, s. 18—*continued.*

of the Registration Act (III of 1877), it was admissible in evidence without registration; that the defendant had been a mere tenant-at-will since the expiry of the year 1880-81; and that the plaintiffs were therefore entitled to possession of the house. *Hand* v. *Hall, L. R., 2 Ex. D., 355*, referred to. KHAYALI *v.* HUSAIN BAKHSH

[I. L. R., 8 All., 198

4. ——— *Admissibility in evidence of unstamped and unregistered document.—Entry in book showing extent of holding and rate of rent.—Admission.*—A lessor having let certain lands to a lessee under a verbal agreement, the lessee entered upon possession. Afterwards, and during the lessee's occupation, an entry showing the extent of the holding and the amount of rent payable in respect of it was made in a book of the lessor and signed by the lessee. In a suit subsequently brought by the lessor against the lessee for arrears of rent, the lessee did not deny that he was a tenant of the lessor, but disputed the extent of his holding and the rate of rent. *Held* that the entry in the book of the lessor did not, although signed by the lessee, amount to a lease or to an agreement for a lease, but to an admission only, and could therefore be used as evidence against the lessee, although neither stamped nor registered. NARAIN COOMARY *v.* RAMKRISHNA DASS

[I. L. R., 5 Calc., 364: 6 C. L. R., 286

5. ——— *Dowl fehrist.—Memorandum of rate of rent.*—A dowl fehrist being merely a memorandum by a zemindar's agent of the rates of rent agreed upon, and to which the tenants affix their signatures in token of such agreement, is not a contract, and does not require to be stamped or registered. GUNGAPERSAD *v.* GOGUN SING

[I. L. R., 3 Calc., 322

S. C. KARTICK NATH PANDAY *v.* KHAKUN SINGH

[1 C. L. R., 328

6. ——— *Principal sum under R100.—Interest.—Interest in immoveable property.*—A deed purporting to secure the sum of R95 advanced on certain properties, giving the lender possession for a fixed period at a yearly rent of R8-12, R6-12 out of such rent being retainable by the lessee as interest on the sum advanced, does not require registration. RAM DOOLARY KOOFR *v.* THACOOR ROY

[I. L. R., 4 Calc., 61: 2 C. L. R., 547

——— **s. 20.**

See s. 17, CL. C. . I. L. R., 4 Bom., 590

——— *Refusal of executing party to initial alteration.—Registrable document.*—Refusal by the executing party to initial an apparent alteration not materially affecting the instrument, unaccompanied by any suggestion that the alteration was improperly made after execution, does not render the document non-registrable. IN THE MATTER OF THE PETITION OF VENKATASAMI NAIK . 4 Mad., 101

1. ——— **s. 21 (1871, s. 21; 1866, s. 21).**—*Requisites for registration.—Description of property.*—The only two things which are absolutely required by section 21 of Act XX of 1866, as conditions without compliance with which registration is prohibited are, first, that the instrument shall contain a description of the property sufficient to identify it; and secondly, that if the instrument contains a map, a copy or copies of the map shall accompany the instrument when presented for registration. The other provisions of section 21 are directory only. The circumstance, therefore, that the description of the parcels in the instrument does not specify the registration district, or sub-district, or division, or village, in which the property is situate, or the former occupancy, is not alone sufficient to disentitle a party getting an instrument registered, if the description in the instrument is sufficient to identify the property. IN THE MATTER OF THE PETITION OF NARAINASAMI PILLAI . . . . . 4 Mad., 91

2. ——— *Presentation of two instruments.—Description of property only in one.*—Where two instruments are contained in the same paper and relate to the same property, and are both presented for, and in all other respects are entitled to, registration, it is not a sufficient ground for refusing registration that in one of the documents the property is described only by reference to the other. Though in the later of two instruments there are no words directly referring to the first, yet the frame of the document showing that the second document should be taken to refer to the first, the second document must be taken to contain a sufficient reference to the first. IN THE MATTER OF THE PETITION OF VENKATASAMI NAIK . . 4 Mad., 101

——— **s. 22.**—*Sufficiency of description.—Question as to nature or effect of document.—Intention of parties.*—When any question arises under the Registration Act as to the nature or effect of any instrument, or the sufficiency of any description contained in it, the Court must endeavour to gather from the words used the intention of the parties, and give effect to it, and not require as a condition of registration that the instrument be drawn up in technical language. IN THE MATTER OF THE PETITION OF VENKATASAMI NAIK . . 4 Mad., 101

1. ——— **s. (23 1871, s. 23; 1866, ss. 22, 24; 1864, s. 18).**—*Time for presentation for registration.—Power of Registrar to register deed after time specified in Act.*—There was no provision in Act XVI of 1864 obliging or empowering a registrar to register a deed after the expiry of the time specified in section 18, whether under a decree of Court or otherwise, except in cases which came under the provisions of section 15. MONMOHINEE DOSSEE *v.* BISHEN MOYEE DOSSEE. BISHEN MOYEE DOSSEE *v.* DELSHAD BIBEE . . . . 7 W. R., 112

2. ——— *Time for presentation for registration.—Procedure.*—Sections 22 and 24 of Act XX of 1866 made it imperative that the instruments therein referred to should be presented for registration within four, or at most eight, months from the date of their execution; but the Act fixed

REGISTRATION ACT, 1877, s. 23—*continued.*

no time within which the registration must be completed. Where the registration of an instrument has been declared by a competent Court to be invalid, the instrument, if originally presented in due time, may again be submitted for registration, although the four months provided by section 22, Act XX of 1866, and the further period of four months allowed by section 24, have both expired. MUKHUN LALL PANDAY *v.* KOONDUN LALL

[15 B. L. R., 228: 24 W. R., 75 L. R., 2 I. A., 210

S. C. in lower Court. KOONDUN LALL *v.* MAKHUN LALL **1 N. W., 168: Ed. 1873, 247**

3. ——————— **and ss. 34, 35, and 73.**—*Time for presentation for registration.—Refusal to register.—Effect of non-appearance within prescribed time.*—When a document has been presented for registration in due time by one of the executants, but the others have failed to appear within the time prescribed, the registering officer must "refuse to register," as in cases falling under the latter clauses of section 35, Act VIII of 1871, and must record the reasons for his refusal. The party desiring registration ought to apply to the Registrar before the period for registration has gone by, either to register or to refuse to register, so as to enable him, in case of refusal, to take further proceedings under section 73. So soon as it appears that the prescribed time has gone by, and the executing parties have not appeared, the order of refusal should be made at once. IN THE MATTER OF THE REGISTRATION ACT, 1871. IN THE MATTER OF BUTTOBEHARY BANERJEE

[11 B. L. R., 20

4. ——————— *Period within which document may be registered.—Agreement of parties.*—By an agreement entered into between the parties, the vendor bound himself to execute within thirty days a deed of conveyance, and in default, that the agreement should be considered as itself the deed of conveyance of certain lands mentioned in the agreement. The vendor having failed to execute such deed, the vendee, more than four months after the date of the agreement, presented it for registration. *Held* that the conduct of the parties concerned could in no way affect the period of limitation within which such agreement could have been registered under the Act, and that the agreement could not be registered. NOBAN NUSYA *v.* DHON MAHOMED

[I. L. R., 5 Calc., 820: 6 C. L. R., 136

5. ——————— *Certificate of sale.—Period within which it should be registered.*—Although section 316 of the Civil Procedure Code, 1877, says that a certificate granted thereunder shall bear "the date of the confirmation of the sale," that provision cannot alter the fact of execution or the time execution does take place, which is the starting-point from which the four months mentioned in section 23 of the Registration Act, 1877, begin to run. *Held*, therefore, that a certificate granted under that section in respect of a sale which was confirmed on the 7th April 1880, which was registered within four months from the 10th May 1882, when it was executed, was registered within the time allowed by law. The certificate showing that a document has been registered is conclusive proof that it has been registered according to law. HUSAINI BEGAM *v.* MULO

[I. L. R., 5 All., 84

6. ——————— *Presentation for registration.—Limitation for completion of registration.*—There is no provision, either in the Registration Act or in the Stamp Act, which lays down that where a document is presented for registration insufficiently stamped, such a presentation shall have no effect. The only effect of such a presentation is that the actual registration is delayed. There is in law no limitation for the actual fact of registration, provided that the requirements of the Act have been complied with in the matters for which a limitation of time is provided. *Mukhun Lall Panday* v. *Koondun Lall, 15 B. L. R., 228*, followed. SHAMA CHARAN DAS *v.* JOYENOOLAH . . **I. L. R., 11 Calc., 750**

——————— **s. 28 (1871, s. 28) and s. 85.**—*"Whole or some portion of the property."*—The terms of section 28 of Act VIII of 1871 must not be construed in their literal sense, inasmuch as to do so would defeat the intention of the Legislature that registration should be made with reference to the locality of the property to which the document relates; and hence the words of the section "some portion of the property" must be read as meaning some *substantial* portion. A bond which purported to mortgage 500 square yards of land situate at P., two entire villages and shares in fourteen villages in the G. district, and a village in the C. district, and which required registration under Act VIII of 1871, was registered at P. *Held* that the bond was not properly registered in accordance with the provisions of section 28 of Act VIII of 1871. *Per* MAHMOOD, *J.*—The imperative direction of section 28 of Act VIII of 1871 is addressed not to the registering officer, but to the person presenting a document to that officer for registration; and therefore section 85, which refers only to defects in the appointment or procedure of the registering officer, could not cure the irregularity which was committed under section 28. SHEO DAYAL MAL *v.* HARI RAM . **I. L. R., 7 All., 590**

——————— **s. 31 (1871, s. 31) and s. 85.**—*Presentation.—Residence of executant.—Intending to register.—Special cause.—Registration Act VIII of 1871, ss. 31 and 85.*—The words "any person intending to register any document" in section 31 of the Registration Act VIII of 1871 include, not only the person or persons in whose favour a document is executed, but also any person or persons executing the same. Under the provisions of that section, therefore, the presentation of a document for registration, on special cause shown, at the residence of a party executing it, is valid. The registering officer is the judge of the sufficiency of the special cause; and, if he is satisfied, the Civil Court has no power to question his decision on that point. Assuming the presentation at the residence of one of the executants of a document for registration to be an irregularity, it is one which, if committed in good faith, is covered

REGISTRATION ACT, 1877, s. 31 (1871, s. 31) and s. 85—*continued.*

by the provision of section 85 of Act VIII of 1871. ISAK MAHAMAD *v.* BAI KHATIJA [I. L. R., 6 Bom., 96

——— **s. 33 (1871, s. 33).**

See STAMP ACT, 1869, SCH. II, ART. 13. [9 Bom., 43

1. ——— **s. 34 (1871, s. 34; 1866, s 36; 1864, s. 29).**—*Appearance of parties executing.—Execution by party as agent.*—Where a document is executed by one of two parties on behalf of himself and the other it is sufficient, for the purposes of the Registration Act, VIII of 1871, section 34, that the person executing it appear before the registering officer. The other party is not required to appear. An agreement to let premises may be made by an agent; there is no law that it shall be signed by the principal. BISSENDOYAL *v.* SCHLAEPFER [22 W. R., 68

2. ——— **and s. 77.**—*Attendance before Registrar to admit execution, Time for.*—Although section 34 of the Registration Act, 1877, lays down that no document shall be registered unless the persons executing the same, their representatives, assigns, or authorised agents appear before the Sub-Registrar within the periods allowed for presentation, yet this section is directly subject to section 77, and that section nowhere provides any time within which the parties, their representatives, assigns, or authorised agents, shall appear to admit execution. SHAMA CHARAN DAS *v.* JOYENOOLAH . . . I. L. R., 11 Calc., 750

3. ——— *"Representative, assign, or agent."*—The representative, assign, or agent mentioned in section 36, Act XX of 1866, meant the representative, assign, or agent of one of the executors of the deed. IN THE MATTER OF RAM CHUNDRE BISWAS [16 W. R., 180

4. ——— *Fact of execution.—Title.*—It was not necessary, under Act XVI of 1864, section 29, that the Registrar of Assurances should be satisfied of the validity of the title of the person applying to have an instrument registered; he should merely enquire whether the person who purports to have executed the instrument did, in fact, do so; if he was satisfied of that, he should not refuse to register. RAJ CHUNDER BUNDOO *v.* RAJESSORY DOSSEE [1 Ind. Jur., N. S., 240

MUTUKDHAREE LALL *v.* FUZUL HOSSEIN [6 W. R., Mis., 130

5. ——— *Suit to compel registration.—Ground for refusal to register.—Held,* in a suit to compel registration under Act XVI of 1864, section 15, that where it was found that the requirements of section 29 of the Act had not been complied with before the Registrar, he was justified in refusing to register the deed. BHAGVAN JAYARAM . VITHOBA GOVIND . . 4 Bom., A. C., 140

SAJANJI VALAD GODAJI *v.* ANAJI VALAD LAKSHMAN . . . 4 Bom., A. C, 142, note

REGISTRATION ACT, 1877, s. 34—*continued.*

6. ——— *Registration without parties appearing before Registrar.—Invalid registration.*—A registering officer who registers a deed of sale without the vendor who executed the deed having appeared before him, acts in contravention of section 36, Act XX of 1866; but there are no words in that section which declare that the registration of a deed under such circumstances shall be null and avoid. *Quære,*—Whether the words of that section are not merely directory to the registering officer for the benefit of the parties to the deed; and whether his acting without the appearance of the parties as provided by the Act is more than a defect of procedure within the meaning of section 88. MAKHUN LALL PANDAY *v.* KOONDUN LALL [15 B. L. R., 228: 24 W. R., 75 L. R., 2 I. A., 210

S. C. in lower Court, KOONDUN LALL *v* MAKHUN LALL . . 1 N. W., 168: Ed. 1873, 247

——— **ss. 34, 35.**

See s. 23 . . . 11 B. L. R., 20

1. ——— **s. 35 (1871; s. 35, 1866 s. 36).**—*Admission of execution.—Duty of Registrar when executant does not consent.*—The plaintiff having purchased at an execution-sale the right, title, and interest of a tenant in an istmerari jote, obtained from the zemindar a pottah which he sought to register according to law. The zemindar appeared at the registration office, and admitted the execution of the pottah but did not assent to its being registered, whereupon the registering officer withheld registration. *Held* that it was the duty of the registering officer to register the pottah, notwithstanding the executant's refusal of assent. MAGON MALLO *v.* DOOLA GAZEE KOOLAN . . 19 W. R., 198

2. ——— *Deed of sale.—Refusal of vendor to endorse deed.—Refusal to register, Ground for.*—A deed of sale of land situated in the registration district of Calcutta was executed and presented by the purchaser for registration. The vendor appeared personally, and admitted execution, but refused to endorse the deed, on the ground that she did not intend to sell, but only to renew a certain deed of mortgage. The Registrar refused to register the deed. *Held* that the Registrar was justified in refusing to register the deed, on the ground that the vendor, one of the parties to it, refused to endorse it. IN THE MATTER OF THE INDIAN REGISTRATION ACT AND BRAJANATH PYNE [3 B. L. R., O. C., 60: 12 W. R., 386, note

3. ——— *Non-payment of consideration.—Refusal to register.—Duty of Registrar.*—Under Act XX of 1866, a Registrar had no power to refuse to register a deed, on the ground that the full consideration there mentioned had not been paid. His duty is, when the parties appear in person before him, simply to ascertain whether the deed has been executed by the persons by whom it purports to have

REGISTRATION ACT, 1877, s. 35—*continued.*

been executed. IN THE MATTER OF ACT XX OF 1866, AND OF THE PETITION OF BRINDABUN CHANDRA SHAW AND NOBODEEP CHANDRA SHAW [1 B. L. R., O. C., 47

4. ——————— *Admission of execution of document.—Setting up collateral agreement.*—Where the defendant admitted the execution of the documents, but set up a collateral agreement which would render the documents of no legal force, the lower Courts found that the agreement relied on by the defendant was come to with the plaintiff. *Held* (reversing the decrees of the lower Courts) that, execution having been admitted, the documents ought to be registered. RAMANADAN CHETTY *v.* VIJIASAMY . . . . . 4 Mad., 425

5. ——————— *Improper admission to registration.—Suit on deed improperly admitted to registration.—H.* and *S.* admitted in the registering office the execution of a deed of sale purporting to be executed by *H.*, *S.*, and *M.* The third person did not appear before the registering officer and did not admit or deny the execution of the deed, on her part, but the other two persons stated that it had been executed without her knowledge or authority. It was held that, under the provisions of sections 34 and 35 of Act VIII of 1871, the registering officer was not warranted in registering the deed. The deed of sale, which the suit was brought to enforce, not having been registered according to law, could not be received in evidence of the sale, and the suit to enforce the sale was unmaintainable. BAIJNATH *v.* MAHOMED IRADAT . . . . . 7 N. W., 185

6. ——————— *Refusal to register.—Disability of executants from minority, idiocy or lunacy.*—The words of section 35 of the Registration Act, VIII of 1871, which provide that "If all or any of the persons by whom the document [*i.e.*, the document presented for registration] purports to be executed deny its execution, or if any such person appears to be a minor, an idiot, or a lunatic, or if any person by whom the document purports to be executed is dead, and his representative or assign denies its execution, the registering officer shall refuse to register the document," taken literally, seem to require the registering officer to refuse registration of a deed which purports to be executed by several persons if any one of them deny execution, or appear to be a minor, an idiot, or a lunatic. Since such a construction would cause great difficulty and injustice, and would be inconsistent with the language and tenor of the rest of the Act, the words in question must be read distributively, and construed to mean that the registering officer shall refuse to register the document *quoad* the persons who deny the execution of the deed and *quoad* such persons as appear to be under any of the disabilities mentioned. The registration of a deed is not necessarily invalid by reason of a failure on the part of the registering officer to comply with the provisions of the Registration Act. *Mukhun Lall Panday* v. *Koondun Lall, 15 B. L. R., 228,* referred to and approved. MUHAMMAD EWAZ *v.* BIRJ LAL . . . I. L. R., 1 All., 465 [L. R., 4 I. A., 166

REGISTRATION ACT, 1877, s. 35—*continued.*

7. ——————— *Refusal to register.—Disability of minority.*—The object of section 35 of the Registration Act, 1877, which directs the registering officer to refuse to register a document if the person by whom it purports to be executed appears to be a minor, is, that if the registration authorities refuse to register on that ground, the question of minority may at once be brought into a Civil Court, and there determined. CHUNEE MUL JOHURY *v.* BROJO NATH ROY CHOWDRY [I. L. R., 8 Calc., 967 : 11 C. L. R., 315

8. ——————— *Execution of bond by father on minor son's behalf.—Registration of bond without the minor being represented, Effect of.*—At the registration of a bond executed by *H.* and *B.*, and by *H.* on behalf of *J.*, a minor, the minor was not represented for the purpose of registration by any one. *Held* that the bond should not affect any immoveable property comprised therein in so far as *J.* was interested in the same. *Muhammad Ewaz* v. *Brij Lal, I. L. R., 1 All., 465,* and section 35 of the Registration Act, 1877, referred to. SHANKAR DAS *v.* JOGRAJ SINGH . . . I. L. R., 5 All., 599

——————— **s. 39 (1871, s. 39; 1866, s. 40).**—*Revenue officer.—Collector.—Sub-Collector.—Semble,*—The words, "the revenue officer in whose jurisdiction the person whose attendance is desired may be," in section 40 of the Registration Act, 1866, point to the chief revenue officer of the district, *viz.*, the Collector, or if in any defined sub-district, the Sub-Collector. Such Sub-Collector has all the powers of a Collector. IN THE MATTER OF THE PETITION OF NARAINASAMI PILLAI . . . 4 Mad., 91

——————— **ss. 42-46 (1871, ss. 42-46; 1866, ss. 44, 46).**

See s. 57 (1866, s. 65). [3 Bom., O. C., 135

See OUDH ESTATES ACT, 1869, s. 13. [I. L. R., 10 Calc., 976

——————— **s. 47.**—*Priority.—Possession.—Notice.*—The plaintiff purchased certain land by a deed dated the 8th April 1879. The deed was registered on the 26th August of the same year. The defendant purchased the same land by a deed dated the 14th June 1879. It was registered on the same day. That deed recited that the land was in the possession of the plaintiff as tenant. Both the deeds were optionally registrable. The Subordinate Judge rejected the plaintiff's claim, and awarded the land to the defendant. His decree was affirmed, on appeal, by the District Judge on the ground that the defendant's deed was registered before the plaintiff's deed. On appeal to the High Court,—*Held* that the plaintiff was entitled to the land. Both the deeds having been registered according to law, they operated from their respective dates of execution as provided by section 47 of the Registration Act III of 1877. *Held*, also, that the defendant had notice of the plaintiff's equitable title to the land. SANTAYA MANGARSAYA *v.* NARAYAN . . . I. L. R., 8 Bom., 182

REGISTRATION ACT, 1877—*continued.*

1. ——— s. 48 (1871, s. 48; 1866, s. 48).—*Verbal contract between Hindus.—Subsequent registered deed.*—Where a lien by verbal contract and deposit of title-deeds of immoveable property in the Island of Bombay by a Hindu in favour of a Hindu was created before the 1st of January 1865, when the first general Registration Act (XVI of 1864) came into force, and a Gujarati document (unregistered) was subsequently (on the 13th of June 1865) executed by the giver of the lien which set out its particulars, and acknowledged the receipt of the loan on account of which the lien was given,—it was held that the original oral contract of lien, being in itself a perfected transaction, was not merged in or invalidated by the subsequent document, and that, therefore, the fact of the latter not being registered did not affect the validity of the prior transaction. Section 48 of Act XX of 1866, which enacted that all instruments duly registered under that Act and relating to moveable or immoveable property should take effect against any oral agreement relating to the same property, did not apply to oral agreements completed before Act XVI of 1864 came into force. JIVANDAS KESHAVJI *v.* FRAMJI NANABHAI [7 Bom., O. C., 45

2. ——— *Registration of illegal or fraudulent document.—Priority.—Oral agreement accompanied by possession.—English principles of equity.*—Persons claiming under a registered document which has been given, accepted, and registered in fraud of a third party, and in collusion with the grantor, are not entitled to the benefit of section 48 of the Registration Act (VIII of 1871), and therefore the registration of a document of title which has been procured in fraud of a party possessing a prior equitable title, or with actual notice of his prior equitable title, does not deprive such party of his priority. Registration cannot confer validity upon an instrument which is *ultra vires*, or illegal, or fraudulent. The reason for the exception made by section 48 of the Registration Act (VIII of 1871) in favour of an oral agreement accompanied by possession, is, that by such possession the parties who rely on a subsequent registered deed had, or might, if they had been reasonably vigilant, have had, previously to their entering into their contract with the vendor and to their taking a conveyance, notice, by the fact of such possession, that there was some prior claim to the property. Therefore, where there is actual notice of a prior oral agreement, although unaccompanied by possession, the object of the Legislature is fully attained. *Hicks* v. *Powell, 4 Ch., 741; Futtehand Sahoo* v. *Leelumber Singh Dass, 14 Moore's I. A., 129: 9 B. L. R., 433;* and *Valaji Isaji* v. *Thomas, I. L. R., 1 Bom., 194,* distinguished. Instances in which the rules of English Courts of Equity have been applied in the mofussil, referred to. WAMAN RAMCHANDRA *v.* DHONDIBA KRISHNAJI . I. L. R., 4 Bom., 126

3. ——— *Case where there is no transfer or giving possession.*—The Registration Act, 1871, section 48, which says that documents relating to any property duly registered shall take effect against any oral agreement or declaration relating to

REGISTRATION ACT, 1877, s. 48—*continued.*

such property, unless where the agreement or declaration has been accompanied or followed by delivery of possession, does not apply to a case where there is no transfer or making over of possession. KIRTY CHUNDER HALDAR *v.* RAJ CHUNDER HALDAR [22 W. R., 273

4. ——— *Priority.—Verbal contract.—Registered deed of sale.*—A subsequent registered deed is entitled to preference to a prior verbal contract: the former would invalidate the latter. KYLASH CHUNDER CHATTERJEE *v.* GOPAL CHUNDER CHATTERJEE . . . . . 1 W. R., 78

5. ——— *Priority.—Verbal sale with possession.—Registered deed.—Held* that a deed of sale of immoveable property, duly registered under Act XX of 1866, was to be preferred to a prior verbal sale of the same property accompanied by possession, where it appeared that it was the intention of the parties to the verbal sale to complete the transaction by a deed. *Semble,*—That the effect would have been the same if there had been no such intention. BHANDU VALAD RAJARAM *v.* DAMAJI VALAD JIVAJI [6 Bom., A. C., 59

6. ——— *Priority.—Possession under unregistered lease.*—Where possession of immoveable property has been given under an unregistered lease, a subsequent grantee of a registered lease cannot maintain a suit to evict the lessee in possession, on the ground of the priority of his deed under section 48, Act XX of 1866. NARSING PORKEAT *v.* BEWAH . 5 B. L. R., Ap., 86: 14 W. R., 250

7. ——— *Mortgage without possession.—Subsequent purchase with possession.—Law in Kanara.—Quære,*—Whether in Kanara a mortgage without possession can be sustained against a subsequent purchase from the mortgagor with possession. PURMAYA *v.* SONDE SHINIVASAPA [I. L. R., 4 Bom., 459

8. ——— *Deposit of title-deeds.—Priority.—Oral agreement.*—A deposit of title-deeds of certain property, under a verbal arrangement to secure payment of a debt, is not an "oral agreement or declaration relating to such property" within the meaning of section 48 of the Registration Act, 1877. COGGAN *v.* POGOSE . . I. L. R., 11 Calc., 158

9. ——— *Oral alienation.—Evidence of possession.—Per* PONTIFEX, *J.*—The words relating to possession found in section 48 are merely intended as a declaration of the law limiting the operation of oral alienations, and of declaring the law with respect to them, by laying down that the only oral alienations, of which the law can take notice in competition with registered instruments, are those which are properly established by evidence of possession. FUZLUDEEN KHAN *v.* FAKIR MAHOMED KHAN [I. L. R., 5 Calc., 336: 4 C. L. R., 257

10. ——— *Oral agreement.—Act XX of 1866 (Registration Act), s. 48.—Held* that an oral agreement of hypothecation of immovable property,

REGISTRATION ACT, 1877, s. 48—*continued.*

entered into in August 1869, and which was not accompanied nor followed by possession of the property charged, could not avail against a registered sale certificate obtained in respect of the same property and dated in August 1876, whether section 48 of Act XX of 1866 or section 48 of Act VIII of 1871 were looked to. NATHU RAM *v.* PHULCHAND

[I. L. R., 6 All., 581

11. ———— *Oral agreement of sale.—Subsequent sale to third party.—Notice of prior agreement.—Rights of purchaser.*—Notwithstanding the provisions of section 48 of the Registration Act, a party who purchases, even under a registered deed of sale, with notice of a prior agreement for sale of the same property, will not be allowed to retain the property as against the person claiming under the prior agreement. *Solano* v. *Lala Ram Lal, 7 C. L. R., 481*, followed; *Fuzludeen Khan* v. *Fakir Mohamed Khan, I. L. R., 5 Calc., 336*, distinguished. CHUNDER NATH ROY *v.* BHOYRUB CHUNDER SURMA ROY . . . I. L. R., 10 Calc., 250

12. ———— *Effect of oral agreement as against subsequent registered conveyance.—A.*, by an oral agreement, agreed to grant two mokurrari leases of certain properties upon certain terms to *B.*, and thereupon executed two mokurrari leases in favour of *B.*, which were not, however, registered. Afterwards *A.* granted two mokurrari leases of the same mouzahs, upon terms more favourable to himself, to *C.* and *D.*, who, at the time of such grant, had notice of *A.'s* previous agreement with *B. Held*, in a suit for specific performance brought by *B.* against *A.*, and to which *C.* and *D.* were added as defendants, that, notwithstanding the fact that *B.* had never got possession under the oral agreement as provided in section 48 of Act III of 1877, *B.* could obtain a decree for specific relief, and a declaration that the leases to *C.* and *D.* were void as against him. NEMAI CHARAN DHABAL *v.* KOKIL BAG

[I. L. R., 6 Calc., 534 : 7 C. L. R., 487

See CHUNDER KANT ROY *v.* KRISHNA SUNDER ROY . . . I. L. R., 10 Calc., 710

a case to which the Specific Relief Act applied.

13. ———— *Constructive possession in pursuance of oral agreement to sell land.*—Where a vendor in pursuance of an oral agreement to sell certain land directed the tenants of the land to pay, and the tenants agreed to pay, rent to the purchaser, —*Held* that such possession was given to the purchaser as would satisfy the condition of section 48 of the Registration Act and enable him to resist the claim of a subsequent registered purchaser. PALANI *v.* SELAMBARA . . I. L. R., 9 Mad., 267

———— **s. 49 (1871, s. 49; 1866, s. 49).**

See CASES UNDER s. 17.

See LIMITATION ACT, 1877, s. 19 (1871, s. 20)—ACKNOWLEDGMENT OF DEBTS.

[I. L. R., 5 Calc., 215: 4 C. L. R., 361

1. ———— *Construction of section.*—In considering the effect to be given to section 49,

REGISTRATION ACT, 1877, s. 49—*continued.*

Act XX of 1866, that section must be read in conjunction with section 88 and with the words of the heading of Part X, "Of the effects of registration and non-registration." It is not clear that the words of section 49, "unless it shall have been registered in accordance with the provisions of this Act," are not confined to the procedure on admitting to registration, without reference to any matters prior to registration, or to the provisions of section 19, 21, or 36, or other provisions of a similar nature. MUKHUN LALL PANDAY *v.* KOONDUN LALL

[15 B. L. R., 228 : 24 W. R., 75
L. R., 2 I. A., 210

S. C. in lower Court, KOONDUN LALL *v.* MAKHUN LALL . 1 N. W., 168 : Ed. 1873, 247

2. ———— *Properly-registered document, Requisites of.—Act XX of 1866, ss. 66, 67, 68, and 69.*—The registration of a document under Act XX of 1866 is complete when all the requirements stated in sections 66, 67, 68, and 69 have been fulfilled, and the certificate mentioned in section 68 is *primâ facie* evidence of such completeness Where a kobala bore the above certificate, a memorandum from the Sub-Registrar, stating that he was not satisfied that the heirship of the party conveying had been established, was held in no way to affect the registration. Where the requirements of the law had been fulfilled, a report made by the Sub-Registrar, in which he expressed his intention to reject the document, was held not to affect its claim to being a well-registered document within the meaning of section 49. ROHIMOONISSA *v.* ABDOOLLAH KHAN

[22 W. R., 319

3. ———— *Document not duly registered.—Admissibility of evidence.*—Although a document has been actually registered by the proper officer appointed for the purpose of registering documents, it cannot be received in evidence under section 49 if it has been registered contrary to the provisions of the Registration Act. MAHOMED ALTAF ALI KHAN *v.* PERTAB SINGH . . 5 N. W., 91

4. ———— *Decree, Sale of.—Decree on mortgage-bond.—Right to execute decree.*—A decree-holder purported to sell to *A.*, by private sale, all his right, title, and interest in a mortgage decree obtained by him in a suit on a mortgage-bond against the mortgagor. The deed of sale was not registered. Afterwards, by a registered deed of sale, *A.* conveyed all his right, title, and interest in the same decree to *B. Held* that the right to execute the decree as a mortgage-decree did not pass to *B.*, the deed of sale not affecting immoveable property without registration. KOOB LALL CHOWDHRY *v.* NITTYA NUND SINGH . I. L. R., 9 Calc., 839 : 12 C. L. R., 393

5. ———— *Deed made before Registration Act.—Admissibility of unregistered deed.—Held* that there is no provision in the law excluding a deed made before the Registration Act came into force, and not registered within the time appointed for the registration of such deeds, from being

REGISTRATION ACT, 1877, s. 49—*continued.*

adduced in evidence. RAM SURUN DASS *v.* RAM CHUND . . . . . **1 Agra, 283**

6. ——— *Admissibility in evidence of unregistered deed for purpose for which registration is unnecessary.—Bond.*—An unregistered document requiring registration as affecting an interest in land is admissible in evidence for any purpose for which registration is unnecessary. LACHMIPAT SINGH DUGAR *v* KHAIRAT ALI

[5 B. L. R., F. B., 18 : 12 W. R., F. B., 11

SHAM NARAYAN LALL *v.* KHEMAJIT MATOE

[4 B. L. R., F. B., 1

MONOMOTHONATH DAY *v.* SREENATH GHOSE

[20 W. R., 107

7. ——— *Admissibility of unregistered deed.—Collateral security of land.*—A bond for money in which land is pledged as a mere collateral security, is not one of the instruments defined in clause 2, section 17, Act XX of 1866, the registration of which is compulsory; but is one of which the registration is optional under clause 7, section 18 of that law: therefore, in a suit for money due on the bond, the reception of the bond as evidence, though not registered, is not barred by section 49. WOODOY CHAND JANA *v.* NITYE MUNDUL . **9 W. R., 111**

8. ——— *Admissibility in evidence of unregistered deed to prove debt.—Suit for money due on mortgage.*—In a suit to recover a sum of money due on a mortgage, the mortgage-deed, though not registered, was admitted in evidence to prove the debt. BUTTOKRISTO DOSS *v.* KHETTRA CHANDRA BHUTTACHARJEE . . **6 B. L. R., Ap., 69**

9. ——— *Admissibility in evidence of unregistered deed as receipt or acknowledgment of debt.—Deed of sale.—Acknowledgment of debt.*—An unregistered deed of sale, so far as it is a receipt or acknowledgment of money paid, or an acknowledgment for old debts, is admissible in evidence, notwithstanding section 49, Act XX of 1866. A portion of an unregistered document requiring registration is admissible in evidence, when such portion does not relate to immoveable property. SHIB PRASAD DOSS *v.* ANNA PURNA DAYI

[3 B. L. R., A. C., 451 : 12 W. R., 435

10. ——— *Evidence, Admissibility of.—Mortgage-bond.*—An unregistered bond, containing a personal undertaking to repay money borrowed, and also a hypothecation of land above R100 in value as security, may be used in evidence to enforce the personal obligation. ULFATUNNISSA *alias* ELAHIJAN BIBI *v.* HOSAIN KHAN

[I. L. R., 9 Calc., 520 : 12 C. L. R., 209

11. ——— *Document creating interest in land.*—A document which gives or purports to give a right to have immoveable property brought to sale with a view to the recovery, out of its proceeds, of money lent (principal and interest), is an instrument which creates an interest in immoveable property, and as such cannot, under section 49 of the Registration Act, be received in evidence without being registered. KALA CHAND MUNDUL *v.* GOPAL CHUNDER BHUTTACHARJEE . **12 W. R., 163**

12. ——— *Suit for money-decree on mortgage-deed of immoveable property.—Admissibility of document in evidence.*—*A.* sued in the Small Cause Court on the covenant of a mortgage-deed for a money-decree. The deed, being unregistered, was held inadmissible in evidence. *Held*, on reference to the High Court, that the unregistered mortgage-deed, being in its terms indivisible and disclosing one transaction only which it would be imperative on the plaintiff to prove for the purpose of making out his case, was, under section 49 of Act VIII of 1871, inadmissible in evidence to prove a fact for which registration was unnecessary. MATTONGENEY DOSSEE *v.* RAMNARAIN SADKHAN

[I. L. R., 4 Calc., 83 : 2 C. L. R., 428

13. ——— *Admissibility of document requiring registration.—Divisible transaction.*—When a transaction is indivisible, and the registration of the document evidencing it is by law compulsory, the document will not be admissible in evidence if not duly registered; but when the transaction is divisible,—as when upon a loan of money it is agreed (i) that the loan shall be secured by a bond containing a covenant for repayment of the sum advanced with interest within a certain time, and also (ii) that certain designated property shall be hypothecated as collateral security for the repayment of the loan,—the same rule does not apply, and an unregistered bond for the amount advanced, with interest, containing a further provision that as collateral security for the amount advanced certain property should remain hypothecated, may be used as evidence of the loan, although inadmissible to prove the hypothecation. KRISHTO LALL GHOSE *v.* BONOMALEE ROY

[I. L. R., 5 Calc., 611 : 5 C. L. R., 43

14. ——— *Admissibility of unregistered bond in evidence to prove money-debt.—Collateral security.*—In order to secure a loan of R120 the defendant executed a bond to repay the loan with interest, which provided that by way of collateral security certain immoveable property should be hypothecated. The bond was not registered. In a suit upon the bond praying for a money-decree against the defendant and for a declaration of a lien upon the property hypothecated, it was objected that the bond was inadmissible in evidence by reason of its not being registered. *Held* that the bond might be taken as divisible in its nature, as being a money-bond with a provision that certain property should be hypothecated as collateral security, and that it was therefore admissible in evidence. GOUR CHURN SURMA *v.* JINUT ALI . . **11 C. L. R., 166**

15. ——— *Unregistered mortgage-bond pledging land.—Consent of parties.—Power of Court.*—Where land of the value of R100 or upwards was mortgaged on a bond which was not registered, as it ought to have been, under the Regis-

REGISTRATION ACT, 1877, s. 49—*continued.*

tration Act in force at the time,—*Held* that the bond could only be sued upon as a money-bond, and though the suit might be brought in a Court within whose jurisdiction the land was not situated, the Judge would have no right, even with the consent of the parties, to deal with it as a mortgage, or to make any decree affecting the land in dispute. SHIBO SOONDUREE DEBIA *v.* SOWDAMINEE DEBIA [25 W. R., 78

16. ——— *Admissibility in evidence of unregistered deed in suit to recover debt.*—Where an instrument purports to create an interest in immoveable property only as a collateral security for the payment of money, and is also a simple contract or bond for the payment of a debt, and where effect is sought to be given to the instrument only as a simple contract, it is admissible in evidence in a suit to recover the debt, though it has not been registered. So far as it is a contract for the payment of money, it is an instrument the registration of which is made optional by section 18 of Act XX of 1866. VELLAYA PADYACHY *v.* MOORTHY PADYACHY . 4 Mad., 174

17. ——— *Instrument creating interest in immoveable property.—Suit for money-debt.*—The plaintiff sued, as the assignee of a mortgagee of immoveable property, to recover the amount of the debt from the mortgagor in pursuance of an express contract to pay the debt contained in the mortgage. The mortgage was executed before the Registration Act (XVI of 1864) came into operation. The assignment to the plaintiff was executed after the Registration Act (XX of 1866) became law. *Held per* BITTLESTON, INNES, and COLLETT, *JJ.*, that the assignment, being an instrument operating to create an interest in immoveable property, and as such requiring to be registered under section 17 of Act XX of 1866, was not admissible in evidence in a suit to enforce the personal obligation only. *Per* SCOTLAND, *C.J.*,—That an instrument which has the two-fold operation of a simple contract or bond to pay a debt and a collateral mortgage security for the debt, is admissible in evidence for the purpose of proving the simple contract debt. ACHOO BAYAHAM *v.* DHANY RAM . . . . . 4 Mad., 378

18. ——— *Admissibility of unregistered document in which land is pledged as a collateral security in a suit to enforce the personal security.*—Under the provisions of section 49 of Act VIII of 1871, an unregistered bond, though immoveable property be made by the terms of it collateral security, is admissible in evidence in a suit to enforce the personal liability of the person executing the bond. It is only excluded where it is offered as evidence of a transaction affecting immoveable property. SESHATHRI AYYENGAR *v.* SANKARA AYEN [7 Mad., 296

19. ——— *Admissibility in evidence of document inadmissible under Act XX of 1886 as not being registered.—Suit for money-debt on document.*—A suit was brought to recover money secured by a mortgage in writing of immoveable property made in 1870 whilst the Registration Act, XX of 1866, was in force. By Act XX of 1866 the document was not admissible in evidence even to enforce the demand for money, the document not having been registered. By Act VIII of 1871 (the Registration Act) the document was rendered admissible when the suit was brought. *Held* that the document was admissible in evidence. GUDURI JAGANNADHAM *v.* RAPAKA RAMANNA . 7 Mad., 348

20. ——— and s. 17.—*Unregistered conveyance.—Covenant to pay money contingent on ejectment.—Suit for money dismissed.*—By an unregistered document *A.* stipulated that *B.* should enjoy certain land for a term of years in order that a debt and interest might be liquidated by receipt of profits, estimated at a fixed sum, and it was provided that, if *B.'s* possession was disturbed in the meantime, *A.* should pay the balance of the principal then due and interest from the date of the loan. *B.* having been ejected, sued *A.* upon the covenant to pay. *Held* that, as the covenant to pay depended on the principal contract, which could not be proved for want of registration, *B.* could not recover. VENKATRAYUDU *v.* PAPI . . . . I. L. R., 8 Mad., 182

21. ——— *Admissibility in evidence of unregistered bond.—Suit for money due on bond.*—*Held* by COUCH, *C. J.*, following the decisions of the Calcutta and Madras High Courts, but doubting, that an unregistered bond, whereby immoveable property was pledged by way of collateral security, is admissible in evidence where effect is sought to be given to it for the purpose of obtaining a decree for the money due under it. TUKARAM VITHOJI *v.* KHANDOJI MALHARJI . . 6 Bom., O. C., 134

22. ——— *Admissibility in evidence of unregistered bond.—Suit for money due on bond.*—Where a bond or other instrument creating an interest in land also contains a distinct promise to pay the money due under it, such bond or instrument is evidence in a suit brought to recover the money only. SANGAPPA BIN NINGAPPA *v.* BASAPPA BIN PARAPPA . . . . 7 Bom., A. C., 1

23. ——— *Admissibility in evidence of unregistered bond.—Suit for money due on bond.*—An unregistered bond containing the condition that the lender will get possession of certain land in default of payment by the borrower within a specified time, is admissible in evidence in case the lender sues, not to enforce any charge or lien against the land, but seeks for personal relief in the shape of a decree against the defendant for the payment of the bond-debt. ESHREE RAI *v.* BINDOOT RAI [3 Agra, 60: Agra, F. B., Ed. 1874, 142

24. ——— *Admissibility in evidence of unregistered bond.—Suit for money due on bond.*—Although a bond which creates an interest in land as security for the debt is inadmissible in evidence if unregistered, it may be adduced as evidence of the debt, and a money-decree may be given on the basis of it for the sum secured by it. SEETA KULWAR *v.* JUGURNATH PERSHAD . . . 3 Agra, 170

REGISTRATION ACT, 1877, s. 49—*continued.*

25. ——————— *Conveyance containing acknowledgment of debt.*—*G.* owed *B.* R3,500, and executed a conveyance of certain land to *B.*, for which such debt was partly the consideration. In such conveyance *G.* acknowledged his liability for the debt, but he died before it was registered and it did not operate. In a suit against *G.'s* widow for the debt,—*Held* that, notwithstanding the conveyance was not registered, it was admissible as evidence of the acknowledgment by *G.* of his liability for the debt. KHUSHALO *v.* BEHARI LAL . **I. L. R., 3 All., 523**

26. ——————— *Unregistered bond hypothecating immoveable property as collateral security.—Admissibility of bond as evidence of the money-obligation.—Effect of non-registration.*—A bond whereby a person obliges himself to pay money to another, and at the same time hypothecates immoveable property as collateral security for such payment, although the money-obligation is of the value of one hundred rupees, and the bond is not registered, can be received in evidence in support of a claim to enforce the money-obligation. IN THE MATTER OF THE PETITION OF SHEO DIAL *v.* PRAG DAT MISR **[I. L. R., 3 All., 229**

27. ——————— *Unregistered bond for the payment of money hypothecating immoveable property.—Admissibility in evidence of the bond in support of a claim for money.—Mortgage.*—On the 3rd February 1871 the defendants, having borrowed R1,000 from the plaintiffs, executed in favour of the latter an instrument in which they mortgaged, by way of conditional sale, certain immoveable property as security for the loan, and in which it was provided that they should pay certain interest on such sum annually, and should pay such sum on the expiration of five years from the date of such instrument, and in the event of failure in these respects that the plaintiffs might apply for foreclosure. On the 18th January 1879 the plaintiffs sued the defendants for the balance of such sum and interest, waiving their claim on such property, and suing for such balance as a simple debt, as such instrument was not registered. *Held*, following *Sheo Dial* v *Prag Dat Misr, I. L. R., 3 All., 229*, that, inasmuch as such instrument involved a personal obligation of the defendants distinct and severable from the obligation in respect of such property, such instrument, notwithstanding it was not registered, was admissible as evidence in support of the claim to enforce that money-obligation; and it was also admissible in proof of the fact that the debt was not exigible from the defendants until on and after the expiration of five years from the date of the loan. LACHMAN SINGH *v.* KESRI . . . . **I. L. R., 4 All., 3**

28. ——————— *Admissibility of unregistered deed.—Specific performance, Suit for.*—*A.* brought a suit in the Munsif's Court against *B.* and *C.*, alleging that they had sold outright to him by saf-kobala certain landed property for R300, which was duly paid, and the kobala was executed; that possession was given to him; that *B.* and *C.* set up before the Deputy Registrar fraudulent objections to the effect that a stipulation to return the property to the vendors on the repayment by them of the consideration-money had not been embodied in the deed, and that part of the consideration-money was still unpaid; that, therefore, the Registrar refused to execute the deed; that in fact there was no such stipulation as set up by *B.* and *C.*, and that the whole of the purchase-money was paid; and it was stated in the conclusion of the plaint that the suit had been instituted to set aside the fraudulent objections, and to establish the full title of *A.* as purchaser. *Held* (MITTER, *J.*, dissenting) that the suit would not lie. The unregistered deed could not be admitted in evidence, nor parol evidence of the contract be given under which *A.* alleged that he acquired his title. *A.* ought to have proceeded under section 88 of Act XX of 1866. RAHMATULLA *v.* SABIUTULLA KAGCHI **[1 B. L. R., F. B., 58: 10 W. R., F. B., 51**

MAHOMED OHID *v.* KALEE PERSHAD SINGH **[24 W. R., 320**

FATI CHAND SAHU *v.* LILAMBER SING DAS **[9 B. L. R., 433: 14 Moore's I. A., 129 16 W. R., P. C., 26**

29. ——————— *Suit for breach of covenant.—Admissibility in evidence of unregistered document.*—In a suit for breach of a covenant to register contained in an unregistered mortgage-deed, the defendant cannot plead the non-registration of the instrument for the purpose of protecting himself. Such a deed is admissible in evidence for a collateral purpose without being registered. SHAM NARAYAN LAL *v.* KHIMAJIT MATOE . **4 B. L. R., F. B., 1**

S. C. SHAM NARAIN LALL *v.* KHEMAJEET MATOE **[12 W. R., F. B., 11**

30. ——————— *Suit for possession based on unregistered deed.—Suit to enforce registration.*—*Held* that a suit for possession based merely on an unregistered sale-deed must fail, such unregistered sale-deed being inadmissible as evidence in any civil proceeding under section 13, Act XVI of 1864. KRISHEN KISHORE CHUND *v.* MAHOMED ZUKAUOOLLAH . **Agra, F. B., 148: Ed. 1874, 111**

31. ——————— *Unregistered indigo "sattah."—Admissibility in evidence of claim for damages.*—*S.* gave *M.* a lease of certain land, which was required by law to be registered, but which was not registered, in which it was stipulated that, if he failed to deliver any portion of such land, he should pay damages at a certain rate per bigha in respect of the portion not delivered, and in which such land was hypothecated as security for the payment of such damages. *S.* having failed to deliver a portion of such land, *M.* sued him for damages in respect of such portion according to the terms of the lease, not seeking to enforce the hypothecation, as the lease was not registered, but seeking only a money-decree. *Held* that the lease, being unregistered, could not be received as evidence even of *S.'s* personal liability thereunder. *Sheo Dial* v. *Prag Dat Misr, I. L. R., 3 All., 229*, distinguished. MARTIN *v.* SHEO RAM LAL . . . . **I. L. R., 4 All., 232**

REGISTRATION ACT, 1877, s. 49—*continued.*

32. ——————— *Admissibility in evidence.—Suit for damages for breach of covenants in unregistered deed.—Document containing covenants for title.—Act III of 1877, s. 17.—Estoppel.—S. L.*, by a deed of gift of 16th February 1847, granted and assured to *S.*, his daughter, certain immoveable property. By a subsequent unregistered deed of gift of 15th July 1865, *S. L.* purported, in consideration of natural love and affection, to grant and convey the same property, the value of which exceeded R100, to *B. R.*, the husband of *S.*, his heirs, executors, administrators, and assigns. The last-mentioned deed contained covenants, on the part of *S. L.*, his heirs, executors, and administrators, with *B. R.*, his heirs, executors, administrators, and assigns, for title to "the hereditaments and premises hereinbefore expressed to be hereby granted and assured unto and to the use of said the *B. R.*, his heirs, executors, administrators, and assigns." *S.* died in the lifetime of *B. R.*, who, in 1867, mortgaged the premises comprised in the deed of 15th July 1865, and died in 1868. In 1870 the mortgagee sold the premises by auction, under the power of sale contained in the mortgage-deed; the plaintiff became the purchaser; and the mortgagee, on 24th March 1871, executed to him a conveyance of the premises, which were then in the possession of the surviving members of the family of *B. R.* and *S.* The plaintiff, having failed in a suit for ejectment against the parties in possession, who relied on the prior gift to *S.*, sued the representatives of *S. L.* for damages for breach of the covenants for title contained in the unregistered deed of 15th July 1865. *Held* that though, as in *Tukaram* v. *Khandoji, 6 Bom., O. C., 134*, and *Sangappa* v. *Basappa, 7 Bom., A. C., 1*, an unregistered document requiring registration may be admitted in evidence for certain purposes, yet it cannot be looked at so far as it affects the immoveable property comprised therein, nor so far as it is evidence of any transaction affecting such property, and that, excluding the part of the document of 15th July 1865 which purported to be the conveyance to *B. R.*, the covenant for title sued on in the present suit was itself ambiguous and uncertain; and there being nothing to connect the premises, to which the covenant related, with the premises conveyed to the plaintiff, no breach of the covenant sued upon had been proved. The Court being precluded by the operation of the Registration Act (III of 1877) from looking at the deed of 15th July 1865 so far as it was a conveyance, the defendants were not estopped from contending that nothing having passed under it to *B. R.*, nothing had passed to the plaintiff under the subsequent deeds, and that, consequently, the plaintiff was not entitled to maintain this suit. RAJU BALU *v.* KRISHNARAV RAMCHANDRA . . . **I. L. R., 2 Bom., 273**

33. ——————— *Admissibility in evidence independently of document sued on when unregistered.*—In a case where it is made to appear that the cause of suit arises upon a document which by law requires registration, but has not in fact been registered, the plaintiff cannot be permitted to establish a claim independently of the document, the existence of which is shown. RAMPERSHAD *v.* MEWA KOOER **[2 N. W., 12**

MOONA *v.* JEY MUNGUL SINGH . **4 N. W., 164**

KABOOLUN *v.* SHUMSHEIR ALI . **11 W. R., 16**

Unless it is apparent that such document is not the foundation of his suit. SAWANTEE *v.* SEWA RAM **[2 N. W., 35**

34. ——————— *Unregistered kabuliat.—Suit for rent.*—Where the contract between the parties to a rent suit is in no way disputed or denied, and the fact of certain lands having been taken at a certain rent is admitted, the only issue being whether the rent has been paid or not, the case may be tried notwithstanding that the kabuliat is inadmissible by reason of non-registration. DINONATH MOOKERJEE *v.* DEBNATH MOOKERJEE . . **14 W. R., 429**

35. ——————— *Inadmissibility for want of registration.—Evidence in suit on document.*—In a suit upon a razeenama, the execution of which was admitted by the defendants, which purported to create an interest in immoveable property, the Civil Judge dismissed the suit because the document had not been registered in accordance with Act XVI of 1864, section 13. *Held* (reversing the decree of the Civil Judge) that the existence of the agreement not having been disputed, its production was not necessary, and that the plaintiff was entitled to whatever relief the effect of the plaint and answer taken together would entitle him on the admission of the defendant. CHEDAMBARAM CHETTY *v.* KARUNALYAVALANGAPULY TAVER . . **3 Mad., 342**

See REZA ALI *v.* BHIKUN KHAN . **7 W. R., 334**

where the only disputed point being the fact of payment, for which the production of the kabuliat was unnecessary, the dismissal of the suit for its non-registration was held unjustifiable.

36. ——————— *Inadmissibility of evidence where registrable document is not registered.*—The plaintiff sued the defendant to recover rent due upon a muchilka executed by the defendant. The defendant admitted that he occupied the land under the express contract contained in the muchilka. The muchilka was a document the registration of which was compulsory under the Registration Acts, but was not registered. *Held* that the plaintiff could not establish his case without putting the muchilka in evidence, and it was inadmissible not having been registered. MORRIS *v.* SAPAMTHEETHA PILLAY **[6 Mad., 45**

37. ——————— *Evidence where contract is unregistered and therefore inadmissible.*—Where defendant, after executing a bill of sale in respect of certain lands, and receiving the full amount of purchase-money agreed upon, had repudiated the contract, and refused to make over possession, it was held that, though the fact of the deed of sale not being registered precluded it, under section 13, Act XVI of 1864, from being admitted as evidence, yet plain-

REGISTRATION ACT, 1877, s. 49—*continued.*

tiff was not excluded from showing by other evidence that he performed his part of the contract. There is nothing in that section which says that no contract purporting to create or transfer any right, title, or interest in land shall be recognised by the Civil Court unless reduced to writing. *Held*, also, that there was no reason why plaintiff should not be permitted to show that non-registration was owing, not to any fault of his own, but to the fraudulent conduct of his adversaries. HELALOODDEEN *v.* CHOWDHRY ABDOOL SUTTAR . . . **9 W. R., 351**

38. ——————— *Unregistered document with possession.—Evidence of possession.*—An unregistered document when followed by delivery of possession may be used as evidence of that possession. LALLA GOPEE CHAND *v.* LIAKUT HOSSEIN **[25 W. R., 211**

39. ——————— *Admissibility in evidence.—Intention of parties.*—*A.* sued *B.* for recovery of possession of land which he alleged had been sold to him by *B.* under a bill of sale. The bill of sale had been duly registered and was not disputed by *B.*, but *B.* produced an unregistered ikrarnamah, executed by *A.*, to prove that the sale was not absolute, but only by way of mortgage. *B.* alleged that the terms of the bill of sale were qualified and explained by the ikrarnamah. *Held* that the ikrarnamah was inadmissible in evidence, as it had not been registered under section 13 of Act XVI of 1864, but that the Court might look at other and independent evidence—*viz.*, the acts and conduct of the parties—to throw a light upon their intention. PARABDI SAHANI *v.* MAHOMED HOSSEIN **[1 B. L. R., A. C., 37**

40. ——————— *Agreement to have deed of partition drawn up.*—An agreement to have a deed of partition drawn up in a particular form, even if not admissible in evidence without registration, can be put in, unregistered, as evidence of the intention of the parties. NEM ROY *v.* LALMUN ROY **[25 W. R., 376**

41. ——————— *Receipt for sums paid on bond hypothecating immoveable property.—Admissibility in evidence.—Parol evidence.—Act I of 1872, s. 91, illus. (e).*—A receipt for sums paid in part liquidation of a bond hypothecating immoveable property must be registered under the provisions of section 17 of Act VIII of 1871 to render it admissible as evidence under section 49 of the said Act. Under illustration (*e*), section 91 of Act I of 1872, such payments may nevertheless be proved by parol evidence, which is not excluded owing to the inadmissibility of the documentary evidence. DALIP SINGH *v.* DURGA PRASAD . . . **I. L. R., 1 All., 442**

42. ——————— *Proof of unregistered mortgage by subsequent admission rejected.—Evidence Act, s. 65 (b).*—The defendant in an ejectment suit claimed to be in possession under a mortgage-deed for R1,000, executed in 1865 but not registered, and a second mortgage-deed for R50 of the same date, in which the first mortgage was recited. *Held* that by virtue of section 13 of the Registration Act, 1864, the first mortgage-deed could not be put in evidence, and that the defendant could not give secondary evidence thereof under section 65 (*b*) of the Evidence Act. DIVETHI VARADA AYYANGAR *v.* KRISHNASAMI AYYANGAR . . **I. L. R., 6 Mad., 117**

43. ——————— *Landlord and tenant.—Entry under unregistered lease.—Holding over.—Proof of terms of lease.*—The plaintiff sued in 1881 to recover certain land and arrears of rent from the defendant, alleging that the defendant's ancestor entered on the land as a tenant in 1865 under a lease for five years, which was not registered. The defendant denied the lease of 1865, admitted that she was the tenant of the land, but denied that she could be ejected, and claimed to deduct from the rent certain emoluments. *Held* that the plaintiff could not prove the tenancy alleged in the plaint, inasmuch as the lease of 1865 was not registered, and, therefore, could not eject the defendant. NANGALI *v.* RAMAN **[I. L. R., 7 Mad., 226**

44. ——————— *Unregistered lease.—Proof of tenancy ejectment.—Occupancy rights.*—If a contract of lease is, for want of registration, ineffectual, the landlord is not debarred from giving other evidence of a tenancy and requiring the Court to adjudicate on his right to eject. Dictum in *Nangali v. Raman, I. L. R., 7 Mad., 226*, observed upon. VENKATAGIRI *v.* RAGHAVA. ZEMINDAR OF VENKATAGIRI *v.* RAGHAVA . . **I. L. R., 9 Mad., 142**

45. ——————— *Effect of a registered instrument confirming a prior one of the same purport not registered.*—An instrument purporting to assign a right in immoveables of more than the value of R100 (section 17, sub-section *b* of Act III of 1877), being unregistered, was ineffectual to affect the title of the purchaser. Some years after, the parties executed a deed of conveyance, making the same assignment, confirming the former instrument, and setting it forth in a schedule. The latter instrument was registered. In a suit in which the ownership of the property was contested,—*Held* that the fact of the prior deed not having affected the property, being unregistered, was no reason why the deed afterwards registered should not be admitted as evidence of title. In this there had been nothing contravening the object of the Registration Act. MITCHELL *v.* MATHURA DAS . . . **I. L. R., 8 All., 6 [L. R., 12 I. A., 150**

46. ——————— *Inadmissibility in evidence of unregistered deed.—Secondary evidence.—Evidence Act, s. 91.*—Plaintiff alleged that *A.* and *B.* had sold and conveyed, by an unregistered deed, certain land to the person under whom he claimed. The deed being inadmissible in evidence, *B.* was called to prove the sale. *Held* that *B.'s* evidence should have been rejected, as secondary evidence of the unregistered deed could not be received. RAM CHUNDER HALDAR *v.* GOBIND CHUNDER SEN . . **I. C. L. R., 542**

47. ——————— *Unregistered document.—Admissibility of other evidence where document is not*

REGISTRATION ACT, 1877, s. 49—*continued.*

admissible.—Admission.—The plaintiff sued to recover certain immoveable property sold to him by the first defendant by a registered deed of sale executed on the 23rd of July 1868. The second, third, and fourth defendants pleaded a sale to them by the same party, the first defendant, on the 23rd March 1867, and that the first defendant, after receiving consideration in full, had improperly refused to have their deed of sale registered. The provisions of section 49 of the Registration Act of 1866 precluded the reception in evidence of the prior unregistered instrument of conveyance, but the lower Courts held that certain admissions made by first defendant in an inquiry held before the registration officer were admissible in evidence to prove the sale to third and fourth defendants. The suit was, therefore, dismissed with costs. Upon special appeal,—*Held*, by INNES and KINDERSLEY, *JJ.*, that the admissions made by first defendant were evidence against plaintiff, as made by one from whom plaintiff derived his title, but that the provisions of the Registration Act precluded any effect being given to the sale evidenced by such admissions: there being a writing, the sale could not be proved by mere oral evidence. By INNES, *J.*—The term "instrument," in section 49 of Act XX of 1866, is used on the understanding that the writing is not merely evidence of the transaction but is the transaction itself. SOMU GURUKHAL *v.* RANGAMMAL . **7 Mad., 13**

48. ——————— *Suit to compel registration.—Evidence of contract.—Document being unregistered held inadmissible to prove the contract sought to be registered.*—The defendants agreed to let certain premises to the plaintiff for a term of three years from the 1st of November 1883 at a monthly rent of R200. Subsequently to the making of the agreement,—*viz.*, on the 17th January 1884,—the plaintiff caused a writing to be prepared, which, as he alleged, contained the terms of the lease agreed on, and, having signed it, handed it over to the defendants. The defendants did not sign it, and the document remained with them. The plaintiff alleged that he did not ask the defendants to sign it, as the defendants told him they would get a copy of it prepared, which they would sign and send to him. The defendants alleged that, at the time the document was given to them by the plaintiff, they objected to it on the ground that it was incomplete, inasmuch as it did not contain two of the terms agreed on which prohibited the plaintiff from sub-letting or altering the premises, and required him to maintain them in their then existing condition. The plaintiff denied these allegations of the defendants. In May 1884 the plaintiff, through his attorneys, called upon the defendants to lodge the document for registration. The defendants refused, and the plaintiff filed the present suit, praying—(1) that the defendants might be ordered to lodge the said document for registration and do all such acts as might be necessary to obtain registration thereof; (2) that, if necessary, another similar document might be prepared and registered; (3) that, in the alternative, the defendants should pay R4,000 damages. At the trial the plaintiff raised (*inter alia*) an issue as to the truth of the defendants' allegation that the agreement of lease comprised terms forbidding the plaintiff to sub-let or alter, &c. The defendants objected to the proposed issue. In the course of the hearing the plaintiff tendered the document of the 17th January 1884 in evidence. The defendants objected, on the ground that it was unregistered. The Court held that it was admissible as a mere writing, with reference to which, irrespective of its contents, the other evidence in the case was given. At the close of the plaintiff's case the defendants declined to call evidence, and judgment was given on all the issues in favour of the plaintiff. The defendants appealed, and contended that they were not bound to produce the document for registration, and that the Court was wrong in permitting the above issue to be raised and determined in this suit, and that the document being inadmissible as evidence of the contract, no oral evidence of the contract was receivable. The plaintiff contended that there was an implied obligation upon the defendants to register the document arising from the fact that the document contained the true contract between the parties, and that the object of the suit being to compel registration, the document, although not registered, could be given in evidence to prove the contract between the parties. *Held* (reversing the decree of the Court below) that there was no obligation upon the defendants to produce the document for registration, and that they could not be compelled to do so. *Held*, also, that the object of giving the document in evidence being to establish the contract of lease for the purpose of drawing an inference from it, the document was for that purpose inadmissible, being unregistered, and that the Court below, although admitting it originally as merely a piece of paper, was wrong in using it as evidence of the contract between the parties. HURJIVAN VIRJI *v.* JAMSETJI NOWROJI . . **I. L. R., 9 Bom., 63**

49. ——————— *Instrument of hypothecation.—Endorsement of payment unsigned.—Admissibility of evidence of endorsement to show payment.*—The plaintiff hypothecated certain land to the defendant by a duly registered instrument, and subsequently paid off the debt and received back the instrument. At the time of payment the defendant made an endorsement on the bond to the following effect: "25th Kartik of Sukla. Rupees two hundred and sixty-three, principal including interest, was received on account of this bond, and there is, therefore, no lien whatever." Some time afterwards plaintiff discovered that what he had paid in redemption of the mortgage-claim was in excess of what was due, and he brought a Small Cause suit to recover the amount overpaid, tendering in evidence the endorsement on the bond. The objection was taken that the endorsement not being registered was not receivable in evidence, under section 49 of the Registration Act of 1866. The District Munsif dismissed the suit upon the ground that the endorsement was not signed by the defendant, and was, therefore, not admissible in evidence, but referred to the High Court the question whether the evidence was rightly excluded. *Held* by SCOTLAND, *C. J.*, and INNES, *J.*, that the fact of there being no signature to the endorsement was no objection to its reception as confirmatory

REGISTRATION ACT, 1877, s. 49—*continued.*

evidence of the sum received by the defendant. By SCOTLAND, *C. J.*—That the endorsement was admissible evidence for the purpose for which it was offered, although not registered, the endorsement not being used as evidence of the creation or discharge of an obligation, but merely as confirmatory proof of a fact provable by oral evidence although stated in writing. By INNES, *J.*—That the endorsement was admissible evidence, its reception not being precluded by the provisions of the Registration Act. VENKATARAMA NAIK *v.* CHINNATHAMBU REDDI . . **7 Mad., 1**

50. ———— *Sale certificate, Inadmissibility of, as unregistered.—Other evidence of sale.*—Independently of the sale certificates where they are inadmissible being unregistered, any proceedings confirming an auction sale are sufficient evidence of the sale. BENODI LALL GHOSE *v.* TAMIZUDDIN **[7 C. L. R., 115**

See RAJKISHEN MOOKERJEE *v.* RADHAMADHUB HALDAR . . . . **21 W. R., 349**

51. ———— *Certificate of sale.—Right of action.*—The plaintiff sued to recover possession of a house purchased by him at a Court sale for R350. The plaint was filed on the 31st March 1873. No certificate of sale was filed with it; but plaintiff subsequently produced one, dated the 8th July 1873, and the Court admitted it in evidence. Defendant submitted that the suit should be dismissed, as no certificate was produced by the plaintiff with the plaint. The first Court made a decree in the plaintiff's favour. The Court of Appeal reversed that decree, and dismissed the suit, holding that the certificate ought not to have been received in evidence by the lower Court. The High Court, on second appeal, confirmed the decision of the lower Appellate Court, on the ground that the plaintiff had no right of action, as he had no registered certificate of sale at the date of the institution of the suit. HARKISANDAS NARANDAS *v.* BAI JAMNA **[I. L. R., 4 Bom., 155**

52. ———— *Admissibility in evidence of instrument registrable, but unregistered, destroyed by fire.*—Where an instrument, the registration of which was rendered compulsory by section 17 of the Registration Act (XX of 1866), was destroyed accidentally by fire soon after its execution, and before registration,—*Held*, in a suit to compel the defendant to execute another instrument to the same effect as that which had been destroyed, that secondary evidence of the contents of the unregistered instrument was admissible. NYNAKKA ROUTHEN *v.* VAVANA MAHOMED NAINA ROUTHEN **[5 Mad., 123**

1. ———— **s. 50 (1871, s. 50; 1866, s. 50; 1864, s. 68; 1843, s. 2.)**—*Priority of registered over unregistered deed.—Mortgage-deed.*—The purchaser under a decree for sale in satisfaction of a registered mortgage, is entitled in priority to the purchaser under another decree for sale in satisfaction of another unregistered mortgage, although the latter

REGISTRATION ACT, 1877, s. 50—*continued.*

mortgage be of an earlier date. PRAHLAD MISSER *v.* UDIT NARAIN SINGH **[1 B. L. R., A. C., 197: 10 W. R., 291**

2. ———— *Priority of registered over unregistered deed.*—Under Act XIX of 1843, a registered deed was entitled to priority over any unregistered deed of an earlier date. MALESHAPPA BIN KARVIRAPPA *v.* BASSAPPA BIN NINGAPPA SHETAVNEKAR . . . . . **1 Bom., 10**

SUNKUR SAHOY *v.* SHEO PERSHAD SOOKOOL **[16 W. R., 270**

GOPAL DASS *v.* DOOMEE CHOWDHRY **[W. R., 1864, 226**

NUZUR ALI *v.* EMDAD ALI . **1 W. R., 206**

A deed of sale held to have no priority over a mortgage unregistered. MAHESHWAR BUKSH SING *v.* BHIKHA CHOWDHRY **[B. L. R., Sup. Vol., 403 S. C. 1 Ind. Jur., N. S., 122 5 W. R., 61**

Nor over another deed of sale where the case is not one of two rival purchasers from the same person. UMBIKA CHURN KOONDOO *v.* DHURMO DOSS KOONDOO . . . . . **11 W. R., 129**

See GOLLA CHINNA GURURVEPPA NAIDU *v.* KALI APPEAH NAIDU . . . **4 Mad., 434**

BISSONATH SINGH *v.* RAJCHUNDER ROY **[W. R., 1864, 141**

3. ———— *Priority of registered over unregistered deed.—Notice.*—A registered deed of sale, though subsequent in date, invalidates, as against the registered purchaser, a prior deed of sale unregistered, notwithstanding that notice of the prior deed be alleged. Act XIX of 1843, section 2, construed. KRISHNASAMI PILLAI *v.* VENKATACHELLA AIYAN . . . . . **3 Mad., 89**

Contra, KISHORBHAI GALLABHAI *v.* JORABHAI DAJI . . . . **7 Bom., A. C., 56**

4. ———— *Bom. Reg. IX of 1827, s. 6.—Priority of registered to unregistered deed.*—Before the repeal of the first part of clause 1, section 6, Regulation IX of 1827 by Act XVI of 1864, a purchaser claiming under a deed of purchase duly registered was entitled to be preferred to a mortgagee claiming under a deed of mortgage executed before his purchase, but not registered until after the deed of purchase had been registered. PARSHOTAM RANCHOD *v.* JAGJIVAN MAYARAM . . **1 Bom., 60**

5. ———— *Priority of deeds.—Contract to sell at future time.—Deed of sale.*—The want of registration of a contract by *A.* to sell land to *B.* at some future time, on receipt of balance of the sum agreed on, not then paid, was no bar, *per se*, to *B.'s* preferential claim over *C.*, a subsequent purchaser, whose sale had been registered under Act XIX of 1843. RAMTONOO SURMAH SIRCAR *v.* GOUR CHUNDER SURMAH SIRCAR . . **3 W. R., 64**

REGISTRATION ACT, 1877, s. 50—*continued.*

NUDDEAR CHAND SEIN *v.* KISHOREE LALL CHUCKERBUTTY . . . **7 W. R., 463**

6. ——————— *Priority.—Deed of sale of immoveable property.—Held* that the preference given under Act XIX of 1843 to the latter of two deeds of sale of immoveable property, when registered, over the earlier unregistered deed, was not confined to cases in which the first deed had not been carried into effect, as every duly registered deed of sale, if authentic, invalidates any other deed of sale which may not have been registered. PARABHUDAS HIRACHAND *v.* DHONDU **[2 Bom., 233 : 2nd Ed., 222**

7. ——————— *Pottahs.—Priority.*—Act XIX of 1843 did not apply to pottahs, consequently a subsequently-registered pottah could not prevail over a prior unregistered pottah. ANUND CHUNDER CHOWDHRY *v.* CHUNDERNATH ROY **[5 W. R., 205**

8. ——————— *Priority of deeds.—Unregistered mortgage with possession.*—Act XIX of 1843 did not give a registered kobala priority over a prior unregistered mortgage under which enjoyment had actually taken place. FURZUND ALI *v.* ABDOOL RAHIM . . . . . **4 W. R., 30**

DENOBUNDHOO SADHOO *v.* KHETTERNATH TEWARY **[2 Hay, 20**

Contra, HARNAMGIR GURU DHANPATGIR *v.* SPIERS **[2 Bom., 213 : 2nd Ed., 204**

9. ——————— *Priority of deeds.—Mortgagee with possession.—Suit under Civil Procedure Code, 1859, s. 230.—Held* that a mortgagee whose bond was registered was entitled, under section 230 of Act VIII of 1859, to recover possession of the mortgaged land of which he had been dispossessed under a decree obtained against his mortgagor by another mortgagee, whose mortgage-bond had been subsequently registered, on condition that he satisfied the claim of the decree-holder; otherwise the defendant to be entitled to possession on his satisfying the plaintiff's mortgage-claim. BHIKAJI *v.* VALLABHDAS **[2 Bom., 209**

10. ——————— *Bom. Reg. IX of 1827.—Prior unregistered sale with possession.—Subsequent registered mortgage.*—On the 15th December 1863 *H.* purchased from *D.*, for valuable consideration, two fields in the Satra district (to which the provisions of Regulation IX of 1827 and of Act XIX of 1843 as to registration were then applicable), and was duly put into possession of the fields. The deed of sale was not registered. On the 14th February 1864 *D.* mortgaged, by a registered mortgage, the same two fields to *B*, who then knew that *H.* was in possession of the fields as purchaser. *Held* that, according to the true construction of Regulation IX of 1827, section 6, clause 1, the title of *H.* having been completed by possession, there was no property in the fields left in *D.* to mortgage to *B.*, and that, therefore, *H.* (the purchaser) had a better title to the fields than *B.*, the mortgagee. *Semble,*—The effect would have been the same under the provisions of Act XVI of 1864 or of Act XX of 1866. History of registration given, and the provisions of the different enactments relating to registration compared and discussed. BALARAM NEMCHAND *v.* APPA VALAD DULU **[9 Bom., 121**

11. ——————— *Priority of deeds.—Priority of title.—Proof of authenticity.*—Priority of registration gave priority of title under Act XIX of 1843 only when the authenticity of the document was proved. GANDHAREE DEBEA *v.* SONATUN PANDAY . . . . . **10 W. R., 215**

12. ——————— *Registered and unregistered deeds.—Priority.—Possession.—Fraud.*—Act XIX of 1843 gave the preference, generally speaking, to a subsequent kobala which was registered over a prior one unregistered. To avoid its operation a plaintiff had to show that the vendor not only sold and parted with his rights in the property, but actually made over possession to him. If, however, the second sale was illusory, proving fraud on the part of the vendor, it would not stand in the way of plaintiff's right. BUTOOLUN *v.* OZEERUN . **8 W. R., 300**

13. ——————— *Registered and unregistered documents.—Priority.*—Plaintiff sued for possession of land under an unregistered deed of sale; and one of the defendants claimed the same land under a deed of subsequent date registered after the commencement of the suit. The latter deed was found to be fraudulently got up between the defendants. *Held* that the registration of such a document did not give it the effect of invalidating a former unregistered deed of sale. NARASANNA *v.* GAVAPPA **[3 Mad., 270**

14. ——————— *Priority of registered over unregistered deed.*—A Civil Court was held to have done right in giving priority to a lease registered under Act XVI of 1864, as against an unregistered conveyance of an earlier date. GOBIND CHUNDER ROY *v.* POORNO CHUNDER SEIN . **10 W. R., 36**

15. ——————— *Priority of registered over unregistered deeds.*—Under section 68, Act XVI of 1864, registered deeds were entitled to preference over unregistered deeds, even of that class the registration of which is optional; the practical distinction between the two classes being that deeds the registration of which is compulsory, if unregistered, will not be received in evidence at all; whereas deeds the registration of which is optional will be received in evidence, notwithstanding the absence of registration, though they must give way to registered documents of subsequent dates relating to the same property. MUNSOOR ALI *v.* AZMUT ALI . . . **9 W. R., 282**

GOOROO DASS DAN *v.* KOOSHOOM KOOMAREE DOSSEE . . . . . **9 W. R., 547**

16. ——————— *Priority of registered over unregistered deed.—Possession.*—Where two parties claimed the same property by conveyance from the

REGISTRATION ACT, 1877, s. 50—*continued.*

owner under registered deeds of sale of 1272, plaintiff's purchase and registration being of anterior date to those of defendant, who, besides being in possession, pleaded that he had previously to plaintiff's purchase obtained possession under a parol contract of sale, it was held that plaintiff was entitled to a decree, and that defendant could not set up the parol sale against the plaintiff's registered kobala of the same year, in the face of section 68, Act XVI of 1864. BOIKUNTONATH SETT *v.* RUSSICK LOLL BURMONO **[10 W. R., 231**

17. ——————— *Impeaching deed of sale registered so as to prevent operation of section.*—For the purpose of impeaching a deed of sale registered under Act XVI of 1864, so as to prevent the operation of section 68, it is necessary to show that the deed was fraudulently executed, and that the purchaser was wilfully and intentionally a party to the fraud of the vendor, or at least that the deed was executed without consideration. RAM CHAND KOOMAR *v.* MODHOOSOODUN MOZOOMDAR **[7 W. R., 119**

18. ——————— *Priority of registered instrument.—Deed registered under existing law.*—Where an instrument was executed under the Registration Act, XIX of 1843, and was a valid instrument conferring a right or interest on the party in whose favour it was made, it does not become invalid by reason of the party not getting it registered within twelve months, nor is priority over it obtained by a subsequent conveyance which is registered under the Registration Law of 1864 or 1866. DOOLAL BIBEE *v.* NADA SHAHA . . . **13 W. R., 446**

19. ——————— *Priority of registered over unregistered deeds.*—A genuine deed of sale given by the owner of an estate at a time when registration was not compulsory, cannot be invalidated by a subsequent deed given by that owner's heir and successor, the registration of which was compulsory by Act XX of 1866, merely on the ground that the last deed was registered, and the first was not. IMRIT SINGH *v.* KOYLASHOO KOER . . **11 W. R., 559**

20. ——————— *Optional registration.—Priority of deeds.*—A deed the registration of which was not absolutely requisite under section 49, Act XX of 1866, was not entitled to priority to a duly registered kobala under section 50 of that Act. MOFUZEL HOSSEIN *v.* GOLAM AMBIAH **[10 B. L. R., 381, note : 10 W. R., 196**

21. ——————— *Priority of registered over unregistered deed.*—In a suit by a purchaser of a howla tenure which defendant was proceeding to sell under an *ex parte* decree which he had obtained upon a mortgage-bond executed by plaintiff's vendor,—*Held* that plaintiff's registered purchase, though of a subsequent date, must take effect as against defendant's unregistered mortgage, which might have been registered. ALI AZIM KHAN *v.* ISLAM KHAN **[14 W. R., 483**

22. ——————— *Priority of registered over unregistered deed.—Lien.—Held* that property sold in satisfaction of a superior lien cannot be held to have been sold subject to an inferior lien, and that a registered deed of a subsequent date has preference over an unregistered deed of prior date. SEETUL PERSHAD *v.* HUR CHUND SAHOO . **1 Agra, 263**

23. ——————— *Priority of deeds.—Mortgage-deed.—Deed of sale.—A.* lent *B.* R75 on 6th Asar 1273 (June 19th, 1866), and *B.* executed a mortgage of two bighas of land for the amount in *A.'s* favour. On 23rd Asar (July 6th) *B.* sold to *C.* one bigha of the same land. *A.'s* mortgage was not registered; *C.'s* deed of sale was. *A.* subsequently brought a suit for the amount owed him by *B.*, and sought to attach the land mortgaged to him in execution. *C.* preferred a claim to the property attached, on the ground that the land was his: his petition was allowed. *A.* now sued to have the property mortgaged to him sold in execution of his decree, and to set aside *C.'s* purchase. *Held* that under sections 18 and 50, Act XX of 1866, *C.'s* registered deed of sale must have preference over *A.'s* unregistered mortgage GAYARAM MAZUMDAR *v.* MADHUSUDAN MAZUMDAR . **4 B. L. R., Ap., 73**

24. ——————— *Conditional deed of sale.—Priority of deeds.—A.* entered into an agreement with *B.* to convey to him a certain portion of land for a consideration of R98, of which R60 had been paid as earnest-money. The agreement contained a proviso that, on *A.'s* refusal to convey the property within the time mentioned in the agreement, this document should operate as a conveyance, and *A.* should forfeit his claim to the balance of the consideration. Before the expiry of the time mentioned in the agreement, *A.* sold, by a registered deed, a portion of the property mentioned in the agreement. In a suit by *B.* for possession of the property and for a declaration that the agreement operated as a conveyance,—*Held* that under clause 1, section 18, and section 50 of Act XX of 1866, the subsequent registered conveyance had priority over the unregistered agreement. SHAMA CHURN NEOGI *v.* NABIN CHANDRA DHOBA . **6 B. L. R., Ap., 1 : 15 W. R., 239**

25. ——————— *Priority of registered over unregistered instrument.—San mortgage without possession in Guzerat.*—Under section 50 of the Registration Act, XX of 1866, a registered instrument takes effect, as regards the property comprised therein, against every unregistered instrument relating to it, whether or not the grantor of those instruments be the same. As between himself and his mortgagor, and also as against any subsequent unregistered assignee of the latter, an unregistered san mortgagee in Guzerat has a perfectly valid charge upon the property mortgaged; but his right against such property is liable to be defeated by the mortgagor, or his heir, or such assignee conveying it to another by a registered instrument while his own title remains unregistered. *Lakhmichand Walchand v. Kastur Rechar, 9 Bom., 60,* dissented from. MAKANDAS KALIDAS *v.* SHANKARDAS HARIBHAI **[12 Bom., 241**

REGISTRATION ACT, 1877, s. 50—*continued.*

26. ——————— *Deeds of different descriptions.—Priority.*—The rule giving a registered document preference over an unregistered one was held not to apply to deeds of different descriptions. KHETTUR BALSEE *v.* GOUR HURREE . **W. R., 1864, 387**

27. ——————— *Priority.—Documents optionally and compulsorily registrable.*—The 50th section of the Registration Act, 1866, applied to instruments of which the registration was optional, giving priority between such instruments to the one which was registered. HAMED BUX *v.* BINDRABUN **[2 N. W., 37**

PANHA KHUMAJI *v.* FATTA UPAJI . **12 Bom., 179**

But not to a case in which the registration of one instrument was optional, but of the other compulsory. HAMED BUX *v.* BINDRABUN . . **2 N. W., 37**

28. ——————— *Priority of registered over unregistered document.—Compulsory and optional registration.*—A registered deed of sale, of which registration was compulsory, did not, under Act XX of 1866, take effect against a prior unregistered mortgage-bond in respect of the same land, the registration of which, it being for a sum under R100, was optional. RYASUTULLA *v.* DOORGA CHURN PAL **[15 B. L. R., 294 : 24 W. R., 121**

See OGHRA SINGH *v.* ABLAKH KOER. **[I. L. R., 4 Calc., 536 : 3 C. L. R., 434**

LAKHMICHAND WALCHAND *v.* KASTUR BECHAR **[9 Bom., 60**

MAHOMED ASHRUF *v.* KUREEMODDEEN **[24 W. R., 468**

29. ——————— *Lease to take juice from date trees.—Priority.*—A registered lease to take juice from date trees cannot, under section 50, Act XX of 1866, have priority over an unregistered one of a prior date. JALU NAMDAR *v.* BEICHA NAMDAR **[3 B. L. R., A. C., 394**

S. C. JANOO MUNDUR *v.* HUCHA MUNDUR **[12 W. R., 366**

30. ——————— *Registration Act, XIX of 1843.—Priority.—Instruments of which registration is optional.*—A mortgage-deed registered under Act XX of 1866 is not thereby entitled to priority over a mortgage-deed which might have been, but was not, registered under Act XIX of 1843, in cases where the consideration for the rival deeds exceeds R100. *Maleshappa* v. *Bassappa, 1 Bom., 10; Harnamgir* v. *Spiers, 2 Bom., 204;* and *Parabhudas* v. *Dhondu, 2 Bom., 222,* distinguished. *Quære,*—Whether, in the case of instruments executed for a consideration less than R100, section 50 of Act XX of 1866 would operate to give priority to the deed registered under that Act, over the deed which might have been, but was not, registered under Act XIX of 1843. KHANDU DULABDAS *v.* TARACHAND AMARCHAND **[I. L. R., 1 Bom., 574**

31. ——————— *Priority.—Registered and unregistered deeds.—Optional and compulsory registration.*—Deeds of sale, dated respectively the 22nd October 1868 and 7th February 1874, and registered, the former under Act XX of 1866 and the latter under Act VIII of 1871, are not thereby entitled to priority over an unregistered mortgage deed dated the 13th June 1864, the registration of which was optional under Act XIX of 1843, where the consideration for the rival deeds exceeds R100. *Quære,*—Whether in Kanara a mortgage without possession can be sustained against a subsequent purchase from the mortgagor with possession. PARMAYA *v.* SONDE SHRINIVASAPA . . . **I. L. R., 4 Bom., 459**

32. ——————— *Priority.—Lien created by sales under registered and unregistered deeds.*—Where it appeared that a sale of the share for which plaintiffs held a conditional sale-deed, had substantially taken place in satisfaction of two decrees obtained on two bonds, one unregistered and the other registered, and of a prior date to that of the plaintiffs' mortgage-deed,—*Held* that the share was not liable to a lien created subsequently to the registered deed; and though the plaintiffs might have, by reason of registration, a preferable right to that possessed by the decree-holder of the unregistered bond, yet they had no claim preferable to that of the decree-holder of the registered prior bond. MOTEE RAM *v.* KAISREE **[2 Agra, 52**

33. ——————— *Unregistered mortgage defeated by subsequent registered sale.*—*V.* having purchased land from *N.* in March 1871 by a registered deed for R10, entered into and retained possession till ousted by *K.* in 1880 in execution of a decree obtained by *K.* against *N.* upon an unregistered mortgage-deed dated 1869, conditioned to become an absolute sale within a certain date which had elapsed before suit was brought. *Held* that, under section 50 of the Registration Act of 1866, *K.'s* title was defeated by *V.'s* registered sale-deed. KANTETI VENKAYYA *v.* BALABHADRAPATRUNI KOTAYYA **[I. L. R., 6 Mad., 153**

34. ——————— *Priority.—Possession.*—A registered deed could not, under section 50, Act XX of 1866, prevail against an unregistered deed under which possession had been delivered to the alienee. SELAM SHEIKH *v.* BAIDONATH GHATAK **[3 B. L. R., A. C., 312 : 12 W. R., 217**

SHEODYAL AHEER *v.* GOOL MAHOMED KHAN **[2 N. W., 296**

MANMAL VALAD SURAT MAL *v.* DASHRATH VALAD NARAYAN . . . . . **9 Bom., 147**

NAGESH BHAT *v.* BALVANTRAV . **9 Bom., 151**

35. ——————— **and s. 100.**—*Priority.*—*A.* purchased certain lands in 1866, and duly registered his bill of sale. *B.* had purchased the same lands in 1855 from the persons through whom *A.'s* vendors made their title, and had been in possession ever since, but had not registered his bill of sale, as he might have done, under section 100 of Act XX of 1866. *A.* sued to obtain possession. *Held, B.*

REGISTRATION ACT, 1877, s. 50—*continued.*

——————— and s. 100—*continued.*

was not bound to register, and his title was good against *A.* GIRIJA SINGH *v.* GIRIDHARI SINGH [1 B. L. R., A. C., 14 : 10 W. R., 65

FYEZOONNISSA *v.* SADUTOOLLAH . 22 W. R., 3

36. ——————— *Priority.—Possession.*—*A.* mortgaged a tank in 1859 to the plaintiff. The mortgage was never registered. *A.* in 1867 sold the tank to *C.*, and executed a deed of sale thereof. The deed of sale was duly registered, and *C.* had been ever since in possession under it. The plaintiff sued *A.* on his mortgage, and in that suit *C.* intervened and was made a defendant. *A.* did not appear in the suit. *Held* that *C.* having registered his deed of sale and being in possession, his title was good against the plaintiff. *Girija Singh* v. *Giridhari Singh, 1 B. L. R., A. C., 14,* distinguished. SOODHARAM BHUTTACHARJEE *v.* ODHOY CHUNDER BUNDOPADHYA [10 B. L. R., 380 : 19 W. R., 279

37. ——————— *Priority of registered over unregistered deed with possession.*—In July 1864 two undivided brothers executed a mortgage of their joint property to the plaintiff for R500, and in January 1868 they executed another mortgage for R1,000 to the defendant, who registered it under Act XX of 1866. In a suit brought on the mortgage of 1864, a decree was made in October 1871 that if the sum due were not paid within two months the property should be sold, and in March 1872 the property was sold in execution of that decree, and bought by the plaintiff, who was duly put into possession. The defendant subsequently obtained a decree on the mortgage of 1868; the property was sold in execution of that decree, and was purchased by the defendant, who, dispossessing the plaintiff, was himself put into possession. In a suit brought to eject the defendant,—*Held* that the mortgage of 1864 did not require to be registered in order to maintain its priority over that of 1868. VENKATA NARSAMMAH *v.* RAMIAH [I. L. R., 2 Mad., 108

38. ——————— *Registered and unregistered deed.—Priority.—Mortgage.—Possession.*—A mortgage in the Konkan without possession is invalid as against a subsequent mortgagee with possession, but the registration of such a mortgage cures any defect or imperfection arising from the non-completion of the transaction by delivery of possession; and a deed so registered is good against a non-registered mortgage though accompanied by possession. Previous cases reviewed. HARI RAMCHANDRA *v.* MAHADAJI VISHNU . . . . 8 Bom., A. C., 50

See KRISHNAPPA VALAD MAHADAPPA *v.* BAHIRU YADAVRAV . . . 8 Bom., A. C., 55

39. ——————— *Possession.—Priority of registered deed.—Purchaser of mortgaged property.*—A purchaser with possession at a Court s sale, whose certificate of sale is registered, buys the right, title, and interest of the debtor burdened with the lien of a prior mortgagee, without possession, whose deed of mortgage is registered. CHINTAMAN BHASKAR *v.* SHIVRAM HARI . . 9 Bom., 304

40. ——————— *Priority of registered documents.—Possession.*—The principle that a registered document of posterior date is not to prevail over an earlier unregistered deed where the transfer under such deed has been perfected by possession, was held not to extend to a case in which, after such possession, the claimant under the unregistered deed had been dispossessed by the opposite party. ISSUREE DOSSEE *v.* LALL BEHAREE HOLDAR [21 W. R., 421

41. ——————— *Unregistered and registered deeds.—Possession.—Priority.*—An unregistered mortgage without possession, upon which a decree has been obtained but not executed, has not, by virtue of such decree, priority over a subsequent deed of sale which is registered. KANU KHANDU *v.* KRISHNA BHULAJI SHET . . 5 Bom., A. C., 147

42. ——————— *Registered and unregistered deeds.—Possession.—Priority.—Held* that an unregistered mortgage, without possession, is not valid against a purchaser with possession. GANPAT BAJASHET *v.* KHANDU CHAUGSHET [4 Bom., A. C., 69

But *see* GOLLA CHINNA GURUVUPPA NAIDU *v.* KALI APPIAH NAIDU . . 4 Mad., 434

And SADAGOPA CHARIYAR *v.* RUTHNA MUDALI [5 Mad., 457

43. ——————— *Mortgage.—Priority over purchaser.—Possession.—Held* that a registered mortgagee, although without possession, is entitled to priority over a subsequent purchaser. SUNDAR JAGJIVAN *v.* GOPAL ESHVANT [4 Bom., A. C., 68

BALAJI NARAYAN KOLATKAR *v.* RAM CHANDRA GANESH KELKAR . . . 11 Bom., 37

44. ——————— *Mortgage.—Deed of sale.—Priority.—Purchaser at Court's sale.—Held* that the rule laid down in *Ganpat Bajashet* v. *Khandu Chaugshet, 4 Bom., A. C., 69,* "that an unregistered mortgage without possession is not valid against a purchaser with possession," does not apply to a purchaser at a Court's sale whose instrument of purchase is not registered. MATHURADAS RANCHODDAS *v.* KALIA KHUSHAL . . 7 Bom., A. C., 24

45. ——————— *Registered and unregistered mortgages.—Possession.—Priority.—H.* and *U.* were mortgagees of one *V.* *U.'s* mortgage was prior in point of time and registered. *H.* and *U.* obtained each a decree against *V.* *U.'s* decree was prior; but *H*, having applied for execution sooner, was put into possession. *U.* subsequently applied for execution, and dispossessed *H.* *Held,* in a suit by *H.* against *U.* to recover possession of the mortgaged premises, that registration made *U.'s* mortgage complete, though he did not obtain possession of the mortgaged property at the time when the deed to him was executed, and

REGISTRATION ACT, 1877, s. 50—*continued.*

that any subsequent dispossession of the equity of redemption by the mortgagor would be subject to his mortgage. UMAJI VALAD MANAJI PALIL DUMALE *v.* HARI RAMCHANDRA KULKARNI [4 Bom., A. C., 143

46. ——————— *Priority of deeds.—Notice to purchaser of existence of unregistered mortgage.—Quære,*—Whether notice to the purchaser of the existence of a prior unregistered mortgage would in any way affect the provisions of the Registration Act. MAKANDAS KALIDAS *v.* SHANKARDAS HARIBHAI . . . . . 12 Bom., 241

47. ——————— *Notice to purchaser of prior deed of sale.*—In a suit to recover possession of land alleged to have been purchased from two parties (*K.* and *D.*), one of whom (*D.*) had appeared before the Registrar, admitted the sale, and allowed the deed to be registered so far as her interest was concerned, but the other (*K*) when he appeared before the Registrar had denied the deed and subsequently sold his share to the defendant by a registered kobala,—*Held* that as there was no evidence of fraud on the part of the defendant purchaser, or that he had purchased with notice, plaintiff was not entitled to a decree for *K.'s* share. SREENATH CHURN DASS *v.* DWARKANATH GHOSE . 14 W. R., 318

48. ——————— *Bonâ fide instruments.—Priority.—Per* PEACOCK, *C. J.*—All instruments under this section must be *bonâ fide* in order to have priority. RAHMATULLA *v.* SARIUTULLA KAGCHI [1 B. L. R., F. B., 58

DOOKHAI MEER *v.* NASSIR . . 20 W. R., 110

BHIKDHAREE SINGH *v.* KANHYA LALL [14 W. R., 24

RAMPHUL LALL *v.* CHUNDEE PURSHAD [1 N. W., 204: Ed. 1873, 287

49. ——————— *Priority. — Finding of fraud or collusion.*—A Judge should record a distinct finding of fraud or collusion on the part of the holder of a registered deed, with the grounds on which it proceeds, before he gives an unregistered deed priority over it; and unless he does so, the case will be remanded to him for re-trial. GOURI KANT ROY *v.* GIRIDHAR ROY [4 B. L. R., A. C., 8: 12 W. R., 456

50. ——————— *Priority of deeds.—Optional registration.—Act XIX of 1843.*—As Act XIX of 1843 has been repealed, and the Registration Act (VIII of 1871) contains no provision for the priority of registered deeds over any others, save in the cases of optional registration, the ordinary rule applies that the prior conveyance must prevail. RACHURI VENKUBAIYAMMA *v.* GUDURU RAMANNA PANTULU . . . . . 6 Mad., 391

51. ——————— *Registered and unregistered documents.—Act XIX of 1843.*—A document executed while Act XIX of 1843 was in force, and not registered thereunder, cannot be postponed to a

REGISTRATION ACT, 1877, s. 50—*continued.*

document executed in 1873 and registered under Act VIII of 1871. CHATTAR SINGH *v.* RAM LAL [I. L. R., 3 All., 488

52. ——————— *Registered and unregistered documents.—Act XVI of 1864.*—An unregistered document executed before Act XVI of 1864 came into force is not invalidated or postponed to a document registered under Act VIII of 1871, under the explanation given in section 50 of Act III of 1877. RAM BARAN RAI *v.* MURLI PANDEY [I. L. R., 3 All., 505

53. ——————— *Registered and unregistered documents.—Act XVI of 1864.*—Section 50 of the Registration Act, III of 1877, does not operate so as to exclude, on the ground of their non-registration, instruments executed before Act XVI of 1864 came into operation. TIRUMALA *v.* LAKSHMI [I. L. R., 2 Mad., 147

54. ——————— *Priority.—Deed of sale registered under Act VIII of 1871.*—Section 50 of Act III of 1877 is not retrospective in its application; and, therefore, a deed of sale registered under Act VIII of 1871, and not having, under that Act, priority over unregistered documents relating to the same property, acquires no new rights of priority by the passing of Act III of 1877, though coming within the larger class of registered documents which, by section 50 of the later Act, have priority over unregistered documents. KANITKAR *v.* JOSHI [I. L. R., 5 Bom., 442

55. ——————— *Priority between registered and unregistered documents.—Optional and compulsory registration.—Acts XVI of 1864, XX of 1866, and VIII of 1871.—Interpretation of statutes.*—The registration of documents under Act XVI of 1864, XX of 1866, or VIII of 1871, does not give them effect as against documents which might have been, but were not, registered under one of those Acts. Section 50 of Act III of 1877 has no retrospective operation upon such documents: the preference which it gives to registered over unregistered documents is confined to documents registered under Act III of 1877. According to the registration law as it stood before Act III of 1877 came into force, there was no competition grounded upon registration between documents optionally and documents compulsorily registrable. The Legislature, while possessing the power to divest existing rights, is not (in construing statutes) to be understood as intending to exercise that power retrospectively to any greater extent than the express terms of, or necessary implication from, its language requires. *A.* and *B.* (two brothers) purchased a house on the 19th July 1871, and mortgaged it to the plaintiff for R585, by a san mortgage, dated the 21st July 1871, and duly registered. In 1874 the plaintiff sued upon his mortgage and obtained a decree, directing satisfaction of his claim by the sale of the house. The house was accordingly sold by the Court and purchased by the plaintiff for R325. He obtained a certificate of sale, dated the 15th October 1875. The certificate was

REGISTRATION ACT, 1877, s. 50—*continued.*

duly registered. On applying to the Court for possession of the house, the plaintiff was resisted by the defendant, on the ground that he was in possession under two mortgages, dated the 20th July 1871, and executed, the one by *A.* and the other by *B.* These mortgages were not registered, both of them being for sums less than R100. The plaintiff's application having been rejected by the Court, he brought a suit for possession of the house. Both the lower Courts allowed his claim, holding that his mortgage and certificate of sale, being registered, were entitled to priority over the unregistered mortgages of the defendant under section 50 of Act III of 1877. On appeal to the High Court,—*Held* that the case was governed by the law of registration as it stood before Act III of 1877 came into force, and that the registration of the plaintiff's mortgage and certificate of sale, both of which were compulsorily registrable, did not confer upon them any priority over the defendant's unregistered mortgages, which were optionally registrable. ICHHA RAM KALIDAS *v.* GOVIND RAM BHOWANISHANKAR . . **I. L. R., 5 Bom., 653**

56. ——————— *Sale under registered and unregistered deeds.—Innocent purchasers.—Per* GARTH, *C. J.*—The only reasonable construction of section 50 of Act VIII of 1871 is, that where property under the value of R100 is purchased by two innocent purchasers, the one by a registered and the other by an unregistered deed, and there is no fraud shown, or other circumstances which in equity would protect the unregistered purchaser against the registered, the title of the latter shall prevail. The section contains no such qualification as that a purchaser under an unregistered deed, who has obtained possession, would have priority as against a subsequent purchaser under a registered deed, and the Courts are not at liberty to import such a qualification into the section. *Per* PONTIFEX, *J.*—Section 50 is intended to apply to the case of two innocent purchasers, giving the preference to the one who has taken the greater precaution to secure his title, but is not intended to apply to the case of a subsequent purchaser who registers, but who at the date of his purchase had *actual notice* of a prior unregistered purchase. FUZULUDDEEN KHAN *v.* FAKIR MAHOMED KHAN . . . **I. L. R., 5 Calc., 336**

S. C. FAKIR MAHOMED KHAN *v.* FAZELUDDEEN KHAN . . . . **4 C. L. R., 257**

57. ——————— *Priority of registered over unregistered documents.*—A registered deed of sale, the registration of which was compulsory, did not, under Act VIII of 1871, take effect against a prior unregistered deed of sale of the same property, the registration of which was optional. OGHRA SINGH *v.* ABLAKH KOER

[I. L. R., 4 Calc., 536 : 3 C. L. R., 434

58. ——————— *Optional and compulsory registration.—Priority of registered over unregistered documents.*—Documents, the registration of which is optional, executed previous to the Registration Act (III of 1877), will not, if unregistered, take effect against later registered documents. *S.*, the owner of a 7 annas share in certain property, on the 19th November 1866 sold a 1 anna share thereof to *A.* for R30, the bill of sale not being registered, as under the provisions of Act XX of 1866 section 18 the registration thereof was optional. Subsequently, *S.* sold the remaining 6 annas to other persons; and then, on the 27th September 1876, sold another 1 anna share in the same property to *B.* for R140, the bill of sale with respect to this purchase being duly registered under the provisions of Act III of 1877. In a suit by *A.*, who had never obtained possession of the 1 anna share he had purchased, against *S. B.* and the purchasers of the other 6 anna shares,—*Held* that he was not entitled to succeed, as his bill of sale, being unregistered, was not entitled to priority over *B.'s*, which had been duly registered. *Lachman Das* v. *Dipchand, I. L. R., 2 All., 851*; and *Oghra Singh* v *Ablakh Koer, I. L. R., 4 Calc., 536*, followed. SHIB CHANDRA CHAKRAVATI *v.* JOHOBUX

[I. L. R., 7 Calc., 570 : 9 C. L. R., 224

59. ——————— *Registration Act (XVI of 1864).—Registration, Optional and compulsory.—Unregistered document of which registration was optional under Act XVI of 1864.—Priority of unregistered document.—Held,* in the case of a document executed while Act XVI of 1864 was in force, the registration of which under that Act was optional and which was not registered thereunder, and of a document executed after Act III of 1877 had come into force, the registration of which was compulsory and which was duly registered, both documents relating to the same property, that under the provisions of section 50 of Act III of 1877 the registered document took effect as regards such property against the unregistered document. *Held*, also, that all that a person seeking the benefit of section 50 of Act III of 1877 is required to prove is, that his document is a document of the kind mentioned in the first clause of that section, that it has been duly registered under that Act, and that it covers the same property as that covered by any unregistered document against which it is contended that his document shall take effect; and it is not necessary for him to show that he is claiming from a vendor common to both himself and the person claiming under the unregistered document. *Lachman Das* v. *Dip Chand, I. L. R., 2 All., 851*; and *Shib Chandra Chakravati* v. *Joha Bux, I. L. R., 7 Calc., 570 : 9 C. L. R., 224*, referred to and followed. GUNGARAM GHOSE SIRDAR *v.* KALIPODO GHOSE . . **I. L. R., 11 Calc., 661**

60. ——————— *Act VIII of 1871, ss. 18, 50.—Registered and unregistered documents.*—A document creating an interest in immoveable property, the registration of which under Act VIII of 1871 was compulsory, and which was registered under that Act, does not, under section 50 of that Act, take effect as regards such property against an unregistered document relating to such land, the registration of which under Act VIII of 1871 was optional. *Held* that the provisions of section 50 of Act III of 1877 did not apply to documents executed

REGISTRATION ACT, 1877, s. 50—*continued.*

after the first day of July 1871, and before Act III of 1877 came into operation. BHOLA NATH *v.* BALDEO . . . . I. L. R., 2 All., 198

61. ——— *Registered and unregistered documents—Compulsory and optional registration.—Held* that under section 50 of Act III of 1877 a document of which the registration was compulsory under that Act, and which was registered thereunder, took effect, as regards the property comprised in the document, as against another document of a prior date relating to the same property, executed while Act VIII of 1871 was in force, and which did not require under that Act to be registered, and was not registered under it. GANGA RAM *v.* BANSI. GIR PRASAD *v.* BANSI . . I. L. R., 2 All., 431

62. ——— *Optional and compulsory registration.—Act VIII of 1871.—Act I of 1868, s. 6.—Registered and unregistered documents.—Held,* in the case of a document executed while Act VIII of 1871 was in force, the registration of which under that Act was optional, and which was not registered thereunder, and of a document executed after Act III of 1877 had come into force, the registration of which under that Act was compulsory, and which was registered thereunder, both documents relating to the same property, that under the provisions of section 50, Act III of 1877, the registered document took effect, as regards such property, against the unregistered document, the provisions of section 6 of Act I of 1868 notwithstanding. LACHMAN DAS *v.* DIP CHAND . . . . I. L. R., 2 All., 851

63. ——— *Registered and unregistered documents.—Held* (STUART, *C. J.*, doubting) that, under the provisions of section 50 of the Registration Act, 1877, documents registered under former Registration Acts do not take precedence over all unregistered documents, of which at the time of their execution registration was either optional or not required. *Lachman Das* v. *Dip Chand, I. L. R., 2 All., 851,* observed on. SRI RAM *v.* BHAGIRATH LAL [I. L. R., 4 All., 227

64. ——— *Registered and unregistered documents.—Priority.—Held* that a document which was registered under the Registration Act, 1877, took effect, as regards the property comprised therein, as against a document relating to the same property, the registration of which under the Registration Act, 1871, was optional, and which was not registered thereunder. *Lachman Das* v. *Dip Chand, I. L. R., 2 All., 851,* followed. ABDUL RAHIM *v.* ZIBAN BIBI . . . I. L. R., 5 All., 593

65. ——— *Priority.—Compulsory and optional registration.—Held* by the Divisional Bench (STUART, *C. J.*, and BRODHURST, *J.*) that, under section 50 of the Registration Act, 1877, an instrument the registration of which under the Registration Act, 1871, was compulsory, and which was registered under that Act, took effect, as regards the property comprised therein, as against an instrument relating to the same property, the registration of which under the Registration Act, 1871, was optional, and which was not registered under that Act HABIBULLAH *v.* NAKCHED RAI [I. L. R., 5 All., 447

66. ——— *Registered and unregistered documents.—Priority of documents.—Registration Act, 1877, s. 50.—Held* by STUART, *C. J.*, that under the explanation to section 50 of the Registration Act, 1877, a sale-deed, the registration of which under the Registration Act, 1871, was compulsory, and which was duly registered thereunder, took effect, as regards the property comprised therein, against a deed of simple mortgage of a prior date, relating to the same property, the registration of which under the Registration Act, 1871, was optional, and which was not registered thereunder. *Ganga Ram* v. *Bansi, I. L. R., 2 All., 431;* and *Lachman Das* v. *Dip Chand, I. L. R., 2 All., 851,* observed on. *Sri Ram* v. *Bhagirath Lal, I. L. R., 4 All., 227,* dissented from. *Held* by STRAIGHT, *J.*, that the former document had no preference over the latter under section 50 of the Registration Act, 1877. *Sri Ram* v. *Bhagirath Lal, I. L. R., 4 All., 227,* followed. DORI LAL *v.* UMED SINGH [I. L. R., 6 All., 164

67. ——— *Priority.—Certificate of sale in execution of decree.*—A certificate of the sale of land in execution of a decree under the provisions of the Code of Civil Procedure does not, by registration, entitle the holder thereof to priority over a purchaser of the land under an optionally registrable deed of sale. NARASAYYA *v.* JUNGAM [I. L. R., 7 Mad., 418

68. ——— *Registered and unregistered documents.—Priority.*—A vendor sold the same property twice over to different people,—once by an unregistered conveyance (the purchase-money being under R100) giving to his vendee possession, and a second time to another person by a registered conveyance at a time when the first vendee was out of possession. *Held* by the Court (PRINSEP, *J.*, dissenting), in a suit by the first vendee to recover possession, that the fact of a vendor having given possession to the first and unregistered purchaser, even if such possession continued to the date of the second conveyance, did not necessarily prevent the operation of that part of section 50 of the Registration Act, 1877, which enacts that "a registered document shall take effect, as regards the property therein comprised, against every unregistered document relating to the same property." The only case in which the title of the prior unregistered purchaser can prevail against the subsequent registered purchaser for value, is when the latter takes with notice of the title of the former. *Per* PRINSEP, *J.*—A purchaser under a registered conveyance subsequently executed cannot succeed in a suit to eject one who holds possession under a prior but unregistered conveyance, registration of which is optional. NARAIN CHUNDER CHUCKERBUTTY *v.* DATARAM ROY [I. L. R., 8 Calc., 597: 10 C. L. R., 241

69. ——— *Decrees.—Registration Act, 1871, s. 50.—Registered and unregistered*

REGISTRATION ACT, 1877, s. 50—*continued.*

documents.—Priority.—Decrees being excluded from the operation of section 50, Act VIII of 1871, and section 50, Act III of 1877, the omission to register does not make them ineffectual as against subsequent registered assignments or decrees. KOLLURI NAGABHASHANAM *v.* AMMANNA . **I. L. R., 3 Mad., 71**

70. ——————— *Unregistered and registered documents.—Priority.—S.* sued *K.* in 1879 upon an unregistered hypothecation deed, dated 3rd January 1870, securing repayment of a loan of R85 with interest. *V.* intervened, and being made second defendant, claimed to be mortgagee of the land hypothecated to *S.* under registered deeds, dated 11th September and 30th November 1875, executed by *K.* *Held* that, under section 50 of Act III of 1877, *V.* had a priority over *S.* KALLACOLATHURAN *v.* SUBBAROYA REDDI . . **I. L. R., 3 Mad., 73**

71. ——————— *Priority.—Registered and unregistered documents.*—Section 50 of the Registration Act, 1877, affects alike documents which it is optional, as well as those which it is compulsory, to register, and its effect is not modified by the fact that the subsequent registered purchaser buys with full notice of a prior unregistered encumbrance. *Fuzludeen Khan* v. *Fakir Mahomed Khan, I. L. R., 5 Calc., 336,* discussed. Opinion of PONTIFEX, *J.*, dissented from. NALLAPPA GOUNDAN *v.* IBRAM SAHIB **[I. L. R., 5 Mad., 73**

72. ——————— *Priority.—Optional and compulsory registration.—Possession.—G.* having obtained possession of land under an unregistered agreement, the registration of which was optional, executed by *S.* and *N.* in 1872, was ousted in 1880 by *K.*, who claimed the land under a registered sale-deed executed by *S.* and *N.* to him in 1879. *Held* that *G.* was not entitled to recover the land by virtue of section 50 of the Registration Act, 1877. KONDAYYA *v.* GURUVAPPA . . **I. L. R., 5 Mad., 139**

73. ——————— *Priority.—Registered and unregistered documents.*—Certain land was hypothecated to *T.* in 1861 to secure repayment of R2,000 and interest. The deed was never registered. In 1873 the land was mortgaged to *K.*, and the mortgage was registered. In 1879, in execution of a decree—to which *T.* was no party—upon this mortgage, the land was sold and bought by *D.*, and the sale certificate registered. *T.* then sued to recover the amount due upon the deed of 1861 by sale of the land. *Held* that the claim of *T.* was not defeated by the sale to *D.* TIMMU *v.* DEVA RAI . **I. L. R., 5 Mad., 265**

74. ——————— *Mortgage.—Priority.—A.* mortgaged certain land to *B.* for R50 on the 13th November 1872 by an unregistered deed. On the 30th September 1876 *A.* mortgaged the same land to *C.* for R300 by a registered deed. On the 20th December 1877 *A.* sold the same land to *B.* for R70 by an unregistered deed. In 1879 *C.* sued *A.* upon his mortgage-deed, obtained a decree, and attached the land in *B.'s* possession. *B.* objected, but his claim was rejected. *Held,* in a suit by *B.* to set aside the attachment by *C.*, that *C.'s* claim, being based on a document registered within the meaning of section 50 of the Registration Act, 1877, was superior to *B.'s* claim, and that the suit must be dismissed. KOTA MUTHANNA CHETTI *v.* ALIBEG SAHIB **[I. L. R., 6 Mad., 174**

75. ——————— *Land subject to unregistered mortgage.—Certificate of sale registered.—Civil Procedure Code, 1882, s. 316.—Rights of purchaser.* — Where land subject to an unregistered mortgage, the registration of which was optional, was attached and sold in execution of a money-decree obtained against the mortgagor, and the purchaser registered his certificate of sale and obtained possession of the land,—*Held* that no question of priority under section 50 of the Registration Act, 1877, could arise, inasmuch as the purchaser acquired only the right, title, and interest of the mortgagor subject to the mortgage. *Sobhagchand Gulabchand* v. *Bhaichand, I. L. R., 6 Bom., 193,* approved and followed. *Semble,*—A certificate of sale issued by a Court under section 316 of the Code of Civil Procedure, if duly registered, takes effect, under section 50 of the Registration Act, 1877, against all unregistered encumbrances. RAMARAJA *v.* ARUNACHALA **[I. L. R., 7 Mad., 248**

76. ——————— *Priority of mortgages.—First and second mortgagees.—S.* and *L.* held mortgage-bonds executed in their favour by the same person. *S.'s* bond was dated the 16th June 1882, and was registered, the registration being compulsory. *L.'s* bond was of prior date, the 30th December 1880, and was not registered, the registration being optional. Both instituted suits on their bonds against the obligor, and obtained decrees for sale of the property, the decrees being passed on the same day. The property was attached in execution of both decrees on the 14th August 1882. *Held* that the registered bond of the plaintiff took effect, as regards the property comprised in it, against the defendant's unregistered bond, under section 50 of the Registration Act (III of 1877), which gave priority to the incumbrance created by the former bond over the incumbrance created by the latter, and this priority was not affected by the subsequent decrees obtained on the bonds, which only gave effect to the respective rights under the bonds. The meaning of section 295 of the Civil Procedure Code, 1882, is that when immoveable property is sold in execution of decrees ordering its sale for the discharge of incumbrances, the sale-proceeds are to be applied in satisfaction of incumbrances according to their priority. SHAHI RAM *v.* SHIB LAL . . **I. L. R., 7 All., 378**

77. ——————— *First and second mortgages.—Payment by purchaser of mortgaged property of first mortgage.—Right of purchaser to benefits of first mortgage.—Right of second mortgagee to bring to sale mortgaged property.—Registered and unregistered instruments.—Optional and compulsory registration.*—At a sale in execution of a decree, *J.* purchased certain property which was at that time subject to two mortgages, the first under

REGISTRATION ACT, 1877, s. 50—*continued.*

an unregistered deed in favour of *M.* and dated in 1872, and the second under a registered deed in favour of *L.* and dated in 1880. The registration of both deeds was optional, the former under Act VIII of 1871, and the latter under Act III of 1877. *J.* subsequently satisfied the mortgage under the registered deed of 1880, which was delivered to him. *M.* then brought a suit to recover the money due to him under the mortgage-deed of 1872 by sale of the mortgaged property. *Held* by OLDFIELD, *J.*, that, applying the rule laid down by the Privy Council in *Gokaldas Gopaldas* v. *Puronmal Premsukhdas, I. L. R., 10 Calc., 1035, J.*, having paid off the mortgage under the registered deed of 1880, should have the benefits of that mortgage, and was entitled to set up the deed which he held against the unregistered deed of 1872, against which, under section 50 of the Registration Act (III of 1877), it would take effect, as regards the property comprised in it. *Lachman Das* v. *Dip Chand, I. L. R., 2 All., 851*, referred to. *Per* MAHMOOD, *J.*, that the word "unregistered" in section 50 of the Registration Act, 1877, must, in reference to the circumstances of the present case, be read as "not registered under Act VIII of 1871," and that, so reading the section, the registered mortgage-deed of 1880 was entitled to priority over the unregistered mortgage deed of 1872. *Lachman Das* v. *Dip Chand, I. L. R., 2 All., 851*; and *Sri Ram* v. *Bhagirath Lal I. L. R., 4 All., 227*, distinguished. JANKI PRASAD v. MAUTANGUI DEBIA . **I. L. R., 7 All., 577**

78. ——— *Registered and unregistered documents.—Mortgagee under registered deed not entitled to prority over holder of subsequent decree on prior unregistered deed.*—The mortgagee under an unregistered hypothecation-bond, of which the registration was optional, obtained a decree thereon, and, in execution of such decree, attached the hypothecated property. *Held*, with reference to the terms of section 50 of the Registration Act (III of 1877), that the bond, having merged in the decree, was entitled to take effect against a registered bond relating to the same property, and which was executed subsequently to the unregistered bond but prior to the decree. *Kanhaiya Lal* v. *Bansidhar, Weekly Notes, All., 1882, p. 15*; and *Shahi Ram* v. *Shib Lal, I. L. R., 7 All., 378*, distinguished. BAIJNATH v. LACHMAN DAS . . . **I. L. R., 7 All., 888**

79. ——— *Registered and unregistered documents.—Mortgagee under registered deed competing with holder of decree on prior unregistered mortgage-deed.*—The words in section 50 of the Registration Act (III of 1877), "not being a decree or order, whether such unregistered document be of the same nature as the registered document or not," mean that, if a decree has been obtained to bring property to sale under a hypothecation-bond or under a money-bond, and under that decree the property has been attached, that decree cannot be ousted by a subsequent registered instrument. The section cannot in any way make a decree effect a transfer of more than the interest which the judgment-debtor possessed. *Held* that a mortgage-deed registered under Act III of 1877 was entitled to priority over a decree obtained subsequently to the registration of such deed upon a prior unregistered deed of mortgage. *Kanhaiya Lal* v. *Bansidhar, Weekly Notes, All., 1882, p. 15*; *Shahi Ram* v. *Shib Lal, I. L. R., 7 All., 378*; and *Madar* v. *Subbarayalu, I. L. R., 6 Mad., 88*, referred to. HIMALAYA BANK v. SIMLA BANK . . **I. L. R., 8 All., 23**

80. ——— *Registered and unregistered documents.—Priority.*—The provision of the Registration Act, that a registered document shall take effect, as regards the property comprised therein, against every unregistered document relating to the same property, only applies where the two documents are antagonistic, not where effect can be given to each without infringement of the other: *e.g.*, if *A.* mortgages or sells to *B.*, and afterwards *C.* purchases at a Court's sale the then existing right, title, and interest of *A.*, he (*C*) buys in the first case the equity of redemption, and in the second nothing at all. Registration, therefore, cannot help him, for on the very face of his certificate of sale the property comprised therein is not the property previously conveyed to *B.*, but only the residue of *A.'s* estate after such conveyance. SOBHAGCHAND v. BHAICHAND **[I. L. R., 6 Bom., 193**

81. ——— *Priority.—Effect of registration—Gift of land.*—Registration gives a donee neither actual, constructive, nor symbolical possession, and therefore cannot be regarded as equivalent to delivery and acceptance. BASUDEB BHAT v. NARAYAN DAJI DAMLE . **I. L. R., 7 Bom., 131**

82. ——— *Priority of registered over unregistered documents*—A sale-deed of which the registration is optional, being registered, takes effect, under section 50 of the Registration Act of 1871, as against a similar but unregistered sale-deed prior in date though followed by possession. BIMARAZ v. PAPAYA . . . . **I. L. R., 3 Mad., 46**

83. ——— *Priority.—Registered conveyance.—Unregistered conveyance accompanied by possession.*—One who holds under an unregistered deed of sale, the registration of which is not compulsory, and is in possession of the property conveyed, has a superior title to one who sets up a registered conveyance of a later date unaccompanied by possession. The second purchaser presumedly has notice of the title of the first purchaser from the fact of possession having been given. Authorities on the question of priority discussed. DINONATH GHOSE v. AULUCK MONI DABEE **[I. L. R., 7 Calc., 753 : 10 C. L. R., 129**

84. ——— *Optional registration.—Priority.—Possession under unregistered deed.—Notice.*—Although the mere fact of possession having been taken by a purchaser under an unregistered conveyance is insufficient of itself to establish a good title to a property as against a subsequent registered purchaser, and is not conclusive evidence of notice as against him, yet, in the majority of cases, such posses-

REGISTRATION ACT, 1877, s. 50—*continued*

sion is very cogent evidence of notice. NANI BIBEE v. HAFIZULLAH . . I. L. R., 10 Calc., 1073

85. ——————— *Registered purchaser.—Notice of prior contract to sell*—The words "former part of this section" used in the second paragraph of section 50 of the Registration Act, 1877, refer to the whole preceding portion of the section. *Held*, therefore, that a registered purchaser of land, who bought with notice of a prior unregistered contract by his vendor to convey to the plaintiff, could not resist a suit for specific performance on the plea of registration. KADAR v ISMAIL [I. L. R., 9 Mad., 119

86. ——————— *Notice of prior unregistered deed—Priority—Sale—Mortgage*—A subsequent registered purchaser or mortgagee is not to be preferred as against the holder of a prior unregistered instrument of purchase or mortgage of which he had notice. HATHISING SOBHAI v KUVERJI JAMER [I. L. R., 10 Bom., 105

87. ——————— *Registered and unregistered documents.—Priority—Notice of prior sale. Quære,*—Whether the case of a second registered purchaser with notice of a prior sale is an exception to the rule laid down in the Full Bench case of *Narain Chunder Chuckerbutty* v *Dataram Roy, I. L R, 8 Calc, 597.* The Court held that it was not necessary to decide the question in the present case, inasmuch as the facts of the case did not justify them in finding that the purchaser had such notice BAMASUNDARI DASSI v. KRISHNA CHUNDRA DHUR [I. L. R., 10 Calc., 424

88. ——————— *Notice.—Mortgagor and mortgagee — Unregistered mortgage.— Purchaser with notice of prior unregistered mortgage—Priority.*—Where property has been mortgaged by a deed the registration of which is not compulsory, a subsequent purchaser of the property, who has duly registered his purchase deed, but who has bought with notice of the unregistered mortgage, takes the property subject to that mortgage ABDOOL HOSSEIN v. RAGHU NATH SAHU . I. L. R., 13 Calc., 70

89. ——————— *Priority.—Registered purchaser competing with holder of decree on prior unregistered deed—Fraud—Notice.*—A registered purchaser of land who has bought in 1878, with full notice of an unregistered encumbrance of 1872 of which the registration was optional, is entitled to hold the land free of such encumbrance, and the fact that prior to the purchase and to the knowledge of the purchaser a decree has been obtained by the encumbrancer declaring the land liable to be sold in default of payment of the amount of the decree, does not affect the title of the purchaser MADAR SAHEB v. SABBARAYALU NAYUDU . I. L. R., 6 Mad., 88

90. ——————— *Notice.—Fraud—Optionally registrable sale-deed, unregistered, competing with similar deed registered.*—*R* sold land to *S* in 1878 for R54 and put *S* in possession. In 1879 *R.* sold the same land to *N* for R24-8-0 *N* registered his sale deed. The sale-deed of *S* was not registered. In 1879 *S* sued *N* to have *N's* sale-deed cancelled on the ground of fraud The lower Courts held that *N's* sale deed was executed collusively and fraudulently and decreed the claim. *Held*, on second appeal, that as there were grounds, apart from notice and knowledge of possession, for holding *N's* sale deed to have been executed collusively, the decision was correct. NARASIMULU v SOMANNA [I. L. R., 8 Mad., 167

91. ——————— *Conflict between an unregistered hypothecation-bond and subsequently registered conveyance.—Notice—Decree on hypothecation-bond.*—Land was hypothecated to plaintiff by an unregistered bond dated 29th May 1878, and afterwards sold to the defendant by a registered conveyance dated 29th June 1879, which recited the previous hypothecation. In a suit brought by the plaintiff to enforce his charge,—*Held* that there was no conflict between the instruments, and the hypothecation-bond was enforceable though unregistered RAMACHANDRA v. KRISHNA [I. L. R., 9 Mad., 495

92. ——————— *Registered and unregistered mortgages.—Possession—Priority—Notice*—On the 10th December 1866 *M* mortgaged certain immoveable property to the defendant for R95. The mortgage was neither registered nor accompanied with possession. On the 12th September 1869 *M.* executed a mortgage of the same property to *K* for R200. That mortgage was registered, but not accompanied with possession. In 1876 *K.* sued *M.* on his mortgage of 1866. The defendant was not a party to that suit. While the suit was pending, *M*, on the 23rd February 1876, executed another mortgage of the property to the defendant for R200, including the amount then due to him (defendant) on his mortgage of 1866. That mortgage was registered and accompanied with possession On the 3rd March 1876 *K* obtained a decree against *M*, directing satisfaction of the mortgage-debt out of the mortgaged property. The property was sold under that decree, and purchased by *K* himself for R50. He obtained a certificate of sale, dated the 8th March 1877, which was not registered. On the 25th July 1877 *K* sold the property to the plaintiff for R75-4 0 The deed of sale was not registered In 1878 the plaintiff sued for possession of the property. The defendant relied upon his mortgages of 1866 and 1876 *Held* that the defendant's unregistered mortgage of 1866, which was optionally registrable, was not overridden by *K's* mortgage of 1869, which was compulsorily registrable, and that, therefore, the plaintiff, whose title was derived from *K*, was not entitled to recover the property from the defendant without redeeming the mortgage of 1866, on which he (defendant) was entitled to rely The registration of *K's* mortgage in 1869 could not have operated as notice to the defendant when he was taking his mortgage in 1866, and, therefore, was not such a registration in relation to the defendant's earlier mortgage as to fall within the scope of the rule that registration is equivalent

REGISTRATION ACT, 1877, s. 50—*continued.*

to possession. LAKSHMANDAS SURUPCHAND *v.* DASRAT . . . **I. L. R., 6 Bom., 168**

93. ——————— *Acts XX of 1866 and VIII of 1871.—Priority.—Registered and unregistered documents.*—On the 14th February 1869 *S.* and *M.* mortgaged a house and site to the plaintiff for R50. The mortgage was not registered. On the 15th June 1870 *S.* (*M.* being then dead) mortgaged the same property to the father of the defendant for R200. That mortgage was registered. On the 24th June 1871 *S.* further mortgaged the property to the plaintiff for R96, including the amount due on the previous mortgage. This second mortgage was not registered. Possession was not given under any of the mortgages. In 1873 the defendant obtained a decree on his mortgage against *S.*, and in execution of it purchased the property for R20 at a Court sale. The certificate of sale, dated the 9th July 1874, was registered, and the defendant was put in possession of the property under it. The plaintiff sued *S.* on his second mortgage, and obtained a decree upon it in 1875. The defendant was no party to that suit. The plaintiff attached the property in execution of his decree, but the attachment was removed on the application of the defendant. In 1879 the plaintiff sued the defendant on his two mortgages, seeking to enforce them and his decree on the second mortgage against the property. The defendant contended that section 50 of the Registration Act, III of 1877, operated retrospectively and conferred priority on his mortgage of 1870, in virtue of its registration, even over the plaintiff's earlier mortgage of 1869. *Held* that the plaintiff's unregistered mortgages, being each for a sum under R100, were, under the Registration Acts of 1866 and 1871, optionally, and not compulsorily, registrable; and that the Registration Act of 1866, under which the defendant's intermediate mortgage of 1870 had been registered, did not bestow any priority on it. *Held*, also, that section 50 of the Registration Act III of 1877 was not retrospective in its application, and that, as registered purchaser at a Court sale, the defendant took subject to existing liens. *Held*, further, that the plaintiff's decree did not operate against the defendant, as he was not made a party to the suit in which that decree was obtained, although the plaintiff had constructive notice of the defendant's mortgage through registration. RUPCHAND DAGDUSA *v.* DAVLATRAM VITHALRAV . **I. L. R., 6 Bom., 495**

94. ——————— *Act XX of 1866, s. 50.—Priority.—Notice of prior unregistered mortgage.—Possession.—Right to redeem.—Parties.*—On the 24th September 1869 *G.* mortgaged certain land to *H.* Subsequently, on the 14th June 1870, he mortgaged the same land to *P.* Both the mortgages were for sums less than R100. The mortgage to *H.* was unregistered, but the subsequent mortgage to *P.* was registered. On the 21st June 1873, in a suit to which *P.* was not a party, *H.* obtained a decree on his mortgage, and at the execution sale he himself became the purchaser, and was put into possession of the land under his certificate of sale. On the 21st September 1874 *P.* assigned his mortgage to the plaintiff. The deed of assignment was not registered; neither *P.* nor his assignee, the plaintiff, ever had possession under the mortgage of 1870. The plaintiff brought this suit to obtain possession of the land. Both the lower Courts dismissed the plaintiff's claim. On special appeal to the High Court,—*Held* that if *P.*, at the time of taking his registered mortgage in 1870, had notice of the prior unregistered mortgage to *H.*, he had that which it is the object of the registration law to give, and, consequently, the non-registration of *H.'s* mortgage could not, under Act XX of 1866, avail either *P.* or the plaintiff who claimed under him by an assignment executed subsequently to the decree in *H.'s* mortgage-suit. A subsequent registered purchaser or mortgagee cannot avail himself of the registration of his deed against a prior unregistered purchase or mortgage of which he had notice. The High Court reversed the decrees of the Courts below, and remanded the case to the District Judge, to ascertain whether *P.*, at or before the time of the execution of his registered mortgage, had notice of the prior unregistered mortgage to *H.* SHIVRAM *v.* GENU . . **I. L. R., 6 Bom., 515**

95. ——————— *Acts XX of 1866 and VIII of 1871.—Priority.—Effect of possession under earlier unregistered document.—Notice.*—The plaintiff and the defendant claimed certain land, the latter under an unregistered deed of sale dated the 1st April 1877, the former under a registered deed of mortgage of later date, *viz.*, the 19th September 1877. The defendant alleged that immediately after his purchase he was put into possession of the field, and had been in possession ever since. Both the lower Courts held that the plaintiff was entitled to the land. On appeal to the High Court,—*Held* that, assuming that the defendant had been in possession when the mortgage-deed was executed to the plaintiff, or that the plaintiff had otherwise notice of the defendant's prior purchase, the plaintiff could derive no advantage from the registration of his mortgage,—possession by, or registration of the title of, a purchaser or mortgagee prior in point of time being notice of that title to subsequent purchasers and mortgagees. DUNDAYA *v.* CHENBASAPA **[I. L. R., 9 Bom., 427**

96. ——————— *Priority of unregistered mortgage over subsequent registered sale.—Notice of prior conveyance.*—It is only where notice of a prior conveyance, of which registration is not compulsory, is so clearly proved as to make it fraudulent on the part of a subsequent purchaser to take and register a conveyance in prejudice to the known title of another, that the Courts will suffer the registered deed to be affected. Where, therefore, a defendant holding an unregistered mortgage of certain property, dated the 23rd March 1867, which was not compulsorily registrable, had obtained a decree thereon on the 4th January 1881, and the plaintiff holding an absolute deed of sale of the same property duly registered and dated the 22nd June 1880, and, having had notice of the mortgage, claimed absolute possession of the property, irrespective of the mortgage,—*Held* that the plaintiff's purchase was subject

REGISTRATION ACT, 1877, s. 50—*continued.*

to the mortgage of which he had had notice, and that the plaintiff's suit to declare his absolute title to the property must be dismissed. BHALU ROY *v.* JAKHU ROY . . I. L. R., 11 Calc., 667

97. ——————— *Registered and unregistered documents.—Transfer of Property Act, s. 52.*—*B.* held a decree for sale of the property which had been mortgaged to him by an instrument which was not compulsorily registrable, and was not registered. *N.* purchased the same property *pendente lite* by a registered deed of sale. *Held* there was no competition here between a registered and unregistered document to which section 50 of the Registration Act would apply, and that *N.'s* purchase was, by section 52 of the Transfer of Property Act, subject to the decree passed in *B.'s* favour. BHAGWAN DAS *v.* NATHU SINGH [I. L. R., 6 All., 444

98. ——————— *Mortgage.—First and second mortgages.—Registered and unregistered documents.—Fraudulent transfer.—Transfer of Property Act, IV of 1882, s. 53.*—Apart from any question of equitable estoppel, such as described by LORD CAIRNS in the *Agra Bank* v. *Barry*, where one person takes a possessory mortgage of property with full knowledge and notice that another is already in possession of such property under an earlier instrument of a similar kind, he cannot be said to be acting in good faith, and the principle of section 53 of the Transfer of Property Act (IV of 1882) is applicable to such a transaction. In such a condition of circumstances, *quoad* the prior title, though created by an unregistered instrument, the status of the second mortgagee under his registered document is affected by his own *mala fides*; and as, on the one hand, the first mortgagee might avoid it on the ground that it was executed in fraud of him, so, on the other, the second mortgagee cannot, on the strength of his own fraud, pray in aid the provisions of the Registration Law to give preference to an instrument which records a transaction that, in its inception, being fraudulent, was a *nudum pactum.* Such document would not be a "document" in the sense of section 50 of the Registration Act, 1877, which term as therein used means a document legally enforcible. *Rahmatulla* v. *Sariatulla, 1 B. L. R., F. B., 58,* referred to. In a suit for possession of immoveable property by virtue of a registered instrument of mortgage executed in 1883, against a defendant in possession of the same property under an unregistered mortgage-deed of 1881 (both deeds being instruments the registration of which was not compulsory), it was found as a fact that at the time of the execution and registration of his mortgage-deed the plaintiff was aware that the defendant was in possession under his mortgage. *Held* that, under these circumstances, the fact that the plaintiff's deed was registered did not entitle him to dispossess the defendant by virtue of the provisions of section 50 of the Registration Act (III of 1877). RAM AUTAR *v.* DHANAURI [I. L. R., 8 All., 540

——————— **s. 57 (1866, s. 65) and ss. 42, 46 (1866, ss. 44, 46).**—*Deposit of will.—Proof of will when deposited with Registrar.*—A testator

REGISTRATION ACT, 1877, s. 57 (1866, s. 65) and ss. 42, 46 (1866, ss. 44, 46)—*continued.*

deposited his will in a sealed cover with the Registrar of Assurances at Bombay under section 44 of Act XX of 1866, and upon his death, his executors applied to the Registrar to deliver over to them the will, in order to enable them to apply to the High Court for probate thereof. The Registrar gave a copy of the will under section 46 of the Act, but refused to part with the original. On application by the executors for a citation to the Registrar General to bring the will into Court, and deposit it with the Ecclesiastical Registrar,—*Held* that the original should be brought into Court, where alone the *factum* of the will could be tried and determined; and that a copy, authenticated under section 65 of the Act, was not sufficient. The Registrar General should not, after the death of the depositor of a will, part with it otherwise than by order of Court. IN THE GOODS OF NAGINDAS [3 Bom., O. C., 135

1. ——————— **s. 58 (1871, s. 58) and s. 85.** —*Omission to endorse signature of person admitting execution.—Validity of registration.—Hindu law.—Gift.—Possession.—Construction of instrument of gift.*—*S.*, on the 23rd September 1874, executed an instrument of gift in favour of his two daughters and his adopted son whereby he gave them "his houses and shops, and other moveable and immoveable property, and his loan transactions," in equal one-third shares. At this time he was possessed of a one-third share in a certain partnership business. As *S.* was unable to appear at the registration office by reason of sickness, *N.*, his adopted son, on the same day presented such instrument for registration, and applied for the issue of a commission for his examination, which the registering officer issued. The Commissioner went to *S.'s* house on the next day, but before he arrived *S.* had died. He examined the attesting witnesses to such instrument, who stated that it had been executed by *S.*, and he was informed by *N.* that it had been so executed. On the next day *N.* and the attesting witnesses and the writer of such instrument appeared before the registering officer, and the witnesses and writer were examined by him. Being satisfied that *S.* had executed such instrument, the registering officer admitted registration, recording that the execution was admitted by *N.* *N.'s* signature was not endorsed on such instrument. *M.*, one of *S.'s* daughters, subsequently sued *N.* for one third of her father's property, including his share in such partnership business, basing her suit on such instrument. *Held* that, inasmuch as *N.* had admitted at the time of registration of such instrument that it had been executed by *S.*, its registration was not invalidated by the mere fact that *N.'s* signature had not been endorsed thereon. MAN BHARI *v.* NAUNIDH [I. L. R., 4 All., 40

2. ——————— **and ss. 59 & 60 and 87.**—*Registration.— Unregistered conveyance.—Bond confirming conveyance.—Registration of conveyance instead of bond.—"Defect of procedure."—Claim to attached property,—Suit to establish.*—A deed of sale, which required to be registered, not having been registered, and the time for presenting

REGISTRATION ACT, 1877, s. 58 and ss. 59 & 60 and 87—*continued.*

it for registration having expired, the vendor, in order to avoid the effect of the deed of sale being unregistered, gave the purchaser a bond confirming such deed. The bond, with the deed of sale annexed thereto, was presented for registration. By mistake or for some other reason the particulars to be endorsed on a document admitted to registration, and the certificate showing that a document has been registered, were endorsed on the deed of sale and not on the bond. *Held* that, assuming that the bond had been registered, it was doubtful whether such an obvious attempt to defeat the provisions of the registration law should be permitted to succeed; that, whether there had been a mistake and the certificate of registration really applied to the bond or not, the provisions of sections 58, 59, and 60 of the Registration Act had not been complied with, and the bond was to all intents and purposes unregistered; and that the defect was not a "defect of procedure" within the meaning of section 87, which could be passed over. MATHURA DAS *v.* MITCHELL . . **I. L. R., 4 All., 206**

In the same case on appeal to the Privy Council it was held, reversing this decision, that the bond was duly registered, and that the fact that the prior deed had not affected the property, being unregistered, was no reason why the deed afterwards registered should not be admitted as evidence of title. In this there had been nothing contravening the objects of the Registration Act. MITCHELL *v.* MATHURA DAS . . . . . **I. L. R., 8 All., 6 [L. R., 12 I. A., 150**

1. ——— **s. 60 (1871, s. 60).**—*Certificate of Registrar.—Proof of registration.*—Where a Registrar of Assurances has intentionally and deliberately issued a certificate of due registration of a document, with knowledge of certain facts relied on as affecting his power to grant the certificate, the Courts are bound to accept such certificate as due proof of registration, and cannot go behind it for the purpose of satisfying themselves that the registering officer has strictly conformed with all the provisions of the Act. SHEO SHUNKUR SAHOY *v.* HIRDEY NARAIN SAHU **[I. L. R., 6 Calc., 25 : 5 C. L. R., 194**

2. ——— *Certificate of registration.—Evidence of registration.—Registration in wrong registration office.*—A Civil Court cannot dispute the correctness of the certificate of due registration on a document produced in evidence before it, merely on the ground that the property referred to by the deed is situate out of the jurisdiction of the Registrar by whom the certificate is granted. See *Sheo Shunkur Sahoy* v. *Hardey Narain Sahu, I. L. R., 6 Calc., 25 : 5 C. L. R., 194.* RAM COOMAR SEN *v.* KHODA NEWAY . . . . . **7 C. L. R., 223**

3. ——— *Registration of mortgage-deed in district in which the mortgaged property is not situate.—Admissibility of document in evidence.*—An instrument of mortgage on land, which required to be registered, was presented for registration to a Registrar within whose district no portion of the land was situate, and was registered by such Registrar. In a suit to enforce such mortgage it was objected that such instrument, not having been properly registered, could not be received in evidence. *Held,* following the opinion of BROUGHTON, *J.,* in *Sheo Shunkur Sahoy* v. *Hirdey Narain Sahu, I. L. R., 6 Calc., 25 : 5 C. L. R., 194,* that when a document which purports to have been registered is tendered in evidence, the Court cannot reject it for non-compliance with the registration law: moreover, that the mortgagor could not be allowed to take advantage of an objection which would not have been available but for his own wrongful act. HAR SAHAI *v.* CHUNNI KUAR . . **I. L. R., 4 All., 14**

REGISTRATION ACT, 1877, s. 60—*continued.*

4. ——— *Presentation of document by agent.—Power of attorney not executed and authenticated as required by law.—Validity of registration.*—A document bearing the certificate required by law showing that it has been registered must be treated as a registered document, notwithstanding the registration procedure may have been defective. *Held,* therefore, where a document bore the certificate required by section 68 of Act XX of 1866 showing that it had been registered, that, notwithstanding that it had been presented for registration by the agent of the person executing it under a power of attorney not recognisable under that Act for the purposes of section 34, it must be treated as a registered document *Mukhun Lall Panday* v. *Koondun Lall, 15 B. L. R., 228;* and *Muhammad Ewaz* v *Bir Lal, I. L. R., 1 All., 465,* referred to. A document was presented for registration by the agent of the person executing it authorised by a power of attorney not recognisable under the registration law, and was admitted to registration. *Held* that the person executing such document could not be allowed to object to the validity of its registration by reason of its having been registered under a power of attorney not recognisable under the registration law, such person being herself responsible for the defect in registration. *Har Sahai* v. *Chunni Kuar, I. L. R., 4 All., 14,* followed. IKBAL BEGAM *v.* SHAM SUNDAR **[I. L. R., 4 All., 384**

——— **s. 69 (1871, s. 69; 1866, s. 80).**—*Rules by Registrar General.—Act XX of 1866, s. 80.*—Section 80, Act XX of 1866, in no way empowered the Registrar General to pass any rule directing by what particular description of evidence a person producing a deed to be registered shall prove his right to have it registered; nor could it empower him to frame a special law different from the ordinary law of evidence as to what fact shall be proved by oral and what by documentary evidence. Where all the executants of a deed admit before the Registrar General that they have executed the deed, that officer has nothing to do with the recitals of the deed, or with its possible operation as regards third parties,—*e.g.,* a minor whose rights are reserved in the deed. IN THE MATTER OF RAM CHUNDER BISWAS . . . . . **16 W. R., 180**

——— **s. 72.**

See s. 77 . . **I. L. R., 9 Calc., 150**

REGISTRATION ACT, 1877, s. 72—*continued.*

See FALSE EVIDENCE—GENERALLY.
[I. L. R., 10 Calc., 604

See PARTIES—PARTIES TO SUITS—REGISTRATION, SUITS FOR—
[I. L. R., 8 Bom., 269

——— s. 73 (1871, s. 73; 1866, s. 84).

See s. 23 . . . 11 B. L. R., 20

See s. 77 . . I. L. R., 9 Calc., 150
[I. L. R., 13 Calc., 264
I. L. R., 7 Mad., 535
. I. L. R., 3 All., 397
I. L. R., 6 All., 460

See APPEAL—ACTS—REGISTRATION ACT.
[3 Bom., A. C., 104
9 W. R., 122
8 W. R., 266

See FALSE EVIDENCE—GENERALLY.
[I. L. R., 10 Calc., 604

See REVIEW—POWER TO REVIEW.
[10 B. L. R., 294
I. L. R., 2 Calc., 131

——— *Refusal to register.—Petition by vendor to have document registered.—Person "claiming" under document.*—A deed of sale executed by the vendor alone, which recited that the vendor had received the purchase-money, and that the purchaser had been put into possession, was presented for registration by the vendor, the purchaser not being present. The Registrar refused to register the document, on the ground that the deed had not been delivered and no consideration had passed, the vendor having stated that he had not received the purchase-money. In refusing to register, the Registrar believed that the deed was of the vendor's own creation. The vendor applied by petition to the High Court to establish his right to have the document registered. The alleged purchaser repudiated the sale. *Held* (by the majority of the Full Bench) that as it appeared on the face of the document itself that the petitioner was not a person "claiming" under it, the petition could not be entertained under the provisions of section 73 of the Registration Act. *Per* STUART, *C. J.*—That the mere fact that it did not appear on the face of the deed that the petitioner could claim under it did not preclude the Court from entertaining the petition, but that, under the circumstances of the case, the registration of the deed should not be ordered. *Per* OLDFIELD, *J.*—That it was the duty of the Court to order the registration of the deed, as it was duly executed and the requirements of the law fulfilled, without entering into the question whether or not the petitioner could claim under it. IN THE MATTER OF THE PETITION OF BISH NATH . . I. L. R., 1 All., 318

——— s. 74.

See s. 77 . . I. L. R., 9 Calc., 851
. [I. L. R., 6 Mad., 460

REGISTRATION ACT, 1877, s. 77 (1864, s. 15).

See APPEAL—ACTS—REGISTRATION ACT.
[I. L. R., 8 Bom., 269

See PARTIES—PARTIES TO SUITS—REGISTRATION, SUITS FOR—
[I. L. R., 4 Calc., 445
I. L. R., 8 Bom., 269

1. ——— *Suit to establish right to registration.—Act XX of 1866, s. 84.*—In an application for registration made on the 27th March 1866, before the new Registration Law (XX of 1866) came into operation, it was held that it was lawful for any person interested to institute a regular suit to establish his right to registration under section 15, Act XVI of 1864, notwithstanding the provisions of section 84, Act XX of 1866. BHEEMUL MAHTOON *v.* OLIMUSSA *alias* BEGUM JAN
[8 W. R., 423

2. ——— *Suit to enforce registration.—Refusal to register.*—Section 15, Act XVI of 1864, was held to apply only to cases in which the Registrar had improperly refused to register an instrument. GOOROO DOSS DUTT *v.* DWARKA NATH MANNA
[6 W. R., Mis., 61

3. ——— *Suit to enforce registration.—Refusal to register.—Held,* under section 15, Act XVI of 1864, that a suit to enforce registration lay where one of the parties to the deed refused to register it. KRISHEN KISHORE CHUND *v.* MAHOMED ZUKAHOOLLAH
[Agra, F. B., 148: Ed. 1874, 111

4. ——— *Suit to enforce registration.—Refusal to register.*—According to section 15 of Act XVI of 1864, a regular suit, and not a miscellaneous application, must be brought to compel a Registrar to register. MUTUKDHAREE LALL *v.* FUZUL HOSSEIN . . 6 W. R., Mis., 131

INAYUT ALI *v.* FURZUND ALI . 2 Agra, 21

5. ——— *Refusal to register.—Suit for enforcing registration.—Act XVI of 1864, s. 17.*—Where the Registrar for any cause refused to register a deed of sale presented for registration under the provisions of section 17 of Act XVI of 1864, the law did not provide that the applicant could bring a suit against the vendor to enforce registration, unless there was an express condition or contract to register. SOORNUM BUTTY *v.* BOODHESSUREE . . . . . 10 W. R., 313

AHSUNA BEGUM *v.* KHEERUN SINGH
[10 W. R., 360

6. ——— *Refusal to register.—Suit for possession and for entry of money in register.*—A party, after purchasing a property, applied to have his deed registered; but the vendor not attending to admit the execution, the Deputy Registrar refused, under Act XVI of 1864, to register, and referred the applicant to the Civil Court. Application was accordingly made, under section 15, to the Principal Sudder Ameen, who, after hearing the vendor's plea that the whole consideration had not

REGISTRATION ACT, 1877, s. 77—*continued.*

been paid, ordered the registration to be made, and this was accordingly done on 2nd February 1866. *Held* that though the Deputy Registrar's order was a proper one, the application to the Civil Court was warranted by the terms of section 15, and the Civil Court had jurisdiction in the matter. RAM LALL SINGH *v.* THAKOOR DYAL . . **9 W. R., 576**

7. ——————— *Suit to compel registration.—Deed presented after time.*—Under Act XVI of 1864, a decree to enforce registration could not be passed in respect of a deed presented for registration four months after the execution of the deed. OOJUL MUNDUL *v.* HERASUTOOLLAH MUNDUL **[7 W. R., 150**

8. ——————— *Procedure in suit to enforce registration.*—Where it was necessary to institute a suit under section 15 of Act XVI of 1864 (Registration Act) in order to enforce registration, the suit was limited to that object. The Court would not, after making the order to compel registration, suspend the further hearing of the case until registration had been effected, and then proceed to consider and decide upon the rights of the parties. KHADAR SAIB *v.* KHADAR BIBI . **3 Mad., 149**

9. ——————— **(1871, s. 76).**—*Suit after application for registration is rejected.—Quære,*—Whether, after an order has been made under section 76 of the Act rejecting an application for registration, it is open to the parties benefited by a deed to propound it in, and to obtain its registration by means of, a regular suit. IN THE MATTER OF THE PETITION OF ABDOOLAH . **I. L. R., 2 Calc., 131**

S. C. REASUT HOSSEIN *v.* ABDOOLLAH **[26 W. R., 50 : L. R., 3 I. A., 221**

10. ——————— *Denial of execution, What is.—Suit to compel registration.*—Refusal to admit execution of a document is a denial of execution within the meaning of the Registration Act of 1877, and so also is a wilful refusal or neglect to attend and admit execution; and where such refusal or neglect occurs, a suit will lie under section 77 for the purpose of having the document registered. RADHAKISSEN ROWRA DAKNA *v.* CHOONEELOLL DUTT **[I. L. R., 5 Calc., 445 : 5 C. L. R., 172**

11. ——————— **and s. 34.**—*Refusal to register.—Time for attendance before Registrar to admit execution.*—Although section 34 of the Registration Act, 1877, lays down that no document shall be registered unless the persons executing the same, their representatives, assigns, or authorised agents, appear before the Sub-Registrar within the periods allowed for presentation, yet this section is directly subject to section 77, and that section nowhere provides any time within which the parties, their representatives, assigns, or authorised agents, shall appear to admit execution. All that is required in order to maintain a suit under section 77 is that there must be a refusal to register by the Sub-Registrar, an appeal within time to the Registrar, a refusal by the Registrar, and a suit filed in the Civil

REGISTRATION ACT, 1877, s. 77—*continued.*

——————— **and s. 34**—*continued.*

Court within one month from the order of the Registrar refusing registration. SHAMA CHARAN DAS *v.* JOYENOOLAH . **I. L. R., 11 Calc., 750**

12. ——————— *Suit for registration of document.*—An application having been made under section 73 of the Registration Act, the Registrar passed the following order: "All the parties have not appeared; the appeal is struck off. It, however, seems to me that the order of the Sub-Registrar was quite correct." *Held* that the mere fact of the applicant not having adduced any evidence before the Registrar did not make his order one not refusing registration within the meaning of section 76; nor was the applicant precluded on that ground alone from pursuing his remedy under section 77 by a civil suit. SAJIBULLAH SIRKAR *v.* HAZI KHOSH MOHAMED SIRKAR . . . **I. L. R., 13 Calc., 264**

13. ——————— **and ss. 72 & 73.**—*Suit to compel registration.*—Under the Registration Act of 1877, a suit to compel registration is maintainable only when the provisions of section 77 of the Act have been complied with. A person omitting to make an application to the Registrar as provided by section 73, within the time provided by section 72, cannot be said to have complied with the conditions precedent to a suit under section 77. Independently of section 77 of the Act, no suit will lie. *Bhagwan Singh* v. *Khuda Baksh, I. L. R., 3 All., 397,* followed. *Ram Ghulam* v. *Choley Lal, I. L. R., 2 All., 46,* dissented from. EDUN *v.* MAHOMED SIDDIK **[I. L. R., 9 Calc., 150 : 11 C. L. R., 440**

14. ——————— **and s. 74.**—*Refusal to execute deed.—Suit to compel registration.*—If the non-registration of a deed has resulted from the refusal of one of the parties to it to execute it, that matter must be inquired into by the Registrar, as directed by section 74 of the Registration Act, before any right to sue under section 77 can arise; and unless the requirements of the Act have been complied with, no cause of action arises under section 77. *Edun* v. *Mahomed Siddik, I. L. R., 9 Calc., 150,* followed. LAKHIMONI CHOWDHRAIN *v.* AKROOMONI CHOWDHRAIN . **I. L. R., 9 Calc., 851 : 12 C. L. R., 527**

15. ——————— **and s. 73.**—A Sub-Registrar having refused to register certain documents on the ground that their execution was denied, the plaintiff appealed to the Registrar, who rejected the appeal because it was not preferred within thirty days as required by section 73 of the Registration Act, 1877. The plaintiff thereupon brought a suit to have the documents registered. *Held* that, by virtue of the provisions of section 77 of the Registration Act, the Court was not competent to order registration. KUNHIMMU *v.* VIYYATHAMMA **[I. L. R., 7 Mad., 535**

16. ——————— *Refusal to register on ground of denial of execution.—Suit for registration.*—A Sub-Registrar refused to register a bond, as the obligor denied the execution of it. The obligee,

REGISTRATION ACT, 1877, s. 77—*continued.*

instead of applying to the Registrar under section 73 of the Registration Act in order to establish his right to have such bond registered, sued the obligor, claiming a decree directing the registration of such bond. *Held* that such suit wasn ot maintainable. *Ram Ghulam* v. *Chotey Lal, I. L. R., 2 All., 46,* observed upon. BHAGWAN SINGH *v.* KHUDA BAKHSH [I. L R., 3 All., 397

17. ——————— *Contract of sale.—Suit to enforce registration of conveyance —Held,* where a person had agreed to sell to another certain immoveable property, and had conveyed the same to him by a deed of sale which, under the Registration Act of 1877, required registration, and the vendor refused to register such deed, that it was not incumbent on the vendee to take steps under that Act to compel the vendor to register before he sought relief in the Civil Court, but that he was at liberty without doing so to sue the vendor in the Civil Court for the registration of such deed. RAM GHULAM *v.* CHOTEY LAL [I. L. R., 2 All., 46

18. ——————— **and ss. 24, 73, 74, 75, 76.**—*Order for registration.—Finality of order. —Refusal to register.—Application to establish right to registration.—Suit for registration.*—Where an application for registration of a sale-deed had been presented after the expiry of the period prescribed by law for registration, and had been dealt with under section 24 of the Registration Act, and the Registrar had passed an order under that section directing that the document should be registered on payment of the prescribed fine, and such fine had been paid,—*Held* that the requirements of the law had been complied with, and that it was not competent for the successor in office of the Registrar, dealing with the document under section 74 of the Registration Act, to go behind the order of his predecessor, nor was it for the Court, in a suit instituted under section 77, to question the propriety of that order, which was given in pursuance of a discretionary power allowed to a Registrar to accept documents for registration after the time prescribed. DURGA SINGH *v.* MATHURA DAS . . . . . I. L. R., 6 All., 460

Under the Registration Acts of 1866 and 1871 a suit to enforce registration after refusal of registration could not be brought: the procedure provided in those Acts was by petition, and, if necessary, appeal. SEPAHEE SINGH *v.* CHUNDUN [2 N. W., 160: Agra, F. B., Ed. 1874, 213

BIHARI LAL *v.* KUNDAN LAL . 7 N. W., 103

TULSI SAHU *v.* MAHADEO DAS [2 B. L. R., A. C., 105

S. C. TOOLSEE SAHOO *v.* MOHADEO DOSS [10 W. R., 483

RAHMATULLA *v.* SARIUTULLA KAGCHI [1 B. L. R., F. B., 58
S. C. 10 W. R., F. B., 51

MAHOMED OHID *v.* KALEE PERSHAD SINGH [24 W. R., 320

REGISTRATION ACT, 1877, s. 77—*continued.*

IN THE MATTER OF THE PETITION OF SANKAR DOBEY . . . 4 B. L. R., A. C., 65

S. C. OBHOY CHURN MOHAPATTUR *v.* SHUNKUR DOBEY . . . . 12 W. R., 500

Upholding SUNKUR DOBEY *v.* OBHOY CHURN MOHAPUTTUR . . . 12 W. R., 385

FATI CHAND SAHU *v.* LILAMBER SINGH DAS [9 B. L. R., 433
S. C. 14 Moore's I. A., 129
16 W. R., P. C., 26

The remedy, however, given by these Registration Acts by appeal, where a registry officer refused to register, did not affect the remedy by suit to compel the vendor to do all that is legally requisite to complete the sale, including the registration of the deed. RAMPHUL LALL *v.* CHUNDER PERSHAD [1 N. W., 204: Ed. 1873, 287

19. ——————— *Suit to compel defendant to register or give up deed to be registered.—Right of suit.*—On the expiration of a zur-i-peshgi tioca granted to plaintiff by defendant, the latter executed a kobala of the property forming the subject of this suit for a consideration. The kobala was drawn up, signed by defendant, and delivered to plaintiff's servants to be registered with his consent; but the defendant subsequently got it away from them and never went to the registry office, and the deed could not be registered. The defendant denied these facts, and pleaded that he had given a mokurrari lease to a third party six days after the date of the alleged execution of the kobala. The lower Appellate Court found the plaintiff's case established, and ordered defendant to restore the deed of sale for the purposes of registration and use, and declared the sale good and valid, plaintiff having already obtained possession. *Held* that plaintiff had a right to the remedy sought, and that his suit was not barred by the Registration Act. SHUMSHARE ALI *v.* LUTAFUT KUREEM. LALLA THAKOOR SAHOY *v* MAHOMED LOOTFOOLLAH . . . . 18 W. R., 504

20. ——————— *Suit to enforce registration on refusal of party who ought to register.—Implied contract to register.*—Whether an action will lie against the maker of an instrument requiring registration to render it valid, for a refusal to get such instrument registered, depends upon the question whether there is a contract, express or implied, on the part of the maker to register it. Such a contract is not to be implied in every case. GIRDHAR DALPAT *v.* HARIBHAI NARAYAN [7 Bom., A. C., 3

21 ——————— *Refusal to register.—Suit to enforce contract.—A.* sold certain property to *B*, and received part of the purchase-money in advance, the rest to be paid after registration of the deed of sale. When the deed was executed, and taken to the registry office, *A.* objected to the registration, on the ground that the full price had not been paid, and the Deputy Registrar returned the deed to him, and he

REGISTRATION ACT, 1877, s. 77—*continued.*

sold the property to other parties. *Held*, it was a suit to enforce a contract from which the vendor had receded, and, notwithstanding the subsequent sale to a third party, and registration of such subsequent deed, there was nothing in the registration law to prevent plaintiff from enforcing this contract. BHEEMUL MATHOON *v.* OLIMUSSA *alias* BEGUM JAN [8 W. R., 423

22. ——————— *Suit for possession, for damages for refusal to register, and for enforcing registration.—Effect of execution of deed required by law to be registered.*—The owner of a share in a talook granted a se-putni thereof to the plaintiff, but before registration, granted a se-putni to the Bengal Coal Company. In a suit against the owner and the Company for possession of the se-patni talook, for damages caused by the refusal to register, and also for compelling registration of the se-putni pottah,—*Held* that the suit was not maintainable in a Civil Court, as the plaintiff's title rested upon an unregistered deed; that there was no cause of action as against the Company to enforce registration of the pottah; and that a distinct stipulation is not necessary to bind a person to cause registration of a deed required by law to be registered, but he virtually agrees to do so when he executes a contract, which by the law in force requires registration. PRABHURAM HAZRA *v.* ROBINSON [3 B. L. R., Ap., 29 : 11 W. R., 398

But *see* TRIPURA SUNDARI *v.* RASIK CHUNDRA KANUNGUI [6 B. L. R., Ap., 134 : 15 W. R., 189

23. ——————— *Suit on bond.—Failure to register according to agreement.—Cause of action.*—*A.* executed a bond in favour of *B.*, but failed to cause the registration of the same. Before the amount secured by the bond became due, *B.* sued *A.* for recovery thereof, on the ground that, as *A* had agreed to get the bond registered, but failed to do so, *B.* was entitled to recover the amount advanced by him. *Held* that *B.* had no cause of action. GURU PRASAD ROY *v.* DHANPUT SING [5 B. L. R., Ap., 46 : 14 W. R., 20

See COURT OF WARDS *v.* NITTA KALI DEBI [2 B. L. R., A. C., 353 : 12 W. R., 287

24. ——————— *Refusal to register.—Suit to enforce registration.*—A suit lies against a vendor and another for recovery and registration of a document wrongfully taken back from a Registrar upon such Registrar's refusal to register the same on account of certain false statements made by the parties objecting to the registration. MITTRE SEIN *v.* NARAIN SINGH [1 N. W., 206 : Ed. 1873, 289

25. ——————— *Suit to enforce deed.*—Where a deed had been registered, though possibly improperly registered, under section 36, Act XX of 1866, a suit for enforcement of the deed was maintainable. UNMOLE SINGH *v.* RAM BHUNJUN MISSER [3 Agra, 407

REGISTRATION ACT, 1877, s. 82 (1871, s. 80; 1866, ss. 91-94).

See FALSE EVIDENCE—GENERALLY. [I. L. R., 10 Calc., 604

See FALSE PERSONATION. [7 W. R., Cr., 99
2 B. L. R., A. Cr., 25

See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—REGISTRATION ACT. [5 Bom., Cr., 7

See SENTENCE—GENERAL CASES. [8 W. R., Cr., 16

1. ——————— (1871, s. 80).—*Inquiry as to proper possession of receipt to take back document from Registrar's office.*—An inquiry made by a clerk of a registry office, with a view to ascertain whether the person who brings a receipt to take back a document, which could not be returned in the first instance, and for which a receipt was accordingly given, is the person in whose possession the receipt ought to be, is an inquiry within the meaning of the Registration Act VIII of 1871, section 80. IN THE MATTER OF THE PETITION OF BUNWARY PODDAR [23 W. R., Cr., 55

2. ——————— and s. 83.—*Sanction to prosecution.*—It is not necessary that sanction should be given before instituting a charge under section 82 of the Registration Act. GOPI NATH *v.* KULDIP SINGH . . I. L. R., 11 Calc., 566

3. ——————— *Act XX of 1866, ss. 93, 94.—Trial by Magistrate of charge instituted by him as Sub-Registrar.*—The proceedings of a Magistrate who tries prisoners charged with having committed offences under sections 93 and 94 of the Registration Act, XX of 1866, are not illegal and without jurisdiction, or otherwise bad, merely because the prosecution was (with the sanction of the Registrar to whom he was subordinate) instituted against the accused by the same Magistrate in his capacity of Sub-Registrar. Under such circumstances, where it can be done, it would be better if the case were tried by some other person. QUEEN *v.* HIRA LALL DASS [8 B. L. R., F. B., 422

S. C. GOVERNMENT OF BENGAL *v.* HEERA LALL DOSS . . . . 17 W. R., Cr., 39

IN THE MATTER OF RAMDYAL SING [5 B. L. R., Ap., 89

S. C. QUEEN *v.* RAM LOCHUN SINGH [18 W. R., Cr., 15

Contra, IN RE BHARAT CHUNDRA SEN [8 B. L. R., 423, note : 14 W. R., Cr., 74

QUEEN *v.* NADI CHAND PODDAR [24 W. R., Cr., 1

——————— s. 83 (1871, s. 81; 1866, ss. 93-95)

See FALSE EVIDENCE—GENERALLY. [I. L. R., 10 Calc., 604

See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—REGISTRATION ACT. [5 Bom., Cr., 7
I. L. R., 7 Mad., 347

REGISTRATION ACT, 1877, s. 83—*continued.*

1. ——————— *Act XX of 1866, s. 95.—Power of Registrar.—Prosecution for offence.*—A Registrar under Act XX of 1866 was competent under section 95 to institute a prosecution for any offence under that Act. QUEEN *v.* RAMDHARY SINGH [10 W. R., Cr., 5

2. ——————— *Act XX of 1886, s. 95.—Offence under Registration Act.—Sanction of prosecution.*—A Sub-Registrar under Act XX of 1866 had no power to investigate regarding the committal of an offence committed before him in the registration of any document, but should cause the complainant to proceed, under section 66 of the Code of Criminal Procedure before the Magistrate, or before an officer authorised to receive such complaint. The sanction of the Registrar under section 95, Act XX of 1866, related to a prosecution to be instituted by the Sub-Registrar for an offence under the Act. QUEEN *v.* HARIDAS KUNDU [4 B. L. R., Ap., 69 : 13 W. R., Cr., 21

3. ——————— *Act XX of 1886, s. 90.—Offence under Registration Act.—Jurisdiction of Sessions Judge.*—The Sessions Judge had jurisdiction to try a case of abetting false personation of a witness before a Registrar of Assurances, under section 95 of the Registration Act (XX of 1866). The word "instituted" in that section should be construed to mean "commenced." QUEEN *v.* SHROGOLAM DASS [6 B. L. R., F. B., 692 : 15 W. R., Cr., 58

Contra, QUEEN *v.* ASANULLA [6 B. L. R., 693, note : 10 W. R., Cr., 21

——————— **s. 84 (1871, s. 82).**

——————— *Evidence Act (I of 1872), s. 3.—Sub-Registrar.—Offence committed during a judicial proceeding.—Meaning of word "Court."—Penal Code, s. 228.*—By section 82 of the Registration Act, 1871, a Sub-Registrar was a public officer, and proceedings before him were judicial proceedings within the meaning of section 228 of the Penal Code, and as he was legally authorised to take evidence, he was a "Court" as defined by the Evidence Act, section 3. IN THE MATTER OF THE PETITION OF SARDHARI LAL [13 B. L. R., Ap., 40 : 22 W. R., Cr., 10

——————— **s. 87 (1871, s. 85; 1866, s. 88).**

See s. 28 . . I. L. R., 7 All., 590

See s. 31 . . I. L. R., 6 Bom., 96

See s. 58 . I. L. R., 4 All., 40, 206 [I. L. R., 8 All., 6 L. R., 12 I. A., 150

1. ——————— (1866, s. 88).—*Registration after proper time.*—The accepting of a document for registration, after the expiration of the period mentioned in Part IV of Act XX of 1866, is not a mere defect of procedure. The Registrar who registers a document so presented acts without authority. RAYA RAGHOBA KAMAT *v.* ANAPURNABAI KOM SUBALBHAT . . . 10 Bom., 98

REGISTRATION ACT, 1877, s. 87—*continued.*

2. ——————— *Presentation for registration to officer at place where he was officiating in another capacity.—Illegal procedure.*—A bond was presented for registration to a Sub-Registrar, not at his public office, but at a place where he was engaged in his duties as a revenue officer. The Sub-Registrar received the bond and registered it and entered it in the books of his sub-registry. He should only have received it at his public office. As no person had been appointed to act for the Sub-Registrar on the occasion of his absence, and the Sub-Registrar did not act otherwise than in good faith, it was held that his procedure, although erroneous, did not invalidate the registration of the land. KALIAN MAL *v.* BHAGWATI . . 7 N. W., 119

REGISTRATION OF MAHOMEDAN MARRIAGES.

See EVIDENCE—CIVIL CASES—MISCELLANEOUS DOCUMENTS—MARRIAGES, REGISTRATION OF . I. L. R., 10 Calc., 607

REGISTRATION OF NAME.

See CASES UNDER DECLARATORY DECREE, SUIT FOR—REGISTRATION OF NAMES BY COLLECTOR.

See CASES UNDER JURISDICTION OF CIVIL COURT—REGISTRATION OF TENURES.

See CASES UNDER RIGHT OF SUIT—REGISTRATION OF NAME.

See SALE FOR ARREARS OF RENT—UNDER-TENURES, SALE OF— [12 B. L. R., F. B., 484 3 C. L. R., 231

REGISTRATION OF PETITION OF APPEAL.

See CIVIL PROCEDURE CODE, 1882, s. 548 (1859, s. 341) . 4 B. L. R., Ap., 103 [8 W. R., 141

REGISTRATION OF TRANSFER.

See CASES UNDER BENGAL RENT ACT, 1869, s. 26.

See CASES UNDER BENGAL RENT ACT, 1869, s. 46.

See CASES UNDER LANDLORD AND TENANT—TRANSFER BY TENANT.

See SALE FOR ARREARS OF RENT—DEPOSIT TO STAY SALE . 13 B. L. R., 146

REGISTRY TICKET, POSSESSION OF—

See PROSTITUTE . 3 B. L. R., A. Cr., 70

REGULATIONS MADE UNDER STATUTE 33 VICT., C. 3.

——————— **1872—III.**

See APPEAL—REGULATIONS. [6 C. L. R., 555

REGULATIONS MADE UNDER STATUTE 33 VICT., C. 3—*continued.*

——— 1872—III—*continued.*

See SETTLEMENT OFFICER.
[6 C. L. R., 555

See SONTHAL PERGUNNAHS SETTLEMENT REGULATION . I. L. R., 7 Calc., 376
[11 C. L. R., 30
I. L. R., 13 Calc., 245

See SUBORDINATE JUDGE.
[5 C. L. R., 128

——— 1877—I.

See AJMERE COURTS REGULATION.
[I. L. R., 2 All., 819

REGULATION LAW.

See ACT OF STATE . 12 B. L. R., 120

RE-HEARING.

See BENGAL RENT ACT, 1869, s. 103.
[7 B. L. R., 207

See CASES UNDER CIVIL PROCEDURE CODE, 1882, s. 108 (1859, s. 119).

See DEATH OF JUDGE BEFORE JUDGMENT.
[3 B. L. R., A. C., 105

See CASES UNDER PRIVY COUNCIL, PRACTICE OF—RE-HEARING.

See CASES UNDER REVIEW.

RELEASE OF CLAIM SECURED BY MORTGAGE.

See MORTGAGE—FORECLOSURE—RIGHT OF FORECLOSURE . I. L. R., 7 All., 820

See REGISTRATION ACT, 1877, s. 17, CL. B.
[I. L. R., 7 All., 820
I. L. R., 2 All., 554

See CASES UNDER REGISTRATION ACT, 1877, s. 17, CL. C.

RELEASE OF GOVERNMENT RIGHTS.

See CONFISCATION OF PROPERTY IN OUDH.
[I. L. R., 4 Calc., 727

RELEASE TO ONE OF SEVERAL PARTNERS.

See CONTRACT ACT, s. 44.
[I. L. R., 4 Calc., 336

RELIEF.

——— Specific statement of—

See DECREE—FORM OF DECREE—GENERAL CASES . . I. L. R., 4 Calc., 69

1. ——— Foundation for relief.—*Facts and documents not stated or referred to in pleadings.*—A plaintiff cannot be entitled to relief upon facts or documents not stated or referred to by him in his pleadings. MAHOMED ZAHOOR ALI KHAN *v.* RUTTA KOOER
[9 W. R., P. C., 9: 11 Moore's I. A., 468

RELIEF.—Foundation for relief—*continued.*

LALJI RATANJI *v.* GANGARAM TULJARAM
[2 Bom., 184: 2nd Ed., 176

KASIM ALI KHAN *v.* BIRJ KISHORE
[2 N. W., 182

VIRASVAMI GRAMINI *v.* AYYASVAMI GRAMINI
[1 Mad., 471

2. ——— Right to relief.—*Relief consistent with facts stated in plaint.*—A plaintiff is entitled to ask for any remedy which the Court may think proper upon the state of facts disclosed in his plaint and established by the evidence, and a mistake in asking for a particular remedy will not debar him from some other remedy similar in its nature, and not more extensive, provided it requires no change in the facts. NUDIAR CHAND SHAHA *v.* PRANNATH SHAHA . . . . . 21 W. R., 8

3. ——— *Mistake by plaintiff as to relief to which he is entitled.—Special relief.*—Where a plaintiff mistakes the relief to which he is entitled in his special prayer, the Court may afford him the relief to which he has a right under the prayer for general relief, provided it is such relief as is agreeable to the case made by the plaint. NISTARINI DASI *v.* MAKHANLALL DUTT
[9 B. L. R., 11: 17 W. R., 432

4. ——— *General prayer for relief—Failure to establish right to special relief asked for.*—Although the plaintiff was found not to be entitled to the special relief prayed for, the Court considered he had established a case in which, upon the plaint and the general prayer for relief, he was entitled to a decree. GOBIND CHUNDER MOOKERJEE *v.* DOORGAPERSAD BABOO
[14 B. L. R., 337: 22 W. R., 248

5. ——— *Prayer for general relief.—Ignorance of exact relief entitled to.*—It may very well be that a plaintiff, being doubtful as to the precise form of relief to which the facts proved may entitle him, may ask the Court to give him such relief as, under the circumstances, the Court may think fit to give. GUNGARAM DUTT *v.* JUNMAJOY MULLICK . . 1 C. L. R., 144

6. ——— *Specific relief.—Prayer for general relief.*—Under the prayer for general relief, specific relief may be granted of a different description from the specific relief prayed for by the bill; provided the bill contains charges putting in issue material facts which will sustain such relief. COCKERELL *v.* DICKENS
[2 Moore's I. A., 353

7. ——— *Prayer for general relief.—Plaint, Relief inconsistent with.*—Upon a prayer for general relief, a plaintiff is not entitled to any relief which is inconsistent with his plaint; therefore, where a plaintiff brought a suit to set aside his father's will, on the ground that he had no power to dispose of his property, but that the plaintiff was entitled as eldest son and heir-at-law according to Hindu law, the suit should have been dismissed with costs, and no account should have been decreed

RELIEF.—Right to relief—*continued.*

to the plaintiff in respect of his interest in a portion of the property, the bequest of which was, in the opinion of the Court below, void for remoteness. HIRALAL MULLICK *v.* MATILAL MULLICK [5 B. L. R., 682

8. ——— *Relief inconsistent with pleadings.*—A party may have subordinate rights awarded when they arise out of the principal right which he pleads. But when a defendant pleads distinctly a jaghirdar's proprietary right against a malik's proprietary right, a Court cannot award a subordinate right of occupancy in no way arising out of a jaghirdar's proprietary right, but out of a ryoti right never pleaded by the defendant, and in fact incompatible with his case. PANDEY BISHONATH ROY *v.* BHYRUB SINGH [7 W. R., 145

9. ——— *Alternative relief.—Prayer for relief beyond powers of Court.*—Where the plaintiffs claimed possession, but in the event of the defendants being found entitled to hold as tenants, asked the Court to ascertain at what rate the defendants were entitled to hold, and direct a lease to be executed,—*Held* that whether the plaintiffs could obtain the alternative relief prayed for or not, their suit ought not to be dismissed, as they might succeed in proving their title to the substantial relief sought. LAND MORTGAGE BANK OF INDIA *v.* NEELOO BHUTTO . . . . . 21 W. R., 125

10. ——— *Alternative case where there is no inconsistency between alternatives.*—Where the title on which a plaintiff sues is put forward in the alternative, and the two parts of the alternative are not inconsistent with each other, he ought to obtain a decree if he makes out either branch of his alternative. WOODIT SINGH *v.* BULDEO SINGH . . . . . 21 W. R., 12

11. ——— *Relief where plaintiff asks for two inconsistent rights.—Quære,*—Whether, where a plaintiff asks for the establishment of two rights, and it appears that he is entitled to one of them, it would not be sufficient to give him a decree for that one, and to insert in the decree a declaration which would bar his right to that which he has failed to establish. DHUNPUT SINGH *v.* NARAIN PERSHAD SINGH . . 20 W. R., 94

See BIJOY KESHUB ROY *v.* OBHOY CHURN GHOSE [16 W. R., 198

12. ——— *Relief granted different from that prayed for in plaint.*—Where the plaintiff purchased two thirds and the defendant one third of the right and interest of certain judgment-debtors sold in execution of a decree, and the plaintiff paid his own and the defendant's quota of the purchase-money, and on defendant's failure to reimburse him sued for possession of the whole property, on the ground that he should be considered the sole purchaser, and the lower Court directed the defendant to pay his share of the purchase-money to the plaintiff with interest,—*Held* that, though the relief granted by the Court was different from that asked for in the plaint, the order should not be disturbed on appeal, as it did substantial justice. BRIJOO RAM MISSER *v.* BHUGWAN DOSS . . . . 7 W. R., 180

RELIEF.—Right to relief—*continued.*

13. ——— *Plaint asking for more than plaintiff is entitled to.*—Where a plaint asks for more than the plaintiff is entitled to, the Court may give him such relief as is within the Court's jurisdiction, and as the Court may deem him entitled to. PITAMBUR SHAHA *v.* RAMJOY GHOSE . . . . . 7 W. R., 92

14. ——— *Suit for possession after dispossession.—Failure to prove whole claim.*—A plaintiff proving a wrong done to him, though not exactly to the extent of which he complains, is entitled to relief, though not to the extent or on the ground on which he asks it. *Baijnath Chatterjee* v. *Lakhimani Debi, 5 B. L. R., 514, note: 12 W. R., 248,* explained and distinguished. BISHNOO PERSHAD BUNNICK *v.* RAM COOMAR DEB . 22 W. R., 2

15. ——— *Prayer for relief which Court cannot give.—Land Registration Act, Beng. Act VII of 1876, s. 89.*—The Civil Court has no power to set aside an order passed under the Land Registration Act, and when a prayer for such relief is contained in a plaint which also asks for a declaration of right and title to and confirmation of possession in property, such prayer may be treated as mere surplusage. LUCHMON SAHI CHOWDHRY *v.* KANCHUN OJHAIN . . I. L. R., 10 Calc., 525

16. ——— *Failure to prove case.—Admission by defendants as to portion of claim.—Partial relief.—Held* (STUART, *C. J.*, and TURNER, *J.*, dissenting) that the plaintiffs, having failed to prove the averments on which their suit was based, were not entitled to any relief in respect of that portion of the property in suit of which the defendants admitted their possession as mortgagees. RATAN KUAR *v.* JIWAN SINGH [I. L. R., 1 All., 194

17. ——— *Title to equitable relief.—Conduct of party.*—Where a party, who, as the facts really stand, would be entitled to equitable relief, misrepresents his case, falsely charges the opposite party with fraud and collusion, and does not rely on his equitable rights, he will be debarred by such conduct from obtaining any relief in a Court of Equity. DULI CHAND *v.* MONOHUR LALL UPADHYA . . . . . 2 C. L. R., 18

RELIGION, OFFENCES RELATING TO—

——— *Disturbing religious assembly.—Penal Code, s. 296.—Mahomedan law.—Hanifa and Shafia schools.—Right to say "Amin" loudly during worship.—Beng. Civil Courts Act, VI of 1871, s. 24.—Evidence Act, I of 1872, s. 57 (1).—Mahomedan Ecclesiastical law.—Judicial notice.*—A masjid was used by the members of a sect of Mahomedans called the Hanifis, according to whose tenets the word "amin" should be spoken in a low tone of voice. While the Hanifis were at prayers, *R.*, a Mahommedan of another sect, entered the

RELIGION, OFFENCES RELATING TO—*continued.*

masjid, and in the course of the prayers, according to the tenets of his sect, called out "Amin" in a loud tone of voice. For this act he was convicted of voluntarily disturbing an assembly engaged in religious worship, an offence punishable under section 296 of the Penal Code. The Full Bench (MAHMOOD, *J.*, dissenting) ordered the case to be re-tried, and that, in re-trying it, the Magistrate should have regard to the following questions, namely: (1) Was there an assembly lawfully engaged in the performance of religious worship? (2) Was such assembly in fact disturbed by the accused? (3) Was such disturbance caused by acts and conduct on the part of the accused by which he intended to cause such disturbance, or which acts and conduct, at the time of such acts and conduct, he knew or believed to be likely to cause such disturbance? *Held* by MAHMOOD, *J.*, that the discussion occasioned by the act of the accused having, presumably, taken place during the interval when the prayers were not going on, the assembly was not at that time "engaged in the performance of religious worship," and was not "disturbed" within the meaning of section 296 of the Penal Code; that in reference to the terms of section 39 of the Code, the accused did not disturb the assembly "voluntarily;" that he was justified by the Mahomedan ecclesiastical law in entering the mosque, and joining the congregation in saying the word "Amin" loudly if he thought fit, and his conduct fell within the purview of section 79 of the Penal Code, and was therefore not an offence under section 296. *Beatty* v. *Gillbanks, L. R., 9 Q. B. D., 308*, referred to. Also *per* MAHMOOD, *J.*, that, having regard to the guarantee given by the Legislature in section 24 of Act VI of 1871 (Bengal Civil Courts Act), that the Mahomedan law shall be administered in all questions regarding "any religious usage or institution," the Court was bound by section 57 of Act I of 1872 (Evidence Act) to take judicial notice of the Mahomedan ecclesiastical law, and the rules of that law need not be proved by specific evidence. QUEEN-EMPRESS *v.* RAMZAN . **I. L. R., 7 All., 461**

RELIGIOUS COMMUNITY.

——— *Suit relating to trust among a community.—Jurisdiction of High Court in charitable trusts.— Khoja Mahomedans —Regulation of rights of dissident parties in a religious community.*— In a suit by certain members of the Khoja community in Bombay for an account of all property belonging to, or held in trust for, the community, come to the hands of the treasurer and accountant of the community; for a declaration that the treasurer and accountant had ceased to be such officers of the community; for an order directing the treasurer and accountant to deliver all the property of the community in their hands; for a declaration that the property of the community was held and ought to be applied to and for the original charitable, religious, and public uses or trusts to or for which they were dedicated and to none other, for the sole benefit of the Khoja sect and none other; and that no person not being or having ceased to be a member of the same, and in particular no person professing Shia

RELIGIOUS COMMUNITY—*continued.*

opinions in matters of religion, was entitled to any share or interest therein; for a scheme to carry such declaration into effect, and for an injunction restraining one of the defendants from interfering in the management of the property and affairs of the Khoja community or in the election and appointment of officers, from excommunicating any members of the community, from celebrating marriages, and from demanding or receiving any offering;—*Held* that the Court had jurisdiction to entertain the suit. When the Court, in exercise of its charitable jurisdiction, is called upon to adjudicate between conflicting claims of dissident parties in a community distinguished by some religious profession, the rights of the litigants will be regulated by reference to the religious tenets held by the community in its origin, and a minority holding those tenets will prevail against a majority which has receded from them. History given of the sects of Sunis, Shias, and Shia Imami Ismailis; of Aga Khan; and of the Khojas and their relations with the hereditary Imam of the Ismailis. Relations of Aga Khan with the Jumat of the Khojas of Bombay discussed. The tenets of Mahomedanism to which the first Khojas were converted were those of the Shia Imami Ismaili sect. In order to enjoy the full privileges of membership in the Khoja community, a person must be one of that sect whose ancestors were originally Hindus, which was converted to, and has throughout abided in the faith of, the Shia Imami Ismailis, and which has always been and still is bound by ties of spiritual allegiance to the hereditary Imams of the Ismailis. There is no public property impressed with a trust, either express or implied, for the benefit of the whole Khoja community. Aga Khan, as the spiritual head of the Khojas, is entitled to exercise a potential voice in determining who, on religious grounds, shall or shall not remain members of the Khoja community. ADVOCATE GENERAL, BOMBAY, *ex-relatione* DAYA MUHAMMAD *v.* MUHAMMAD HUSEN HUSENI *alias* AGA KHAN **[12 Bom., 323**

RELINQUISHMENT BY HEIR.

——— *Relinquishment in consideration of grant of maintenance.*—Where *M.* executed on behalf of *N.* a ladawinamah, or deed of disclaimer, disclaiming all right to an estate to which he was one of the heirs-at-law, upon consideration of receiving a monthly allowance for maintenance, and accepted a perwannah securing that allowance to himself and his heirs,—*Held* that the ladawinamah and the perwannah amounted to a valid contract by which the parties were respectively bound; and that ladawinamah, being founded on good consideration, was binding on the heirs, who could not set it aside except by returning the money which had been paid in advance on account of the maintenance allowance. OOMRAO BEGUM *v.* NAWAB NAZIM OF BENGAL **[24 W. R., P. C., 28**

RELINQUISHMENT BY MOTHER OF HER INTEREST IN PROPERTY.

——— *Subsequent suit to recover estate as heiress of son.*—A widow, being old, presented a

RELINQUISHMENT BY MOTHER OF HER INTEREST IN PROPERTY—*continued.*

petition in a suit by her daughter-in-law, as guardian of the former's infant son, relinquishing all her rights in the property to the daughter-in-law herself, and as guardian of the infant. The son died, and the mother now sued her daughter-in-law for possession as heiress of her son. *Held* that by the petition the mother had transferred no rights to the daughter-in-law as proprietor, but that the mother, as heiress of her son, was entitled to the estate. UDEY KUNWAR *v.* LADU . . . . **6 B. L. R., 283**
[S. C. 15 W. R., P. C., 16
13 Moore's I. A., 585

Affirming the decision of the lower Court in LADO *v.* OODEY KOONWUR
[Agra, F. B., 22 : Ed. 1874, 17

RELINQUISHMENT, DEED OF, EFFECTING PARTITION.

See HINDU LAW—PARTITION — REQUISITES FOR PARTITION.
[I. L. R., 1 Mad., 312

RELINQUISHMENT OF CLAIM.

See ADMISSION — ADMISSIONS IN STATEMENTS AND PLEADINGS.
[15 B. L. R., 10

See CASES UNDER RELINQUISHMENT OR OMISSION TO SUE FOR PORTION OF CLAIM.

See PLEADER — AUTHORITY TO BIND CLIENT . . **3 B. L. R., Ap., 15**
[12 W. R., 279

See CASES UNDER WAIVER.

RELINQUISHMENT OF TENURE.

See CASES UNDER LANDLORD AND TENANT—ABANDONMENT OR RELINQUISHMENT OF TENURE.

1. ——— **Lease for specific term.**—*Act X of 1859, s. 19.—Tenant.*—Section 19, Act X of 1859, did not apply to a ryot who had taken a lease for a specific term. KASHEE SINGH *v.* ONRAET
[5 W. R., Act X, 81

2. ——— **Contract for definite specified interest in land.**—*Notice of relinquishment.—Act X of 1859, s. 19.—Held* that the provisions of section 19, Act X of 1859, were not applicable to a lessee who had contracted for a definite specified interest in the land, and that the contract or lease must regulate the whole relationship between the lessor and lessee, not only in regard to the time of commencement and continuance, but also in regard to the termination of the holding. DWARKA DOSS *v.* GOKUL DOSS . . . **1 Agra, Rev., 22**

3. ——— **Contract by lessee not to relinquish.**—*Act X of 1859, s. 19.*—A perpetual contract by a lessee for his heirs, reciting that they shall never relinquish the jote, could not operate against section 19, Act X of 1859, which enacted that any ryot might relinquish his jote if he did so in a legal manner. GOPAL PAL CHOWDHRY *v.* TARINEE PERSHAD GHOSE . . . . **9 W. R., 89**

RELINQUISHMENT OF TENURE.—**Contract by lessee not to relinquish**—*continued.*

4. ——— **Proof of relinquishment.**—*Onus of proof.*—Where a tenant is found to have taken steps required by law in furtherance of his intended relinquishment, it is for the landlord to prove his continued possession notwithstanding. But where it is found that the tenant has not gone through the necessary steps, it will be for him to prove that the landlord took possession of the land and enjoyed the profits by holding it khas, or by letting it to others. ERSKINE *v.* RAM COOMAR ROY . **8 W. R., 220**

5. ——— **Waiver of right to tenure.**—*Failure to take up mâl land after survey and assessment.—Forfeiture of claim.*—A person who fails at the survey to take up mâl land, which he held without assessment before the survey, and allows it to be taken up by another cultivator who pays the assessment upon it, must be held to have forfeited his claim to such land. BALKRISHNA GOVIND GADGIL *v.* NARAYAN SAKHARAM . **8 Bom., A. C., 180**

6. ——— **Relinquishment by mirasidar.**—*Effect of delivery of possession without reservation.—Title, Extinction of.—B.*, a mirasidar, addressed a razinama to the mamlatdar, resigning certain miras land in favour of *L.* (to whom at the same time he delivered possession of the lands), and containing no reservation or qualification. *Held* that the transfer to *L.* was complete, and the rights of *B.* wholly extinguished. TARACHAND PIRCHAND *v.* LAKSHMAN BHABANI . **I. L. R., 1 Bom., 91**

7. ——— *Right of ejectment.—Razinama.*—A mirasidar who has given in a razinama is entitled to eject the tenant put in possession of his miras lands by the Collector, provided he sue within the period of limitation, and the razinama contain no stipulation whereby he expressly abandons his miras rights. JOTI BHIMRAO *v.* BALU BIN BAPUJI . . . **I. L. R., 1 Bom., 208**

8. ——— *Relinquishment after mortgage, Effect of.—Right of transferee.—Mortgagee's right.—Sale for arrears of revenue.*—*D.*, widow of a Hindu mirasidar, by a duly-registered deed, dated the 24th of November 1869, mortgaged the mirasi land of her deceased husband to *R. M.* for R150. Subsequently, on the 5th July 1872, *D.* executed a razinama of the land in favour of *R. G. Held* that the mortgage bound *D.'s* estate in the mirasi land as a Hindu widow; that whether the property was regarded as mirasi or as that of an ordinary occupant, it was transferable under section 36 of Bombay Act 1 of 1865; that when *D.* executed the razinama, there was nothing left in her to relinquish or otherwise deal with more than the equity of redemption; that, consequently, *R. G.* took nothing by the razinama executed in his favour by *D.*, except this equity of redemption. *Tarachand* v. *Lakshman, I. L. R., 1 Bom., 91*, distinguished. The distinction

RELINQUISHMERT OF TENURE.—Relinquishment by mirasidar—*continued.*

between the present case and the case of a purchase at a sale for arrears of Government land revenue is, that at such last-mentioned sale the purchaser takes the land discharged of all encumbrances, inasmuch as the Government land revenue is the paramount charge upon the land. RAMACHANDRA MANKESHWAR *v.* BHIMRAO RAOJI . **I. L. R., 1 Bom., 577**

9. ——— Notice of relinquishment.—*Beng. Act VIII of 1869, s. 20.*—Section 20, Bengal Act VIII of 1869, does not apply when the ryot holds under a lease for a limited period which has expired. In such a case no written notice of relinquishment is necessary. TILAK PATAK *v.* MAHABIR PANDAY **[7 B. L. R., Ap., 11: 15 W. R., 454**

10. ——— *Act X of 1859, s. 19* —Where a ryot holding a considerable portion of land wishes to relinquish a portion, he must specify in his notice what portion he relinquishes in order to relieve himself of liability to payment. HABELA SIRCAR *v.* DOORGA KANT MOZOOMDAR **[11 W. R., 456**

11. ——— *Act X of 1859, s. 19.*—When a landlord served a notice on an ootbundi ryot that unless he paid at an enhanced rent for the ensuing year he was to quit the land, and the ryot thereupon intimated to the landlord's agent his intention to relinquish the land,—*Held* that there was a sufficient compliance with section 19, Act X of 1859. KENNY *v.* ISSUR CHUNDER PODDAR . . . . **W. R., 1864, Act X, 9**

12. ——— *Act X of 1859, s. 19.*—Section 19, Act X of 1859, did not imperatively require an application for service of notice of relinquishment of land by a ryot to be made to the Collector. The non-service of notice by the Collector cannot affect the rights of the tenant, if he can prove that, previous to his application to the Collector, he had given actual notice direct to the landlord himself or to his authorised agent. The application to the Collector is not bad because it was not made in the month of Chyet preceding. ERSKINE *v.* RAM COOMAR ROY . . . . **8 W. R., 220**

RELINQUISHMENT OR OMISSION TO SUE FOR PORTION OF CLAIM.

1. ——— Splitting cause of action.—*Accidental or involuntary omission.—Mistake.—Civil Procedure Code, 1859, s. 7.*—The words "if a plaintiff relinquish or omit to sue for any portion of his claim, a suit for the portion so relinquished or omitted shall not afterwards be entertained," in section 7, Act VIII of 1859, plainly include accidental or involuntary omission, as well as acts of deliberate relinquishment. The correct test when a second suit is brought for something omitted to be sued for in a previous suit, is whether the claim in the new suit is in fact founded on a cause of action distinct from that which was the foundation of the former suit. Where a suit was brought for a large amount of property, consisting partly of Government paper which, it was alleged, had been fraudulently appropriated

RELINQUISHMENT OR OMISSION TO SUE FOR PORTION OF CLAIM.—Splitting cause of action—*continued.*

by the defendant and the plaintiff obtained a decree, —*Held* (reversing the decision of the High Court) that the plaintiff was precluded by section 7 of Act VIII of 1859 from afterwards bringing a fresh suit on a piece of Government paper which might have been, but by mistake was not, included in the previous suit. BUZLOOR RUHEEM *v.* SHUMSOONNISSA BEGUM. JUDOONATH BOSE *v.* SHUMSOONNISSA BEGUM . . . . **8 W. R., P. C., 3 [11 Moore's I. A., 551**

S. C. in High Court, SHAMSOONISSA BEGUM *v.* BUZLUL ROHIM . **Marsh., 286: 2 Hay, 190**

The suit was held to be barred on the test laid down in this case in SHIB KRISTO DAH *v.* ABDOOL SOBHAN CHOWDHRY . . . **15 W. R., 408**

2. ——— *Civil Procedure Code, 1859, s. 7.—Statement of intention not to relinquish.*—The words of section 7 of the Civil Procedure Code were imperative against the splitting of a claim into parts. The consequences of an infringement of that direction were not, that the suit which does not include the whole claim shall for this reason be barred. The words "in bar of suit" referred to any subsequent suit brought for the portion of the claim omitted in the previous suit, and not to such previous suit itself. A plaintiff who omits to sue for a portion of his claim, stating that he does not relinquish it, but means to sue again for it, can gain nothing by such a statement. Neither can such a statement furnish a reason for holding the first suit to be barred. SOONDER BEBEE *v.* KHILLOO MULL *alias* RAM LALL . . . . . **2 N. W., 90**

3. ——— *Suit for arrears of rent for successive years.—Civil Procedure Code, 1859, s. 7.*—Section 7, Act VIII of 1859, did not require a plaintiff having several distinct causes of action against one defendant to comprise them all in one suit subject to the hazard of forfeiting all those not included in the first suit. The object of the clause was only to provide against splitting a cause of action. SUTTO CHURN GHOSAL *v.* OBHOY NUND DOSS . . . . . **2 W. R., Act X, 31**

DYARAM *v* GOUREE SHUNKER . **3 N. W., 20**

4. ——— *Negligent omission of part of claim.—Obligation as to enforcing all available remedies.*—The 7th section of the Civil Procedure Code, 1859, prohibits the splitting of a claim, but does not require that all remedies by suit on all the securities which a creditor may hold, be enforced together. If a plaintiff, from negligence or other cause, omits to prefer a portion of his claim which seeks to charge the land, or, having preferred it, is content to accept an imperfect adjudication, or one which awards him only a portion of the relief claimed, he cannot afterwards bring forward in a fresh suit matter which might well have been then disposed of. MULUK FUQUEER BUKSH *v.* LALLER MANOHUR DOSS . . . . **2 N. W., 29**

5. ——— *Fresh suit in respect of same subject-matter.—Civil Procedure Code,*

RELINQUISHMENT OR OMISSION TO SUE FOR PORTION OF CLAIM. —Splitting cause of action—*continued.*

1859, s. 7.—A party is bound to bring forward his whole case in respect of the matter in litigation and open to him upon the points for decision in the suit. He cannot abstain from relying upon nor abandon a ground of claim which is in question and proper for consideration and decision in the suit and afterwards make it a cause of fresh suit in respect of the same subject-matter. UDAIYA TEVAR *v.* KATAMA NACHIYAR . . . . . **2 Mad., 131**

6. ——————— *Omission to include all grounds on which suit is based.—Civil Procedure Code, 1859, s. 7.*—A plaintiff is bound to include in his plaint all the grounds upon which his suit is based. A second suit upon a different ground which existed before the commencement of the first suit, would not be allowed, as it would be splitting the cause of action. ABHIRAM DOSS *v.* SRIRAM DOSS **[3 B. L. R., A. C., 421: 12 W. R., 336**

PREMANUND GOSSAMEE *v.* RAM CHURN DEB **[20 W. R., 482**

7. ——————— *Omission to sue for all rights under the same or similar titles.—Civil Procedure Code, 1859, s. 7.*—Section 7, Act VIII of 1859, required that, if all rights arising out of the same cause of action were not sued for together, the portion abandoned could not be separately sued for afterwards; but it did not enact a similar penalty for all rights under the same or similar titles, the right to sue for which may require different issues to be tried, and may arise under different dates and different causes of action, and the defendants as to which different properties may be either only one party or different parties altogether. MOTHOOR MOHUN MUNDUL *v.* KHEMUNKUREE DOSSEE **[5 W. R., P. C., 182**

See RAMHURRY MUNDUL *v.* MOTHOOR MOHUN MUNDUL . . . **20 W. R., P. C., 450**

8. ——————— *Omission to put forward case in full.—Civil Procedure Code, 1859, s. 7.*—A plaintiff suing for the recovery of land is bound to put forward his whole case at once, and cannot be allowed to maintain a second suit for the same cause of action, merely by alleging that the Collector's order sought to be set aside is of a different date and description from that which was sought to be set aside in the former suit. LUCHMUN DOSS *v.* PRIAG DUTT . . . . . **2 Agra, 305**

9. ——————— *Civil Procedure Code, 1859, s. 7.—Title resting on different and distinct transactions.*—The fact that a defendant's title rests upon different and distinct transactions, supported by distinct and separate evidence, does not necessarily imply that to a party contesting their title, there are different causes of action warranting separate suits. RAM SOONDUR SHAHA *v.* DELANNEY . . . . . **20 W. R., 103**

10. ——————— *Civil Procedure Code, 1859, s. 7.—Distinct causes of action.*—Section 7 of Act VIII of 1859 applied whether the omission to sue had been the result of knowledge and intention or not. The test as to whether a suit was barred by section 7 of Act VIII of 1859, was, whether the claim in the new suit was in fact founded on a cause of action distinct from that which was the foundation of the former suit. BULWUNT SINGH *v.* CHITTAN SINGH . . . **3 N. W., 27**

11. ——————— *Omission to ask for particular relief.—Civil Procedure Code, 1859, s. 7.—Quære,*—Whether a relinquishment or omission under section 7, Act VIII of 1859, extended to cases of omission to ask for any particular description of relief which a plaintiff might intend to seek against the parties to the suit in respect of his cause of action. SABEER KHAN *v.* KALLI DOSS DEY **[1 W. R., 199**

12. ——————— *Claims arising out of same cause of action.—Simultaneous suits.—Civil Procedure Code, 1859, s. 7.—Held,* where two suits were instituted simultaneously, and one of such suits had been determined, that, assuming that the claims in such suits arose out of the same cause of action and should have been included in one suit, the provisions of section 7 of Act VIII of 1859 were no bar to the entertainment of the second suit. KALESHAR PARSHAD *v.* JAGAN NATH . **I. L. R., 1 All., 650**

13. ——————— *Suit by co-sharers some of whom have before sued.—Civil Procedure Code, 1859, s. 7.—Held* by KEMP, *J.*, that where, as in this case, four suits are brought with the common object of setting aside the sale of a putni talook by four joint tenants, two of whom are not estopped under section 7, Act VIII of 1859, this Court cannot in equity declare the sale to be good or bad in part, but must decide as to whether the sale is to stand or fall for the whole talook. *Per* AINSLIE, *J.*—But if one of the joint tenants in a former suit claimed a 2-anna instead of a 4-anna share, she cannot now be allowed to supplement her claim or take interests in the putni which she could not have enforced independently of the sale. RAM CHURN BUNDOPADHYA *v.* DROPOMOYEE DOSSEE . . **17 W. R., 122**

14. ——————— *Civil Procedure Code, 1859, s. 7.—Application to file award.*—The privilege given in Act VIII of 1859, section 7, to a plaintiff in a suit to abandon the excess of a claim applies also to a case where the party comes in with an application to cause an arbitration award to be filed. IN THE MATTER OF THE PETITION OF GRISH CHUNDER CHOORAMONEE. GRISH CHUNDER CHOORAMONEE *v.* BROJONATH BHUTTACHARJEE **[20 W. R., 56**

Section 7 of Act VIII of 1859 was held to be applicable to rent suits. BHABOSOONDEREE *v.* BHUGWAN CHUNDER MOZOOMDAR **[W. R., 1864: Act X, 88**

PURBHOO TEWAREE *v.* RAMJEAWUN PATUCK **[1 N. W., 65: Ed. 1873, 119**

RELINQUISHMENT OR OMISSION TO SUE FOR PORTION OF CLAIM. —Splitting cause of action—*continued.*

15. ——————— *Suit for receipt as security for advance.—Suit for balance of account.* —*A.* sued *B.* for recovery of a receipt which had been deposited by the former with the latter as security for a certain advance of money. *Held* that he was not thereby debarred, under section 7, Act VIII of 1859, from bringing a suit for the balance due on the whole account between them. MEDHI ULLEE KHAN *v.* MAHOMED WAJID ULLEE

[1 N. W., Part II, 10: Ed. 1873, 70

16. ——————— *Simultaneous suits for balance of account after settlement.—Civil Procedure Code, 1882, s. 43.*—Upon a settlement of accounts between plaintiff and defendants, R3,985-6-9 was found due by the defendants, who agreed to pay the same. They gave to plaintiff an order on their agents to pay R2,500 from the profits of certain land, and promised to pay the balance within a month. Plaintiff filed two suits, one for R2,500 and the other for the balance of the debt. Defendants pleaded that both suits should be dismissed, as brought in contravention of the requirements of section 43 of the Code of Civil Procedure. The lower Courts held that there were two distinct causes of action, and decreed both claims. *Held*, on second appeal, that plaintiff had only one cause of action, and that the decree in one of the suits must be reversed. APPASAMI *v.* RAMASAMI

[I. L. R., 9 Mad., 279

17. ——————— *Suit for sum due in account book.—Addition of claim for same sum due on hath-chitta.—Civil Procedure Code, 1859, s. 7.—Civil Procedure Code, 1877, s. 34.*—Where a plaintiff originally sued for a certain sum upon his khatta books, and an objection was taken by the defendant that he ought to have sued upon a certain hath-chitta, whereupon the plaintiff amended his plaint by suing for the amount admittedly due upon the hath-chitta, in addition to the amount he claimed upon his khatta books,—*Held* that, when the plaintiff amended his plaint by suing upon the hath-chitta, his causes of action, which when the suit was originally framed where distinct, became united; that there was no "relinquishment" in the original suit within the terms of Act VIII of 1859, section 7 (with which section 43, Act X of 1877, corresponds), and that the plaint was rightly amended. RAM TARRUN KOONDOO *v.* HOSSEIN BUKSH . **I. L. R., 3 Calc., 785**

[2 C. L. R., 385

18. ——————— *Civil Procedure Code, 1882, s. 43.—Suit to cancel release, obtained by duress, of all claims against defendants, and to recover amount of one such claim no bar to subsequent suits upon other causes of action so released.*—On the 1st July 1878 there was a settlement of accounts between the plaintiff and defendants and a debt was acknowledged due by the latter to the former, and on the same day the plaintiff and defendants entered into a trading partnership which was carried on till August. On the 30th September the defendants extorted a release from the plaintiff whereby the plaintiff's claims against them arising out of the two transactions mentioned and all other transactions between them were released. On the 23rd November the plaintiff brought a suit against the defendants, and, in the plaint, after stating the fact of the settlement of 1st July 1878, the balance found due therein to the plaintiff, the extortion of the release, and the misappropriation of the sums due to the plaintiff by the defendants as the cause of action, prayed for cancellation of the release and for recovery of the amount due to the plaintiff by the defendants under the settlement of 1st July 1878. *Held*, in a suit to wind up the partnership of July and August 1878, that the plaintiff was not bound by section 43 of the Code of Civil Procedure to have included in his former suit his claim arising out of that partnership, and that the former suit being in substance a suit upon the account stated on 1st July 1878, and not for damages for extorting the release, was no bar to the present suit. SUBBAYYA *v.* VENKATESAPPA

[I. L. R., 6 Mad., 49

19. ——————— *Accretion to land.* —*Civil Procedure Code, 1859, s. 9.*—The plaintiff sued for a certain specified quantity of land as being between specified boundaries. On measurement, however, it was found there was more land within those boundaries than the plaintiff claimed. He obtained only a decree for what he claimed, though he had claimed all the land up to the boundary (the river) on one side: the excess was deducted on that side. *Held*, reversing the decision of the High Court, that a subsequent suit in which he claimed land which had accreted to the excess portion which was not decreed to him in the former suit was not barred by section 7, Act VIII of 1859. PAHALWAN SINGH *v.* MAHESSUR BUKSH SINGH. MAHESSUR BUKSH SINGH *v.* MEGHBURN SINGH

[9 B. L. R., 150: 16 W. R., P. C., 5

S. C. in High Court, MEGHBARUN SINGH *v.* MOHESSUR BUKSH SINGH . . **5 W. R., 211**

20. ——————— *Civil Procedure Code, 1882, s. 43.—Breaches of one term in a contract, how sued upon.—Cause of action.—Contract.* —*Per* GARTH, *C. J.*—A claim for the price of goods sold is a cause of action of a different nature from a claim for damages for non-acceptance of goods pursuant to a contract. Such claims therefore, although arising under one and the same contract, may be sued upon separately, section 43 of the Code of Civil Procedure notwithstanding. *Per* WILSON, *J.*—Where there is one contract for the purchase of goods and the purchaser takes some of the goods, but breaks his contract in part by not paying for the goods he takes, and in part by not taking and paying for the remainder, and both breaches occur before any suit is brought, the claim of the person suing is one arising out of one cause of action; and the whole claim must be included in one suit. ANDERSON, WRIGHT, & CO., *v.* KALAGARLA SURJINARAIN

[I. L. R., 12 Calc., 339

21. ——————— *Suit for demurrage.—Civil Procedure Code, 1859, s. 7.*—In a suit for demurrage, the cause of action being the deten-

RELINQUISHMENT OR OMISSION TO SUE FOR PORTION OF CLAIM. —Splitting cause of action—*continued.*

tion of a boat, plaintiff is bound to sue for the whole of the demurrage due; failing to claim a portion, he is barred by section 7, Act VIII of 1859, from suing subsequently for such portion. MUNGHROO MANJHEE *v.* GYARAM NUNDEE . . **14 W. R., 253**

22. ——————— *Civil Procedure Code, 1877, s. 43.—Suit for damages for wrongful dismissal.*—A suit having been brought in a Small Cause Court for damages laid at R400 for wrongful dismissal, a decree was given for R75 per mensem, the amount of wages which had been agreed on, up to the filing of the plaint, the Judge intimating that for damages accruing after the filing of the plaint further suits month by month might be brought. Two suits were accordingly brought for the two months next succeeding the date of the first suit, and decrees were obtained. The High Court upon an application made by the defendant set aside these decrees on the ground that after the first suit no further suits could lie. SIMPSON *v.* CLEGHORN **[6 C. L. R., 91**

23. ——————— *Suit for damages. — Subsequent suit against another wrong-doer for the same tort.*—Where a plaintiff had sued for and obtained damages against one of several persons who had joined together in defaming his character,—*Held* (PEARSON, *J.*, dissenting) that a similar suit by the plaintiff against another of such wrong-doers would not lie; and that the cause of action in both suits being identical, and satisfaction having been obtained in one, the other was barred by virtue of section 7, Act VIII of 1859 MADUD ALI KHAN *v.* SALEEM AHMED KHAN *alias* KUMMUN KHAN **[4 N. W., 142**

24. ——————— *Suit for damages.*—On the 27th Joist 1286 F. S. (2nd June 1879) the plaintiff brought a suit to recover damages for the breach of a contract on the part of the defendant for not having made over possession to him of certain leasehold properties, the damages claimed being for the profits accrued due for the year 1283 F. S. (1875-76). In this suit he obtained a decree. On the 21st Joist 1287 F. S. (14th June 1880) the plaintiff brought another suit against the defendant to recover damages for the profits accrued for the years 1284, 1285, and 1286 F. S. (1876-77 to 1878-79). *Held* that the plaintiff should have included the damages for the years 1284 and 1285 (1876-77 and 1877-78) in his former suit, and that he was debarred by section 43 of Act X of 1877 from including in his second suit any portion of his claim for damages which had accrued due at the time of the institution of his first suit, and for which he had omitted to sue; but that he was entitled to recover damages for the year 1286 (1878-79). *Taruck Chunder Mookerjee v. Panchu Mohini Debya, I. L. R., 6 Calc., 791,* followed. SHEO SUNKUR SAHOY *v.* HRIDHOY NARAIN . **I. L. R., 9 Calc., 143: 12 C. L. R., 34**

Held by the Privy Council on appeal that the High Court had rightly decided that, in regard to Act X of 1877, section 43, the plaintiff could not recover so much of the profits as had already accrued at the date of the institution of the prior suit, inasmuch as the claim in respect of such profits might have been included therein, *viz*, the profits for the two years 1284 and 1285 F., which had expired when that suit was brought. MADAN MOHAN LAL *v.* LALA SHEOSANKER SAHAI . **I. L. R., 12 Calc., 482**

25. ——————— *Suit for value of cattle.—Subsequent suit for damages for taking them away.*—A person suing for the value of cattle illegally taken away, should include in his plaint whatever claim he wishes to make in respect of damages caused to him by the defendant's wrongful act, and cannot afterwards maintain a new suit for any damages which he might have claimed in the former suit. MOHUBUT MUNDUL *v.* SHOORENDRONATH ROY . . **4 W. R., S. C. C. Ref., 20**

26. ——————— *Civil Procedure Code, 1859, s. 7.—Suit for damages after suit for recovery of property.*—A suit for damages for wrongful detention of property (in this case a cart and bullocks seized in execution of decree against another party) is barred under section 7, Act VIII of 1859, after a decree in a former suit for the recovery or value of the same property. PUNJU *v.* OODOY **[18 W. R., 337**

27. ——————— *Suit for mesne profits after setting aside sale for arrears of rent.—Subsequent suit for rents wrongly collected.*—At a sale for arrears of rent, *A.* became the purchaser of a certain putni taloek. *B.*, whose putni right had been sold, sued for and obtained a decree for reversal of the sale on the ground of irregularity. In the meantime, *A.* had committed default, and the putni was again sold for arrears of rent. The zemindar drew out from the Collectorate the amount due to him. *C.*, who had bought *B.'s* right, title, and interest in his decree, now sued *A.* for recovery of the surplus proceeds of sale in the hands of the Collector, and obtained a decree. He afterwards sued *A.* for mesne profits for the time during which he was in possession of the putni taloek. This was a suit by *C.* against *A.* for recovery of the amount drawn out by the zemindar, on the ground that, in consequence of *A.* having collected the rents from the taloek, which were to go towards payment of the rent due to the zemindar, and having fraudulently withheld such payment, he had sustained damage to the extent of the amount taken by the zemindar. *Held* that the suit was barred by section 7, Act VIII of 1859. TARINI PRASAD GHOSE *v.* KHUDUMANI DABI . **5 B. L. R., 184: 13 W. R., 261**

TARINI PRASAD GHOSE *v.* RAGHAB CHANDRA BANDOPADHAYA **[5 B. L. R., 187, note: 13 W. R., 205**

28. ——————— *Suit for refund of excess payment of rent.—Civil Procedure Code. 1859, s. 7.*—*A.* recovered from *B.*, under the terms of his lease, a refund of the excess of rent paid by him in respect of the years 1861, 1862, and 1863,

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While that suit was pending, *B.* recovered from *A.* rent at the same rate in respect of the three succeeding years. *Held* that *A.* was entitled to bring another suit against *B.* for damages in respect of the excess of rent paid by him during the years subsequent to the institution of the prior suit. NILMANI SINGH *v.* ANNUNDAPRASAD MOOKERJEE

[1 B. L. R., F. B., 97: 10 W. R., F. B., 41

29. ——————— *Suits for mesne profits.*—Mesne profits claimed for a period of dispossession are essentially damages,—the ground upon which the plaintiff in any case is entitled to ask for them being the wrongful conduct of the defendants in dispossessing and keeping them out of possession; and every suit brought to recover mesne profits must, by Act VIII of 1859, section 7, include the whole claim arising out of the cause of action which gives the ground for the claim. ROOKMINEE KOER *v.* RAM TOHUL ROY . . . **21 W. R., 223**

RAM RUTTUN AUDO *v.* RAM CHUNDER PAL

[25 W. R., 113

30. ——————— *Suit for mesne profits and possession.—Subsequent suit for mesne profits.*—The plaintiff brought a suit for possession of land with mesne profits. The suit was dismissed. He appealed on the question of possession only, and obtained a decree for possession without any mention of mesne profits, and in execution of the decree he obtained possession. *Held* that a subsequent suit to recover mesne profits from the date of the decree for the period of six years next before the commencement of the suit, exclusive of the period the plaintiff was in possession, was not barred by section 7 of Act VIII of 1859. PRATAP CHANDRA BURUA *v.* SWARNAMAYI. SWARNAMAYI *v.* PRATAP CHANDRA BURUA

[4 B. L. R., F. B., 113: 13 W. R., F. B., 15

31. ——————— *Civil Procedure Code, 1859, ss. 7, 8, 9, 10.—Cause of action, Including whole claim arising out of.—Mesne profits, Suit for. —Possession, Suit for.*—Under section 7, read with sections 8, 9, and 10 of Act VIII of 1859, a plaintiff suing for mesne profits of land is not precluded from afterwards maintaining a suit for possession of such land. *Pratap Chandra Burua* v. *Swarnamayi, 4 B. L. R., F. B., 113,* commented on. MONOHUR LALL *v.* GOURI SUNKUR . **I. L. R., 9 Calc., 283**

[12 C. L. R., 434

32. ——————— *Civil Procedure Code, 1859, s. 7.—Suit for mesne profits.*—The plaintiffs having been dispossessed of a tank and of land on its banks, recovered possession by a suit under Act XIV of 1859, section 15. The defendants then instituted a civil suit for determination of title, in which the plaintiffs were successful. The plaintiffs on the 22nd Cheyt 1277 (3rd April 1871) instituted a suit for the recovery of the value of fish taken by the defendants on the 27th Bysack 1276 (8th May 1869), the day of dispossession; but the suit was compromised. The plaintiffs now claimed mesne profits with reference to fish and grass appropriated by the defendants from 1st Bysack 1277 to 7th Bhadro 1278 (12th April 1870 to 22nd August 1871). *Held* that the present claim for the period preceding 22nd Cheyt 1277 (the date of the former suit) was barred by Act VIII of 1859, section 7; that the previous suit as well as the present were really suits for damages; and that the previous suit and compromise ought to have included all claims of the plaintiffs arising out of the dispossession. SAEM SIRDAR *v.* KAMALUDDY SIRDAR . . **22 W. R., 424**

33. ——————— *Civil Procedure Code, 1877, s. 43.—Suit for mesne profits.*—The plaintiffs sued the defendants for possession of the land upon which certain trees stood, and for such trees, stating that on the 19th June 1879 the defendants had interfered with their possession of such trees and had wrongfully taken the fruit thereof. The plaintiffs subsequently sued the defendants for the value of the fruit upon such trees, alleging that on the 19th June 1879 the defendants had wrongfully taken such fruit. *Held* that as the cause of action—*i.e.*, the taking of such fruit—was in both suits identical, and the plaintiffs not having claimed the value of such fruit as mesne profits in the first suit, the second suit was barred by the provisions of section 43 of Act X of 1877. DEBI DIAL SINGH *v.* AJAIB SINGH

[I. L. R., 3 All., 543

34. ——————— *Civil Procedure Code, 1859, s. 7.—Suit for possession.—Subsequent suit for mesne profits.*—*S.*, the plaintiff's guardian, and *D.*, the husband of *M.*, one of the defendants in the suit, held a mouzah in equal shares. *S.* sold the half share held by her to *M.*; some portion of the mouzah being in the possession of the other defendants, *S.* and *D.* sued them to recover it and also for mesne profits, and obtained a decree. The defendants appealed, whereupon *S.* filed a solehnamah. The decree was upheld, however, by the lower Appellate Court. In special appeal the Sudder Court refused to give the renouncing plaintiff any decree for mesne profits of a share. The plaintiff, who had then come of age, was not represented in the litigation in the Court. Shortly afterwards he sued *S.* and *M.* to set aside the sale to *M.* and obtained a decree. On *D.'s* death *M.* obtained possession of the land which had been the subject of the suit by *S.* and *D.* The plaintiff now sued to recover a half share of the land sued for by *S.* and *D.*, and of the mesne profits recovered or recoverable by *M.* under the decrees of the Sudder Court and the lower Courts, and to set aside the solehnamah. *Held* that as to *M.* the suit was not barred by section 7, Act VIII of 1859. RAMLOCHUN LALL *v.* GOORPERSHAD . . **5 N. W., 172**

35. ——————— *Civil Procedure Code, 1877, s. 43.—Suit for recovery of immoveable property.—Mesne profits.—Mortgage.—Specific performance of contract.—Compensation.*—According to the terms of a mortgage, possession of the mortgaged property was to be delivered to the mortgagee, and he was to take the mesne profits. The mortgagor refused to deliver possession of the property, and

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the mortgagee sued him to enforce specific performance of the contract to deliver possession, and obtained a decree. At the time this suit was brought, the mortgagee had been kept out of possession of the property for two years, during which time the mortgagor had taken the mesne profits. The mortgagee subsequently sued the mortgagor to recover the mesne profits of the mortgaged property for those two years. *Held* that, as the mortgagee might in the former suit, in addition to seeking the specific performance of the mortgage-contract, have asked for such mesne profits by way of compensation for the breach of it; and as the claim for possession and mesne profits were in respect of the same cause of action,—*viz.*, the breach of the contract to give possession,—the second suit was barred by the provisions of section 43 of Act X of 1877. LALJI MAL *v.* HULASI

[I. L. R., 3 All., 660

36. ——————— *Suit for declaration of title.—Right to possession.*—The fact that, at the time when the purchaser of certain lands sued, with a view of confirming his title to the lands under his purchase, for a decree declaring such title, he was in a position to have sued for possession of the lands, was no bar under the provisions of section 7, Act VIII of 1859, to his subsequently suing for possession of the same. TULSI RAM *v.* GANGA RAM

[I. L. R., 1 All., 252

37. ——————— *Right to possession.—Suit for declaration of title.—Civil Procedure Code, 1859, s. 7.*—*D.* being able to sue for the possession of certain property, omitted to do so, and sued in the first instance only for a declaration of her right to such property. The Court refusing to make any such declaration, on the ground that she could sue for possession, *D.* then sued for possession. *Held* that the second suit was not barred by section 7 of Act VIII of 1859. DARBO *v.* KESHO RAI

[I. L. R., 2 All., 356

38. ——————— *Suit for declaration of title.—Subsequent suit for possession.—Civil Procedure Code, 1882, s. 43.*—When a suit for a declaration of title and confirmation of possession of certain land has been dismissed on the ground that the plaintiff was not in possession of the land at the time of instituting the suit, a subsequent suit on the same title to recover possession is not barred under section 43 of the Civil Procedure Code. A cause of action consists of the circumstances and facts which are alleged by the plaintiff to exist, and which, if proved, will entitle him to the relief or to some part of the relief prayed for, and is to be sought for within the four corners of the plaint. *Jibunti Nath Khan* v. *Shib Nath Chuckerbutty, I. L. R., 8 Calc., 819,* followed. NONOO SINGH MONDA *v.* ANAND SINGH MONDA . . **I. L. R., 12 Calc., 291**

39. ——————— *Civil Procedure Code, 1877, s. 43.—Splitting remedies.—Suit for declaration of title and for possession.—Subsequent suit for possession.*—Where a previous suit for a declaration of title and confirmation of possession of certain land has been dismissed on the ground that the plaintiff was not in possession at the time of filing the suit, a subsequent suit on the same title for recovery of possession of the land is not barred under section 43 of the Code of Civil Procedure. *Buzloor Roheem* v. *Shumsoonnissa Begum, 11 Moore's I. A., 551,* discussed. JIBUNTI NATH KHAN *v.* SHIB NATH CHUCKERBUTTY

[I. L. R., 8 Calc., 819: 10 C. L. R., 537

KOMOLA KAMINY DEBIA *v.* LOKE NATH KUR

[I. L. R., 8 Calc., 825, note: 11 C. L. R., 183

40. ——————— *Civil Procedure Code, 1859, s. 7.—Suit for declaration of right to share.—Suit for share.*—A former suit brought by the daughter of one of four brothers of a joint Hindu family against her uncles for a declaration of her right to a share in certain bond-debts due to the joint estate (in which suit she obtained a decree), is not identical, under sections 2 or 7, Act VIII of 1859, with a subsequent action brought by the same plaintiff against the same defendants for a distinct share in certain moneys which the defendants had since realised upon the bond-debts and had appropriated to themselves, a fresh cause of action accruing to the plaintiff from the time of such appropriation. BURODA SOONDUREE DOSSEE *v.* RAJ BULLUB SEN

[18 W. R., 202

41. ——————— *Civil Procedure Code, 1877, s. 43.—Suit for declaration of right.—Subsequent suit for possession.*—In December 1878 *H.*, a Hindu widow, in possession by way of maintenance of a certain estate of which *R.* owned one third and *P.*, *B.*, and *S.* one third jointly, made a gift thereof to *N.* *H.* died in January 1879. In February 1879, *R.*, *P.*, *B.*, and *S.* joined in suing *N.* for a declaration of their proprietary right in two thirds of the estates and to have the deed of gift set aside. The Court treated the suit as one for a mere declaration of right, and dismissed it with reference to section 42 of the Specific Relief Act, 1877, on the ground that the plaintiffs had omitted to sue for possession, although they were able to sue for it. In November 1879, *R.*, *P.*, *B.*, and *S.* again joined in suing *N.*, claiming possession of two thirds of the estate, and to have the deed of gift set aside. *Per* STUART, *C. J.*, and STRAIGHT and OLDFIELD *JJ.*, that the causes of action in the two suits being different, the second suit was not barred by the provisions of section 43 of the Civil Procedure Code. *Per* TYRRELL, *J.*, that the plaintiffs being entitled to only one remedy in the former suit, the provisions of section 43 were not applicable to the second suit. RAM SEWAK SINGH *v.* NAKCHED SINGH

[I. L. R., 4 All., 261

42. ——————— *Civil Procedure Code, 1859, ss. 7 and 15.—Declaratory decree.—Subsequent suit for consequential relief.—Civil Procedure Code (Act X of 1877), s. 43.*—The plaintiffs brought a suit to have themselves declared

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entitled to an account, and obtained such a declaratory decree without asking for or obtaining any consequential relief. The defendants took no steps to render an account, and the plaintiffs brought another suit against them "for the amount of such Company's papers and other debts that might be found due by the defendants on an adjustment of accounts." *Held* that the plaintiffs were not barred from bringing such a suit, section 15 of Act VIII of 1859 being intended to modify the provisions of section 7 of the same Act. *Tulsi Ram* v. *Gunga Ram, I. L. R., 1 All., 252,* followed and approved. KALIDHUN CHUTTAPADHYA *v.* SHIBA NATH CHUTTAPADHYA

[I. L. R., 8 Calc., 483: 11 C. L. R., 57

43. ——————— *Civil Procedure Code, 1859, s. 7.—Declaratory decree.—Suit for possession of immoveable property.—Relinquishment of part of claim.—Act VIII of 1859, s. 15.—"Relief."*—In 1868 *B.* made, it was alleged, a gift of a zemindari estate to *K.* In 1869 *B.* died, and *K.'s* name was recorded in the revenue registers in the place of *B.'s* name in respect of the estate. In 1870 *K.* died, and her daughter *S.* applied to have her name recorded in the revenue registers in respect of the estate. *M.*, the illegitimate son of *B.*, objected, claiming to have his name recorded. His objection having been disallowed and *S.'s* name having been recorded, *M.*, in 1876, sued *S.* for a declaration of his proprietary right to the estate, and on the 29th June 1878 obtained such declaration. In January 1880 *M.* sold a moiety of the estate, and in December 1880 *S.* sold the entire estate. In February 1881 *M.'s* transferees sued *S.* and her transferee for possession of the moiety of the estate transferred to them by *M.* *Held* by the Full Bench (STUART, C. *J.*, dissenting) that such suit was not barred by the provisions of section 7 of Act VIII of 1859 by reason that *M.* had omitted to claim in the suit of 1876 possession of the estate. *Darbo* v. *Kesho Rai, I. L. R., 2 All., 356;* and *Kalidhun Chatturpadhya* v. *Shibo Nath Chutturpadhya, I. L. R., 8 Calc., 483,* followed. *Held* by STUART, *C. J.*, that such suit was barred by the provisions of section 7 of Act VIII of 1859 by reason of such omission. *Darbo* v. *Kesho Rai, I. L. R., 2 All., 356,* distinguished. The meaning of the term "relief" explained, and the distinction between it and the term "cause of action" pointed out. SARSUTI *v.* KUNJ BEHARI LAL . . **I. L. R., 5 All., 345**

44. ——————— *Civil Procedure Code, 1859, s. 7.—Fraud.—Cause of action.*—*S.*, as one of the heirs of his brother *M.*, sued the sons of *M.*, the other heirs of *M.*, for, amongst other things, a declaration of his right to share in the rights and interest of *M.* as the mortgagee under a deed of mortgage, which he valued at the principal sum advanced under the mortgage,—*viz.*, R5,600,—stating his cause of action to be the obstruction caused by the sons of *M.* to his sharing in *M.'s* estate. He obtained a decree declaring his title to the share claimed. *L.*, one of the sons of *M.*, had fraudulently concealed from and kept *S.* in ignorance of the fact that previously to the suit he had realised R8,624 under the mortgage. On this fact coming to *S.'s* knowledge he sued the sons of *M.* to recover his share of that sum. *Held* that the second suit was not barred by section 7 of Act VIII of 1859. *Bulwant Singh v. Chittan Singh, 3 N. W., 27,* followed and observed upon. LACHMAN SINGH *v.* SANWAL SINGH

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45. ——————— *Civil Procedure Code, 1859, s. 7.—Separate causes of action.*—Section 7 of Act VIII of 1859 required that every suit should include the whole of the claim arising out of the cause of action, meaning the whole of the claim arising out of the cause of action upon which the suit was brought, not that every suit should include every cause of action or every claim which the plaintiff had against the defendant. Accordingly, where a plaintiff had sued to obtain his share of an estate in land, in consequence of having been wrongfully dispossessed by the defendant, whom he afterwards in the present suit sued for his share of personal property, being entitled to both under a will, it was held that the subsequent suit was not barred by reason of the non-claim in the prior one. The claim in respect of the personalty had not arisen out of the cause of action which existed in consequence of the wrongful dispossession; the case was not like one of the conversion of several things; and the causes of action were distinct. *Buzlur Ruheem* v. *Shamsoonnissa Begum, 11 Moore's I. A., 551,* referred to. PITTAPUR RAJA *v.* SURIYA RAU . **I. L. R., 8 Mad., 520**

S C. RAJAH OF PITTAPUR *v.* VENKATA MAHIPATI SURYA . . . **L. R., 12 I. A., 116**

46. ——————— *Suit for property by person having a right in two capacities.*—*J.* had a right to share in a certain estate, as an heir to her father, and also as an heir to her brother. She transferred such right by sale to *H.* *H.* sued *S.*, who had acquired the whole estate by purchase at sales in execution of decrees against the other heirs of *J.'s* brother, for *J.'s* share as one of her brother's heirs in such estate, and obtained a decree. *H.* then sued *S.* for *J.'s* share as one of her father's heirs in such estate. *Held* that *H.* was debarred from bringing the second suit by the provisions of section 43 of Act X of 1877. SHAFKATUNISSA *v.* SHIB SAHAI . . . . **I. L. R., 4 All., 171**

47. ——————— *Civil Procedure Code, 1859, s. 7.—Different causes of action.—Suit for possession of land.—Subsequent suit for trees.*—In 1869 *P.* brought a suit against his grandmother *K.* and another person for possession of a piece of land which *P.* alleged had descended to him from his grandfather. In 1870 *P.* sued the said *K.* and one *E.* for some trees which he also claimed by right of inheritance from his grandfather. *Held* that the causes of action in the two suits by *P.* were different,—*viz.*, unlawful alienations by *K.* of the respective properties, the subject-matter of the different suits. Section 7, Civil Procedure Code, requires that every

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suit should include the whole of the claim arising from the same cause of action; but although the Civil Procedure allows of claims arising from different causes of action being included in the same plaint, there is no provision of law which makes it obligatory on the plaintiff to do so. PRAGJI RUDARJI *v.* ENDARJI BHIMBHAI . **9 Bom., 257**

48. ——————— *Separate suits for property acquired under one sale-deed.—Civil Procedure Code, ss. 42, 43.—R.* purchased two houses under the same sale-deed. Four years afterwards he sued for possession of one of the houses, alleging that he had been dispossessed by the ancestor of the defendant. Subsequently he sued the same defendant for possession of the other, alleging that, at the time when he instituted the former suit, he had already been dispossessed of the house now in question, and by the same person. *Held* that, although the plaintiff's title to both houses rested on the title acquired by him under one and the same sale-deed, yet the cause of action—*viz.*, his ouster from the two houses on different occasions—gave rise to two separate causes of action, which he was not bound to join in the former suit, there being nothing in the Civil Procedure Code to compel him to do so. *Jardine, Skinner, & Co.*, v. *Shama Soondurse Debia, 13 W. R., 196*; and *Ram Sunder Saha* v. *Delanney, 20 W. R., 103*, referred to. RIAYATULLAH KHAN *v.* NASIR KHAN . . . . . **I. L. R., 6 All., 616**

49. ——————— *Suit by heir after suit by his father for same cause of action.*—A suit by an heir on the same cause of action on which a suit was previously brought by his father, and for property which, though different, might have been included in that suit, is barred by section 7, Act VIII of 1859. SOORUJ PERSHAD TEWARY *v.* SAHEB LALL TEWARY . . . . . **3 W. R., 25**

50. ——————— *Civil Procedure Code, 1859, s. 7.—Suits for property purchased at different times.*—A former suit for a share of property purchased in the name of *G.*, one of the members of a joint family which claimed it to be joint property, does not bar the plaintiff from suing for other of the family property which was bought in the name of *M.*, another of the members, at another time, the latter claim being no part of the claim arising out of the cause of action in respect of the property first mentioned so as to come within the meaning of Act VIII of 1859, section 7. RAMHURRY MONDUL *v.* MOTHOOR MOHUN MONDUL . **20 W. R., P. C., 450**

51. ——————— *Suit for share of property not included in former suit because the permission of Government was necessary to sue.*—The plaintiff brought a suit in 1860 against the defendants to recover his share in the joint family property. The present claim, which was for a share in the rents of certain inam lands, also joint family property, was not included in the suit of 1860. At the date of the former suit the land in respect to which the present suit was brought was subject to the provisions of Regulation IV of 1831, and the Civil Courts had no jurisdiction to try the suit in respect to such land without the permission of the Government. It did not appear that the plaintiff had applied to the Government for permission to sue. *Held* that the plaintiff was not precluded by section 7 of the Civil Procedure Code from maintaining the present suit. Meaning of the words "cause of action" discussed. PATTARAVY MUDALI *v.* AUDIMULA MUDALI . . . . . **5 Mad., 419**

52. ——————— *Separate claims in same right.—Civil Procedure Code, 1859, s. 7.*—Where the plaintiff claimed by right of inheritance for partition of one out of a number of villages left by his ancestor, and the lower Court dismissed the claim as untenable under section 7, Act VIII of 1859,—*Held* that that section, though it might operate as a bar to any future claim by plaintiff for partition of the remaining villages by right of inheritance, could not be held to bar the present claim. CHOB SINGH *v.* BAHADOOR SINGH . **1 Agra, 55**

53. ——————— *Suits for property possessed under different rights.—Distinct causes of action.*—Where a lessee in one case, after resuming certain rent-free lands on behalf of his landlord, retained them in his own possession, and, in another case, retained portions of land which he had obtained by way of lease,—*Held* that, though the lessor's title to recover was the same, the causes of action were entirely distinct. DOORGA NATH ROY CHOWDHRY *v.* ROY KALEE NARAIN ROY **[24 W. R., 212**

54. ——————— *Suits by heir to cancel alienations made at various times.*—A widow of a deceased Mahomedan alienated her husband's property by two deeds to different persons at different times. A suit was brought by the heirs of the deceased, first to set aside the second alienation, and then a second suit to cancel the first alienation. *Held* that section 7, Act VIII of 1859, did not bar the second suit. The heir's cause of action against different alienees, who have acquired possession under alienations made at different times and under different circumstances, was not one and the same, the question of right of succession to the deceased and widow's competency to alienate arising equally in both the cases notwithstanding. It was not obligatory on the heirs to make all the alienees parties to the first suit upon pain of forfeiting all future right of suit against them by reason of such omission. JEHAN BEBEE *v.* SAIVUK RAM **[1 Agra, F. B., 109: Ed. 1874, 82**

55. ——————— *Suit to set aside alienations of portions of estate.*—A Hindu, whose share in an ancestral estate had been alienated by a co-proprietor, instituted simultaneously three different actions against the co-proprietor, and the persons to whom the alienations had respectively been made, to recover several distinct parcels of land which constituted his share. *Held* that as the plaintiff had

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but one single cause of action against the co-proprietor, he ought to have brought but one suit against him, and either included all the alienees in this suit, or brought separate actions against the alienees for the several pieces of land in their possession, and caused the proceedings in these suits to be stayed till the suit against the co-proprietor was determined. The course of procedure last indicated is the more correct course. VITHU *v.* NARAYAN DABHULKAR [5 Bom., A. C., 30

56. ——————— *Civil Procedure Code, 1877, s. 43.—Act VIII of 1859, s. 7.—Suit for partition of portion of property.*—If a person intentionally omit to sue for any portion of his claim, the provisions of section 43 of Act X of 1877, as well as the provisions of section 7 of Act VIII of 1859, bar the institution of a second suit for the portion so omitted: so that where a family property consisted of lands as well as debts, and the plaintiff at first sued for a partition of debts only, and then compromised and withdrew the suit without the permission of the Court, it was held that his second suit to demand a partition of the whole property was not maintainable. UKHA *v.* DAGA [I. L. R., 7 Bom., 182

57. ——————— *Different cause of action.—Suit for share of undivided property.—Subsequent suit for partition of whole of the property.*—In applying the provisions of section 7 of the Code of Civil Procedure, 1859, the first thing to be considered is whether the cause of action in the second suit is the same as the cause of action in the first. If the cause of action be the same, the second suit is barred in respect of any portion of the claim omitted from the first suit, but not otherwise. Accordingly where the plaintiff, as a member of an undivided Hindu family, sued for a share of a particular portion of the family property leaving the rest undivided, and his suit was rejected, as it had not been brought for his whole share, it was held that the suit was no bar to a second suit to have the whole property divided, as the causes of action in the two suits were entirely distinct. KAKAJI BIN RANOJI *v.* BAPUJI BIN MADHAVRAV . . 8 Bom., A. C., 205

58. ——————— *Civil Procedure Code, 1859, s. 7.—Suit for partition omitting mortgaged lands.—Subsequent suit for share of mortgaged lands.*—The plaintiffs in 1863 sued the defendants for the plaintiff's share in certain undivided family property, and did not include in their claim certain lands then in the possession of mortgagees, which lands had been mortgaged by one of the defendants as manager of the family. The defendants subsequently redeemed the mortgaged lands. The plaintiffs then filed a suit to recover their share of the lands so redeemed. *Held* that they were entitled to maintain such suit, as the mortgaged lands had not been available for an actual partition at the time of the former suit. BALKRISHNA VITHAL *v.* HARI SHANKAR . . . . 8 Bom., A. C., 64

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59. ——————— *Omission of mortgaged field in suit for partition.—Subsequent suit.*—In 1861 the plaintiff brought a general partition suit (No. 1363) to recover his share of the family property in the possession of the first defendant and did not include in that claim a field then in the possession of a mortgagee. The field was subsequently redeemed by the first defendant, who again mortgaged it to the second defendant. The plaintiff then filed the present suit to recover his share in the field. The first Court allowed the plaintiff's claim, but the District Judge on appeal threw it out, on the ground that it was barred both by section 7 of the Civil Procedure Code, 1859, and by the "law of limitation." The Judge based the latter finding on certain allegations made by the plaintiff in suit No. 1363, and in another suit brought by him against the first defendant and the then mortgagee of the field, from which allegations the Judge inferred a separation between the plaintiff and the first defendant. *Held* in special appeal that the claim was not barred by section 7 of the Civil Procedure Code, because the mortgaged field was not available for an actual partition at the time of the former suit, No. 1363 of 1861. The true question for consideration in cases of this kind is whether the former suit was one in which the plaintiff might have recovered precisely that which he seeks to recover in the second, and where the former suit is one for an actual division of property, the plaintiff is not bound in it to ask for a declaration defining his right in property not then capable of division. *Balkrishna Vithal* v. *Hari Shankar, 8 Bom., A. C., 64,* followed. NARAIN BABAJI DABHOLKAR *v.* PANDURANG RAMCHANDRA DABHOLKAR . . 12 Bom., 148

60. ——————— *Civil Procedure Code, 1882, s. 43.—Relinquishment of part of claim.—Suit for maintenance and suit for a share of the inheritance, distinguished.—Cause of action.—Election, Doctrine of.—Succession Act (X of 1865), s. 172, excep.*—A testator bequeathed all his property to his nephew, in which he included the share of his brother's widow in the ancestral property; but at the same time made a suitable provision for her maintenance and worship. The widow at first sued for and obtained the allowance allotted to her under the will, and afterwards brought a suit for a share in the ancestral property. *Held* that, although having regard to the doctrine of election (Succession Act, section 172) the widow was precluded from again bringing a suit for a share of the ancestral property, it could not be said that the suit was barred under the provisions of section 43 of the Code of Civil Procedure, inasmuch as the two claims were distinct, and indeed inconsistent, and did not arise out of the same cause of action. PRAMADA DASI *v.* LAKHI NARAIN MITTER . . I. L. R., 12 Calc., 60

61. ——————— *Suits to recover money misappropriated by manager of joint estate.—Civil Procedure Code, 1859, s. 7.*—In a suit by members of a Hindu family which had become separate in 1862, to recover certain moneys said to have been misappropriated by the defendant while manager of the

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joint estate, it appeared that the plaintiffs had previously sued him since the separation to recover certain other moneys belonging to the said joint estate, also said to have been misappropriated by him while manager, and obtained a decree. *Held* that the present claim should have been included in the former suit; and whether the omission was by mistake or not, it must be taken to have been relinquished, and under section 7 of Act VIII of 1859 could not now be entertained. GANESH CHANDRA CHOWDHRY *v.* RAM COOMAR CHOWDHRY . **3 B. L. R., A. C., 265**

S. C. RADHA KISHORE DEBIA *v.* RAM COOMAR CHOWDHRY . . . . **12 W. R., 79**

62. ——————— *Suit to recover money misappropriated by agent.*—In a suit to recover certain sums of money misappropriated by defendant as plaintiff's general agent, where a similar suit had been brought against the same party upon a like allegation as to other sums of money,—*Held* that all the acts of misappropriation having occurred before plaintiff called upon defendant to render an account, constituted a claim arising out of one and the same cause of action. MONOHUR DAS *v.* SEETUL PERSHAD . . . . . **23 W. R., 418**

63. ——————— *Relinquishment of lands in another talook.—Civil Procedure Code, 1859, s. 7.*—Where, in a former suit to set aside the sale of a tenure, the plaintiff in specifying the lands subject to that tenure excluded a portion of the lands once included therein as having been by a survey award included in the adjacent talook,—*Held* that the exclusion of such land from the former suit was not a relinquishment within the meaning of section 7, Act VIII of 1859, so as to affect the right of the plaintiff to maintain a suit for the land so excluded. PROSUNNO CHUNDER BANERJEE *v.* KALLY PERSAUD GHOSE . . . . . **W. R., 1864, 134**

64. ——————— *Estates in different districts.—Civil Procedure Code, 1859, s. 7.*—The plaintiff claimed two estates as belonging to her deceased husband from which she alleged she was dispossessed by the principal defendant and others claiming under her. The estates were situated in different districts, A. and B. She obtained a decree for possession of the estate in A. In a subsequent suit for the estate in B. she alleged a different act of dispossession, but the defendants were the same. *Held*, the cause of action in both suits was the same, and that as she could have proceeded under section 12 of the Code and brought one suit for both estates in either A. or B., the suit was barred by section 7 of the Code. JUMOONA DASSEE CHOWDHRANEE *v.* BAMASOONDEREE DASSEE CHOWDHRANEE **[2 W. R., 149**

65. ——————— *Civil Procedure Code, 1877, s. 43.—Suit on mortgage of property in different districts.—Former suit on one portion only.*—*A., B., C.,* and *D.* were the proprietors of a 2 annas 13 gundas share in mouzah E., and also of a 2 annas 13 gundas share in mouzah F., both in the district of Bhagalpore. On the 19th September 1872 *A.* mortgaged a 1 anna 4 pies share of E. to *H.* On the 20th September 1872 *A., B., C.,* and *D.* mortgaged their shares in E. and F., together with property in the district of Tirhoot, to the plaintiff. On the 24th March 1873 *A.* mortgaged his share in E. and F. to *J.* On the 13th November 1874 *A.* and *B.* mortgaged their shares in E. to *K.* On the 25th March 1874 *J.* obtained a decree on his mortgage, and the interests of *A.* and *B.* were purchased on the 5th January 1875 by *L.* On the 17th April 1874 *M.*, to whom the first mortgage had been assigned, obtained a decree and attached the property mortgaged. *L.* objected that he had already purchased the interest of *A.*, and on the objection being allowed, *M.* instituted a suit against *L.* for a declaration of priority, and obtained a decree on the 9th August 1876. In execution of this decree the property first mortgaged was sold on the 4th March 1878, and after satisfying the mortgage a surplus of R7,664 remained. After the institution of the first suit and before *L.'s* purchase, the plaintiff instituted a suit upon his mortgage in the Tirhoot Court without having obtained leave to include that portion of the mortgaged property situate in the Bhagalpore district. On the 17th July 1874 a decree was made in this suit. On the 17th January 1877 *K.* obtained a decree on his mortgage, and the shares of *A.* and *B.* in E. were sold, and purchased on the 3rd September 1877 by *N.* The plaintiff had his decree transferred for execution to the Bhagalpore Court, and he attached the surplus sale-proceeds and a 1 anna 9 gundas share in E. This attachment was withdrawn on the objection of *L.*, who drew out the surplus sale-proceeds. The share purchased by *N.* was also released from attachment. The plaintiff now sued *L., N.,* and the mortgagors for a declaration that his decree of the 17th July 1874 affected the E. property, to recover the surplus sale-proceeds from *L.*, and in case the decree should not be valid to the extent mentioned, for a decree declaring his prior lien on the property in E. *Held* that the cause of action had been split. *Grish Chunder Mookerjee* v. *Ramessuree Debia, 22 W. R., 308;* and *Kurun Singh* v. *Mahomed Fyaz Ali Khan, 10 B. L. R., 1,* followed. BUNGSEE SINGH *v.* SOODIST LALL **[I. L. R., 7 Calc., 739: 10 C. L. R., 263**

66. ——————— *Civil Procedure Code, 1859, s. 7.—Multifariousness.*—Section 7 of Act VIII of 1859 does not bar a suit for a declaration that property in the defendant's possession is subject to the mortgagee's lien, on the ground that such property was part of the property mortgaged, and was not included in a previous suit against other parties for other portions of the property. IN THE MATTER OF THE PETITION OF HURRY MOHUN PARAMANICK **[14 B. L. R., 418, note: 15 W. R., 486**

67. ——————— *Suit to set aside mortgage by Hindu widow.—Civil Procedure Code, 1859, s. 7.*—A Hindu widow executed deeds of gift in which her late husband's mother, the nearest

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reversioner, concurred. After the death of the widow, but in the lifetime of the mother, the next presumable reversioner sued to set aside the deeds and for possession. Such suit was held to be no bar to a second suit by the same plaintiff to set aside a mortgage by the widow and the mother of the deceased of a portion of the property which was the subject of the first suit, although in that suit the property was described as subject to the mortgage, and the name of the mortgagee was mentioned. The true test of the application of section 7 of Act VIII of 1859 is, whether there has been a splitting of the cause of action. GOLAB SINGH *v.* KURUN SINGH. KURUN SINGH *v.* MAHOMED FYAZ ALI KHAN . . . **10 B. L. R., P. C., 1 [14 Moore's I. A., 176, 187**

68. ——————— *Suit for declaration of lien.—Surplus sale-proceeds.—Civil Procedure Code, 1859, s. 7.*—A mortgagee brought a suit against the mortgagor to have a declaration of his lien over the mortgaged properties, and obtained a decree. He afterwards brought another suit against certain attaching creditors of his mortgagor, to have a declaration of his lien over certain surplus moneys in the hands of the Collector, who, previously to the institution of the first suit, had sold certain of the mortgaged properties free of all incumbrances for arrears of Government revenue. *Held* that the second suit was not barred under Act VIII of 1859, section 7. KRISTODASS KUNDOO *v.* RAMKANT ROY CHOWDHRY **[I. L. R., 6 Calc., 142 : 7 C. L. R., 396**

69. ——————— *Suit for redemption.—Omission of claim for improvements and accretions.—Civil Procedure Code, 1859, s. 7.*—A suit for redemption of land, without specification of details, includes a claim for restoration of all accretions and improvements which it may have received while in the hands of the mortgagee; and if the Court omits to adjudicate upon part of the claim, the mortgagor is not precluded, by section 7 of Act VIII of 1859, from bringing a second suit in respect of that part. BAKSHIRAM GANGARAM *v.* DARKU TUKARAM . . . . . **10 Bom., 369**

70. ——————— *Suit for overpayments to mortgagee in possession after suit to redeem. —Civil Procedure Code, 1859, s. 7.*—Where a mortgagor filed a suit to redeem mortgaged lands, alleging that the mortgagees in possession had been overpaid, but did not, in that suit, claim to recover the overpayments, which were therefore not awarded to him, it was held that he could not recover such overpayments in a fresh suit brought for that purpose, as his claim was barred by section 7 of the Code of Civil Procedure. BALOJI TAMAJI POTHAR *v.* TAMANGOUDA BIN GHANASYAM GOUDA **[6 Bom., A. C., 97**

71. ——————— *Suits for possession of mortgaged property.—Civil Procedure Code, 1882, s.4 3.*—*N.* being mortgagee in possession of five eighths of a pangu (share) of certain land—security for a debt of R400—hypothecated his rights to *M.* in 1876. In 1878, *K.* bought two eighths of the said five eighths from the mortgagor. In 1879, *K.* sued *N.* claiming possession of his two eighths on payment of R400 and obtained a decree and possession thereof. Pending this suit, *N.* assigned his mortgage to *M.* *M.* was aware of the suit, and *K.* was aware of the assignment when he paid R400 into Court for *N.* In 1883, *K.* bought the remaining three eighths from the mortgagor and sued *N.* and *M.* to recover possession thereof. *M.* pleaded that the suit was barred by section 43 of the Code of Civil Procedure, inasmuch as *K.* might have recovered the five eighths in the suit against *N.*—*Held*, that this plea was bad. BRAHANNAYAKI *v.* KRISHNA **[I. L. R., 9 Mad., 92**

72. ——————— *Civil Procedure Code, 1877, s. 43.—Leave to omit to sue for any remedy.—First hearing of suit.*—The plaintiff held a mortgage of certain immoveable property given to him by the defendant to secure the repayment of a loan of money with interest. The plaint stated the fact of the mortgage, but prayed only for a money-decree. The mortgage contained a personal undertaking to repay. Plaintiff's counsel, directly upon the case being called on for hearing and before the case had in any way been gone into, applied (under section 43 of Act X of 1877, Civil Procedure Code) for leave to reserve his remedies under the mortgage, taking then only a money-decree—an application which, it is provided by that section, must be made "before the first hearing." *Held* that the application was not too late. PESTONJI BEZONJI *v.* ABDOOL RAHIMAN . . **I. L. R., 5 Bom., 463**

73. ——————— *Civil Procedure Code, 1877, s. 43.—Res judicata.—Dekkhan Agriculturists' Relief Act, XVII of 1879.—Mortgagor.—Mortgagee.—Suit for account merely.- Subsequent suit for possession.*—Where there has been a suit between an agriculturist mortgagor and his mortgagee for an account merely, a subsequent suit for possession on payment of the money declared to be due is barred under either section 13 or section 43 of the Code of Civil Procedure. BHAU BALAJI *v.* HARI NILKANTHRAV . . **I. L. R., 7 Bom., 377**

74. ——————— *Civil Procedure Code, 1877, s. 43.—Bond for the payment of money hypothecating property as collateral security for such payment.—Omission of claim.*—The obligee of a bond for the payment of money, hypothecating immoveable property as collateral security for such payment, sued for the moneys due on the bond, but omitted to claim the enforcement of his lien, and obtained a decree only for the payment of the amount of the bond-debt. He subsequently sued to enforce his lien. *Held* that, under section 43 of Act X of 1877, as amended by section 7 of Act XII of 1879, he could not be permitted to sue to enforce his lien. GUMANI *v.* RAM PADARATH LAL . **I. L. R., 2 All., 838**

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75. ——————— *Civil Procedure Code, 1877, s. 43 —Omission to sue for one of several remedies.—Mortgage.*—A mortgagee had two remedies in respect of the mortgagor's breach to pay the stipulated interest at the time fixed by the contract of mortgage, one being a suit on foreclosure proceedings to convert the mortgage into a sale, and the other a suit to recover his money against his debtor by enforcement of his lien against the mortgaged property. He sued for the first remedy in respect of such breach, omitting the second. His suit was dismissed on the ground that he was not entitled to such remedy until the expiration of the mortgage term. He afterwards sued for the second remedy. *Held* that, inasmuch as the mortgagee was not at the time of his suing for the first remedy "a person entitled to more than one remedy," not being "entitled" to the first but only to the second, his omission at that time to sue for the second remedy was not under section 43 of Act X of 1877 a bar to his afterwards suing for it. PIARI *v.* KHIALI RAM

[I. L. R., 3 All., 857

76. ——————— *Civil Procedure Code, 1877, s. 43.—Lease by usufructuary mortgagee of mortgaged property to mortgagor.—Hypothecation of mortgaged property as security for rent.—Suit for rent in Revenue Court.—Suit for enforcement of lien in Civil Court.*—The usufructuary mortgagee of certain land gave a lease of it to the mortgagor, the latter hypothecating the land as security for the payment of the rent. Arrears of rent accruing, the mortgagee sued the mortgagor for the same in the Revenue Court and obtained a decree. Subsequently the mortgagee sued the mortgagor in the Civil Court to recover the amount of such decree by the sale of the land, claiming under the hypothecation. *Held* that the second suit was not barred by the provisions of section 43 of Act X of 1877. BANDA HASAN *v.* ABADI BEGUM . I. L. R., 4 All., 180

77. ——————— *Civil Procedure Code, 1877, s. 43.—Mortgage.—Decree enforcing lien.—Suit against purchaser to enforce decree.*—The obligee of a bond for the payment of money, in which certain property was mortgaged as collateral security, sued the obligor for the money due on such bond, claiming the enforcement of such mortgage. At the time the suit was brought such property was in the possession of a third person, who had purchased it at a sale in execution of a money-decree against the obligor of such bond. The obligee did not make the purchaser a defendant to the suit. He obtained a decree in the suit for the sale of such property. Being resisted in bringing it to sale by the purchaser, he sued the purchaser to have it declared that such property was liable to be sold under his decree. *Held* that such second suit was not barred by the provisions of section 43 of the Civil Procedure Code. BAHRAICHI CHAUDHRI *v.* SURJU NAIK

[I. L. R., 4 All., 257

78. ——————— *Civil Procedure Code, 1877, s. 43.—Lease by usufructuary mortgagee of mortgaged property to mortgagor.—Hypothecation of mortgaged property as security for rent.—Suit for rent in Revenue Court.—Suit for enforcement of lien in Civil Court.*—The usufructuary mortgagee of certain land granted a lease of such land to the mortgagor, the latter hypothecating the land as security for the payment of the rent. Arrears of rent accruing, the mortgagee sued the mortgagor for the same in the Revenue Court and obtained a decree. Subsequently the mortgagee sued the transferee of such land in the Civil Court to recover the amount of such decree by the sale of the land, claiming under the hypothecation. *Held*, following *Banda Hasan* v. *Abadi Begam, I. L. R., 4 All., 180*, that such claim was not barred by the provisions of section 43 of Act X of 1877; that it could only be made through the medium of the Civil Court; and that the shape in which it was presented was perfectly regular. IMAMI BEGAM *v.* GOBIND PRASAD

[I. L. R., 4 All., 318

79. ——————— *Omission to claim compensation-money.—Subsequent suit.—Civil Procedure Code, 1859, s. 7.—A*, a Hindu widow, granted, without legal necessity, a mokurrari lease of certain mouzahs, portion of her husband's estate, to *B*. During *B.'s* possession part of the lands comprised in the granted mouzahs were taken up by Government, and the compensation-money was lodged in the Collectorate. *A*. having afterwards died, the next heirs of *A.'s* husband, on the 7th October 1871, sued *B*. to recover possession of the mouzahs, but not being aware of the facts, did not in that suit claim the compensation-money lying in the Collectorate. While this suit was still pending, *B*., in March 1872, drew the compensation-money out of the Collectorate. The heirs, after obtaining a decree against *B*. for possession of the mouzahs, on the 13th September 1875 instituted a fresh suit against him to recover the compensation-money wrongfully drawn out by him from the Collectorate. *Held* that the suit was not barred by section 7 of Act VIII of 1859. *Held*, further, that the claim of the heirs was a proper subject for a regular suit, and could not have been heard and determined in the course of the proceedings in execution of the decree which they had obtained against *B*. for possession of the mouzahs. NUND LALL BOSE *v.* ABOO MAHOMED

[I. L. R., 5 Calc., 597

S. C. NUND LALL BOSE *v.* ABU SYED

[5 C. L. R., 45

80. ——————— *Civil Procedure Code, 1882, s. 43 —Suit for money paid under Land Acquisition Act.*—In 1876 *K*. sued *M*. on a bond, dated 25th December 1869, for R5,000, by which certain land in the district of South Tanjore was hypothecated as security for the debt, and obtained a decree on the 6th of April 1876 for the sale of the lands, which he purchased on the 17th August 1876 for R6,000. *K*. then discovered that part of the land hypothecated, situated within the jurisdiction of the Subordinate Court at Kumbakonam, had been ac-

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quired by a railway company under the Land Acquisition Act in 1874, and that the compensation, R460 (claimed by *M.'s* mother, who sold the land to the company), was lodged in the treasury of Kumbakonam in the name of *M.'s* mother. *K.* having applied to the Subordinate Court for an order for payment out of this sum, the Court, by order dated 28th February 1880, directed that the question of title to the money should be decided by suit. *K.* then sued *M.*, as the sole heir of his deceased mother, in the District Munsif's Court of Tiruvadi (where *M.* resided), for a declaration of right to and to recover the said sum of R460. The suit was filed on the 4th September 1880. On the 16th April 1880 *M.* assigned his interest in the money sued for to *V.*, who was made defendant in the suit on his own application, and pleaded that the land having been acquired by the railway company in 1874, before the suit upon the bond was filed, this suit was barred by section 43 of the Code of Civil Procedure. *Held* that *K.* not having known, at the date of his suit on the bond, of the acquisition of the land by the railway company, the suit was not so barred. VENKATA VIRARAGAVA VAYYANGAR *v.* KRISHNASAMI AYYANGAR

[I. L. R., 6 Mad., 344

81. ——————— *Civil Procedure Code, 1882, s. 43.—Bond with alternative conditions for repayment of loan.—Decree for interest.—Second suit for further interest.*—A bond provided for the repayment of a loan with interest by a stated time. In default of payment by that time it was provided that the loan might be added to an existing mortgage for a term of years, and repaid at the end of the term, together with the mortgage-debt. After the expiration of the time fixed for the repayment of the loan, the obligee sued and obtained a decree for the interest which had accrued due at the date of the suit. He now sued for the further interest which had since become due. *Held* that the second suit was not barred by section 43 of the Code of Civil Procedure, for that the first suit being for interest merely, and not for principal and interest, which were then both due, the plaintiff must be taken to have elected, under the bond, to add the principal sum to the previously existing mortgage-debt, in which case he forfeited nothing by suing merely for arrears of interest as they became due. SHRI SHAILAPA *v.* BALAPA LOKANNA . I. L. R., 7 Bom., 446

82. ——————— *Civil Procedure Code, 1882, s. 43.—Multiplicity of suits.*—When money is due on two or more bonds at the time of the institution of a suit, and the bonds appear to have been originally passed in respect of one claim, it is not incumbent upon the plaintiff to sue upon both bonds in one action. There is nothing in section 43 of the Code of Civil Procedure which would justify this Court in going behind the bonds to consider the circumstances out of which they sprung, albeit those circumstances might themselves at the time have constituted a cause of action. UMED DHOLCHAND *v.* PIR SAHEB JIVA MIYA . I. L. R., 7 Bom., 134

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83. ——————— *Suit on bond.—Part of decree infructuous for want of jurisdiction.—Civil Procedure Code, 1859, s. 7.*—Where a holder of a bond in which properties are hypothecated as security for money lent, brings a suit for the whole claim and obtains a decree, but a part of that decree is infructuous for want of jurisdiction, he is not precluded by Act VIII of 1859, section 7, from maintaining a second suit to enforce such part of his claim (as was infructuously decreed in the first suit) against a third party who derives his title through the borrower subsequent to the date of the bond. GRISH CHUNDER MOOKERJEE *v.* RAMESSUREE DABEE

[22 W. R., 308

84. ——————— *Promissory note payable by instalments.—Act IX of 1850, s. 34.*—When two or more instalments of a promissory note, payable on the face of it by instalments, are due, the holder of the note is not at liberty to sue separately for each instalment or for some of them; he must sue for all the instalments due in one action. A judgment recovered in a suit for one instalment when others are due is a bar to a suit subsequently brought for the latter. MACKINTOSH *v.* GILL

[12 B. L. R., 37 : 20 W. R., 358

85. ——————— *Suit on instalment-bond.—Civil Procedure Code, 1859, s. 7.*—Plaintiff sued upon an instalment-bond as each successive instalment fell due, and the whole of his claim on each instalment was included in his suit. He recovered the full amount of the first instalment under the first decree, and a portion of the second instalment in execution of his second decree. He now sued for the unpaid portion of the second instalment, and for the whole of the third instalment, including the interest. *Held* that such suit was not affected by section 7, Act VIII of 1859. BOLAKEE LAL *v.* CHOWDHRY BUNGSEE SINGH

[7 W. R., 309

86. ——————— *Promise to pay balance found due on accounts stated in instalments.—Promissory note.—Note of agreement in account book.*—In 1876 accounts were stated between *B.* and *D.*, and a balance of R800 was found to be due from *D.* to *B.* *D.* gave *B.* an instrument whereby he agreed to pay the amount of such balance in four annual instalments of R200. *B.* at the same time noted in his account book that such balance was "payable in four instalments of R200 yearly." In July 1879 *B.* sued *D.* upon such instrument for the balance of the first instalment. The Court trying this suit refused to receive such instrument in evidence, on the ground that it was a promissory note, and as such was improperly stamped. Thereupon *B.* applied for and obtained permission to withdraw from the suit, with liberty to bring a fresh one for the original debt. In October 1879 *B.* again sued *D.*, claiming the balance of the first and second instalments, basing his claim upon the note made by him in his account book. He obtained a decree in that suit for the amount claimed by him. In 1880 *B.*

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again sued *D.*, claiming the amount of the third instalment, again basing his claim upon such note. *Held* by SPANKIE, *J.*, that the suit last mentioned was barred by the provisions of section 43 of Act X of 1877, inasmuch as *B.* should in the second suit brought by him against *D.* have claimed the balance of the money found due from *D.* to him upon the accounts stated between them, instead of claiming the balance of the instalments due. *Held* by OLDFIELD, *J.*, that such suit was not so barred, the causes of action therein and in the former suit being different. BANARSI DAS *v.* BHIKARI DAS **[I. L. R., 3 All., 717**

87. ——————— *Civil Procedure Code, 1859, s. 7.—Suit to enforce claim against representatives of deceased.—Held* that section 7 of Act VIII of 1859, which barred all future suits for the portion omitted or relinquished, had not the effect of prohibiting more than one suit to enforce satisfaction of a claim against the representatives of a deceased person. The creditor had a right to make all the property of the deceased debtor in the hands of the several persons who might have succeeded to it liable for the payment of his debt, but he was not bound to bring his suit in such a shape as to include the whole of the representatives and the whole of the property at the risk of being precluded from all future suits. PURUMSOOKH *v.* SOOBHAN **[2 Agra, 323**

88. ——————— *Civil Procedure Code, 1877, s. 43.—Stamp Act, 1879, s. 41.—Duty and penalty under Stamp Act.—Costs.—Suit to recover amount paid.*—The plaintiff in a suit on an instrument not duly stamped was compelled to pay the amount of duty and penalty: the proper stamp on the instrument ought to have been paid by the defendant. In a suit with reference to section 41 of the Stamp Act to recover the amount paid,—*Held* that the plaintiff could not have recovered the amount as costs of the former suit in which it was paid, and that a fresh suit to recover it was maintainable. ISHAR DAS *v.* MASUD KHAN . . **I. L. R., 6 All., 70**

89. ——————— *Suit under colour of suit for rent to try question of title.—Civil Procedure Code, 1859, s. 7.*—Where a suit for possession would be met by a plea in bar, the plaintiff cannot be permitted to have the question of title tried under colour of a rent suit, such a proceeding being opposed to the principle laid down in Act VIII of 1859, section 7. RAM TUNOO KOLOO *v.* SHABODA PERSHAD MULLICK. GOLAM MAHOMED SHAHA *v.* SHABODA PERSHAD MULLICK . . . . **19 W. R., 91**

See DAYAL CHAND SAHOY *v.* NABIN CHANDRA ADHIKARI. **8 B. L. R., 180: 16 W. R., 235**

90. ——————— *Suit for abatement of rent.—Subsequent suit for excess of rent paid.*—A plaintiff who has sued for and obtained a decree for an abatement of rent payable in respect of a putni held by him, may afterwards sue for a refund of the rent paid by him before instituting the suit for abatement of rent, in excess of the amount justly payable, notwithstanding that he might, if he had chosen, have included this claim in his suit for abatement of rent. OKHOY KOOMAR CHUTTOPADHYA *v.* MAHATAP CHUNDER BAHADOOR **[I. L. R., 5 Calc., 24**

91. ——————— *Civil Procedure Code, 1882, s. 43.—Enhancement of rent, Suit for. —Subsequent suit for rent.*—Under sections 42 and 43 of the Civil Procedure Code, plaintiffs must bring their entire claim and every remedy enforceable in respect of that claim into Court at once, and if they fail to do that in any suit, they cannot afterwards avail themselves of any remedy on which they have not chosen to insist in the first suit. Suits for enhanced rent, and suits for rent, are claims arising in respect of the same subject-matter, and a plaintiff cannot be allowed, after having unsuccessfully sued for rent at an enhanced rate, to sue for the original rent for previous years. KUNNOCK CHUNDER MOOKERJEE *v.* GURU DASS BISWAS **[I. L. R., 9 Calc., 919: 12 C. L. R., 599**

92. ——————— *Civil Procedure Code, 1859, s. 7.—Suit for arrears of rent.*—A suit for arrears of rent was not barred under Act VIII of 1859, section 7, by the fact that the plaintiff had split his claim,—*i.e.*, the jumma; but the circumstance that a part of the jumma had been omitted would be a bar to the plaintiff suing subsequently for such part. PURSUN GOPAL PAUL CHOWDHRY *v.* POORNANUND MULLICK . . . **21 W. R., 272**

93. ——————— *Suits for arrears of rent.—Rent for separate years.—Civil Procedure Code, 1859, s. 7.*—Under section 7 of Act VIII of 1859 it was held that arrears of rent for successive years are several and distinct causes of action, in respect of which a plaintiff may institute separate suits. SUTTO CHURN GHOSAL *v.* OBHOY NUND DOSS **[2 W. R., Act X, 31**

RAM SOONDER SEIN *v.* KRISHNO CHUNDER GOOPTO . . . . **17 W. R., 380**

KRISTO KINKUR PORAMANICK *v.* RAMDHUN CHATTERJEE . . . . **24 W. R., 326**

94. ——————— *Suit for rent.—Rent of separate successive years.*—At the close of the Bengali year 1283, which was on the 11th of April 1877, the defendant owed to the plaintiff, his landlord, the rents of his holding for the years 1281, 1282, and 1283. The plaintiff, in the month of April 1878, before the close of the year 1284, instituted a suit for the rent for 1281 only, and obtained a decree. On the 10th of April 1879 he instituted another suit for recovery of the rents for the years 1282, 1283, and 1284. *Held* that the claim for the years 1282 and 1283 was barred under section 43 of the Code of Civil Procedure, 1877. The cases of *Sutto Churn Ghosal* v. *Obhoy Nund Doss, 2 W. R., Act X, 31; Ram Soonder Sein* v. *Krishna Chunder Goopto, 17 W. R., 380;* and *Krishna Kinkur*

RELINQUISHMENT OR OMISSION TO SUE FOR PORTION OF CLAIM. —Splitting cause of action—*continued.*

Poramanick v. *Ramdhun Chatterjee, 24 W. R., 326,* are overruled by section 43 of Act X of 1877, TARUCK CHUNDER MOOKERJEE *v.* PANCHU MOHINI DEBYA . I. L. R., 6 Calc., 791: 8 C. L. R., 297

See BALAJI SITARAM NAIK *v.* BHIKAJI SOYARE PRABHU . . . I. L. R., 8 Bom., 164

95. ——— *Civil Procedure Code, 1882, s. 43.—Suit for arrears of rent.—Application of the Civil Procedure Code to suits in Revenue Courts.—Relinquishment of part of claim.*—The plaintiff sued under the provisions of Act X of 1859 to recover arrears of rent for the years 1287, 1288, and 1289 (1880—1882), after having obtained a decree for the rent due for the year 1286 (1879) in a suit instituted after the rent for the year 1289 (1882) had become due. *Held* that the provisions of section 43 of the Civil Procedure Code applied, and that the second suit was consequently barred. *Madho Prakash Singh* v. *Murli Manohar, I. L. R., 5 All., 405,* cited and approved. *Taruck Chunder Mookerjee* v. *Panchu Mohini Debya, I. L. R., 6 Calc., 791,* cited. ADHIRANI NARAIN KUMARI *v.* RAGHU MAHAPATRO . . . I. L. R., 12 Calc., 50

96. ——— *Civil Procedure Code, 1882, s. 43.—Cause of action.—Separate suits for rent due for successive years.*—Petitioners filed two suits in a Small Cause Court on the same day to recover rent due for two successive years under the same lease. The sum of the two claims exceeded the pecuniary limit of the Court's jurisdiction. The suit for the rent of the first year was dismissed under section 43 of the Code of Civil Procedure, on the ground that the claim ought to have been included in the suit for the second year's rent. *Held* that, as the petitioners had no intention of abandoning either claim, the proper course was to allow them to withdraw both suits and file a fresh suit in a competent Court. ALAGU *v.* ABDOOLA [I. L. R., 8 Mad., 147

97. ——— *Suit waiving difference of exchange.—Civil Procedure Code, 1859, s. 7.*—An auction-purchaser of a zemindari, being entitled to be paid his rents in Azeemabad rupees, and having sued for the same in Company's rupees (the former coinage being more valuable than the latter), his omission to sue for the difference of value was held to be an abandonment of claim under section 7, Act VIII of 1859, and to bar his recovery of it in a fresh suit. MAHOMED SOADUCK GOLESTAN *v.* FORBES . . . 5 W. R., Act X, 90

98. ——— *Civil Procedure Code, 1859, ss. 7 and 97.—Omission of portion of claim.—Withdrawal of suit.—Institution of fresh suit including claim omitted.*—Where the plaintiffs in a suit were permitted to withdraw from the same, with a view to bringing a fresh suit which should include a portion which had been omitted of the claim arising out of the cause of action, and such fresh suit was brought, the additional portion of the claim in that suit was not barred by section 7 of Act VIII of 1859. ILAHI BAKHSH *v.* IMAM BAKHSH [I. L. R., 1 All., 324

99. ——— *Civil Procedure Code, 1882, s. 43.—Act XII of 1881 (N.-W. P. Rent Act), s. 140.—Case struck off with liberty to plaintiff to bring a fresh suit.—Omission to sue for part of claim in case struck off.—Fresh suit for omitted claim not barred.*—A recorded co-sharer of a mehal sued the lumbardar for his share of the profits of the mehal for the year 1286 Fasli. At the time of the institution of the suit, the profits for 1287 and 1288 Fasli also were due, but no claim was then made in respect of them. The suit was struck off on account of the non-appearance of the parties under section 140 of Act XII of 1881 (N.-W. P. Rent Act), with leave to the plaintiff to bring a fresh suit. Subsequently the plaintiff brought a suit against the same defendant for his share of the profits of the mehal for 1287 and 1288 Fasli. *Held* that the suit was not barred by the provisions of section 43 of the Civil Procedure Code. MULCHAND *v.* BHIKARI DASS. I. L. R., 7 All., 624

REMAND.

	Col.
1. POWER OF REMAND . . .	4895
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See ISSUES—DECISION ON ISSUES. [5 W. R., P. C., 63: 10 Moore's I. A., 476

See STAMP DUTY, REFUND OF— [B. L. R., Sup. Vol., 511 11 B. L. R., 372, note

——— entailing delay and expense.

See DECLARATORY DECREE, SUIT FOR—REQUISITES FOR EXISTENCE OF RIGHT. [I. L. R., 4 Calc., 190

——— to take fresh evidence.

See PRIVY COUNCIL, PRACTICE OF—REMISSION OF CASE TO INDIA. [I. L. R., 3 Calc., 645

REMAND—*continued.*

1. POWER OF REMAND.

1. ——— **Appellate Court, Power of.**—*Power of Court of Special Appeal.—Irregular order.—Civil Procedure Code, 1859, ss. 351, 354, 355.*—A Court of Special Appeal has, indirectly, the same powers as are vested in a Court of Regular Appeal by sections 351, 354, and 355, Act VIII of 1859, in respect to a wrong order passed by a lower Appellate Court. WUZEER ALI *v.* KALEE COOMAR CHUCKERBUTTY . . . . . **11 W. R., 228**

Contra, section 354 relating to trial of additional issues, is only applicable to regular appeals. KEBUL KISHEN MOZOOMDAR *v.* AMBALA **[7 W. R., 326**

KALI KRISTO TAGORE *v.* JUDOO LALL MULLICK **[24 W. R., 20**

2. ——— *Special appeal.—Act VIII of 1859, ss. 351, 354, and 355.*—In a suit on a bond executed under a mooktearnamah, which was not produced, the Court of first instance admitted secondary evidence of it, and decreed the suit. In special appeal, the High Court was of opinion that the secondary evidence had been improperly admitted, and, therefore, the decree in the plaintiff's favour could not stand. Upon this it was contended that the suit should be dismissed, as the Court hearing a case in special appeal had no power, under such circumstances, either to remand the case or to call for additional evidence. *Held* that, although the powers conferred by sections 351, 354, and 355 of Act VIII of 1859 on the Court of Regular Appeal are not directly given to the Court of Special Appeal, yet the Court, when it found the order of a lower Appellate Court was wrong, could point out the error and direct the lower Appellate Court to make such order as would rectify the error. AZUR ALI *v.* KALI KUMAR CHUCKERBUTTY . **2 B. L. R., A. C., 315**

3. ——— *Remand order.—Civil Procedure Code (Act X of 1877), s. 562.*—An Appellate Court has no power to remand a case except under the provisions of section 562 of the Code of Civil Procedure. MUDUN MOHUN PODDAR *v.* BHAGGOMANTO PODDAR . **I. L. R., 8 Calc., 923**

4. ——— *Local investigation.*—An Appellate Court is not competent to remand a case for re-trial after a local investigation. JEEBUN KISSEN ROY *v.* DWARKANATH ROY CHOWDHRY . . . **W. R., 1864, 363**

2. GROUND FOR REMAND.

5. ——— **Error in law.**—*Civil Procedure Code, 1859, s. 372.*—To justify a remand it must be shown that the lower Court has committed some error in law, or that the case comes in some other way within the terms of section 372, Civil Procedure Code. HURISH CHUNDER SHAHA *v.* HURISH CHUNDER PAUL . . . **25 W. R., 325**

6. ——— *Erroneous decision of first Court.—Civil Procedure Code, 1859,*

REMAND—*continued.*

2. GROUND FOR REMAND—*continued.*

Error in law—*continued.*

s. 354.—Where a Subordinate Judge's decision in appeal was not a right decision (his orders having been impossible of execution), the District Judge was held to have been empowered, under Act VIII of 1859, section 354, to send the case back, after fixing an issue, for a finding. UMER ALI *v.* RUMZAN ALI **[23 W. R., 347**

7. ——— **Decision given when Court was closed.**—The fact that the decision of the Court of first instance was passed on a day when the Court was closed does not necessitate the lower Appellate Court remanding the case. WARRISH ALLY *v.* LALLA RAM SAHAYE . . **1 Hay, 197**

8. ——— **Undervaluation of suit.**—*Pre-emption suit.*—Where a pre-emption suit was valued at R31, though the consideration was R2,000, the High Court, in special appeal, refused to remand the case to enable plaintiff to make up the deficient stamp duty. MEWA LALL *v.* BEHAREE LALL **[14 W. R., 195**

9. ——— **Addition of parties.**—*Rejection of application to make intervenor a party.—Act X of 1859, s. 77.*—Where a Deputy Collector rejects an application by a third party to intervene under section 77, Act X of 1859, a Judge has no jurisdiction on that party's appeal to remand the case to the Deputy Collector for re-trial, with directions to make the intervenor a party. KHONDKAR KEFAETOOLLAH *v.* MAHOMED KABEL **[9 W. R., 345**

10. ——— *Question as to validity of alienation.—Improper remand by Appellate Court.*—*M.*, a Hindu widow, executed a deed of usufructuary mortgage in *J.'s* favour, the property hypothecated being the separate property of her husband in which she only had a life interest. On the latter applying for mutation of names, *B.* objected that he was in proprietary possession under a deed of gift executed by *M.*, and the objection was allowed. In virtue of a clause in the deed of mortgage that, in case any demand was made in respect of the property within the mortgage term, the mortgagee was entitled to sue for the mortgage-money notwithstanding the term had not expired. *J.* sued to recover the money by the sale of the hypothecated property. *B.*, in addition to an objection to the validity of the mortgage based on the deed of gift, pleaded that it was invalid under Hindu law, as against him, the next reversioner to the property, there being no legal necessity for the alienation. The lower Appellate Court held that the mortgage was valid as against the deed of gift, but invalid as against the next reversioner. Finding that *B.* was not the next reversioner, it remanded the case to the Court of first instance, with instructions to make certain persons who had applied to that Court to be made parties to the suit, on the ground that they were the nearest heirs to *M.'s* deceased husband, but whose application that Court had rejected, defendants in the suit, as also any other persons who might claim to be near heirs, and to

REMAND—*continued.*

2. GROUND FOR REMAND—*continued.*

Addition of parties—*continued.*

determine as between them who was the next reversioner, and to further determine whether such next reversioner had relinquished his rights in favour of *B.*, and whether the validity of the mortgage could be questioned on the ground that *M.*, having only a limited interest, had alienated for an indefinite period. It was held that the suit was improperly remanded, and the Court decreed *J.'s* claim in respect of the property. BULAKI SINGH *v.* JAI KISHEN DAS . **7 N. W., 203**

11. ——————— *Order of remand.—Civil Procedure Code (XIV of 1882), ss. 562, 564, and 566.—Addition of necessary parties not a ground for remand on a first appeal.*—Where a Court of first appeal remanded a case to the Court of first instance for the addition of all necessary parties, and at the same time decided an issue as to the merits, and it appeared that the Court of first instance had not disposed of the case "on a preliminary point, so as to exclude any evidence of fact which appeared to the Appellate Court essential to the determination of the rights of the parties,"—*Held*, first, that, on an appeal from the order of remand, the decision on the merits, on which the order of remand was not based, was not before the High Court on appeal; and, further, that the order of remand was unsustainable under sections 562 and 564 of the Civil Procedure Code (Act XIV of 1882), which are strictly binding on all Courts of first appeal. The proper course for the lower Appellate Court would have been to join the parties whom it found to be necessary, and then to raise the proper issues as between the plaintiff and those parties, and, if necessary, to refer the issues to the Court of first instance for trial under section 566. GANESH BHIKAJI JUVEKAR *v.* BHIKAJI KRISHNA JUVEKAR **[I. L. R., 10 Bom., 398**

12. ——— **Examination of witness.**—*Application to have witness examined.—Omission to make order.*—Where in the first Court the defendant applied for a witness to be examined, but no order was made on the subject, and on the case coming up on appeal, the Appellate Court, on its notice being called to the omission, remanded the case to the lower Court to entertain the application,—*Held* that there was nothing illegal in such a remand, though the remand sections of Act VIII of 1859 did not expressly apply to it. BONOMALEE CHURN MYTEE *v.* HAFIZUDDEEN . **13 B. L. R., 247, note: 12 W. R., 317**

13. ——————— *Refusal to summon witnesses.*—If a defendant's case is not closed, he has a right to have his witnesses summoned and to get an opportunity of producing them if he can do so in time. Where such right was refused to a defendant by the first Court, and his objection on that score was not noticed by the lower Appellate Court, the High Court, on special appeal, remanded the case for a fresh hearing. BROJO NATH MOOKHOPADHYA *v.* PROTAP CHUNDER THAKOOR **[22 W. R., 296**

REMAND—*continued.*

2. GROUND FOR REMAND—*continued.*

Examination of witness—*continued.*

14. ——————— *Insufficient examination of witness.—Bad legal advice.*—Where the oral evidence taken fell short of the requirements of the Evidence Act, section 63, only because the witnesses were not properly questioned, the High Court, on special appeal, held it to be unjust to let the plaintiff suffer on account of the inefficiency of his legal adviser, and so remanded the case for re-trial. LOCHUN SINGH *v.* HET NARAIN SINGH **[24 W. R., 232**

15. ——— **Local inquiry, Order for.**—*Civil Procedure Code, 1859, ss. 351, 354.—Further evidence.*—A Judge on appeal in a suit to open roads leading to a kotee, expressing an opinion that the facts had not been sufficiently ascertained, directed a further local inquiry to be made, and remanded the case to the lower Court to be again decided there after such local inquiry. *Held* that he had no authority upon such a ground to remand the case for re-decision, there being no suggestion under Act VIII of 1859, section 351, that the lower Court had erroneously decided a preliminary point excluding evidence, and the reference not being of an issue framed by the Appellate Court under section 354. NUNDOCOOMAR BANNERJEE *v.* BARRY **[Marsh., 121: 1 Hay, 260**

16. ——— **Necessity of further evidence.**—*Civil Procedure Code, 1859, ss. 351, 352.—Cases heard together.—Quære,*—Whether, under sections 351 and 352, Act VIII of 1859, when several cases are tried together, remand can be allowed for a new trial, on the ground that the plaintiff's evidence had not been completely heard, and that it was an error in the Court below to determine all the cases at once. SNADDEN *v.* TODD, FINLAY, & CO. **[7 W. R., 313**

17. ——— **Defect in pleadings.**—*Jurisdiction.*—When it did not appear on the face of the pleadings, or on the evidence, under what kind of bastu the land in dispute fell, and no plea to the jurisdiction of the Court under Act X of 1859 had been taken in the Courts below, the High Court would not remand the case to inquire under which class of bastu land the subject-matter of the suit fell, nor entertain the point of jurisdiction on appeal. NAIMUDDA JOWWARDAR *v.* MONCRIEFF . **3 B. L. R., A. C., 283**

S. C. NYMOODDEE JOARDAR *v.* MONCRIEFF **[12 W. R., 140**

18. ——— **Defect in plaint.**—*Civil Procedure Code, 1859, s. 354.*—Where there is a defect in the allegations in a plaint and the subject-matter of the absent allegation has not been tried in the Court below, the proper course is for the Judge to frame an issue, and refer it to the lower Court for trial under Act VIII of 1859, section 354. KASSEENAUTH MOOR *v.* REEJOONISSA . **Marsh., 198: 1 Hay, 467**

19. ——— **Omission to settle issues.**—*Remand for re-trial.*—Where no issues have been

REMAND—*continued.*

2. GROUND FOR REMAND—*continued.*

Omission to settle issues—*continued.*

settled in a suit, the High Court will remand the case for re-trial. JOGESHUR RAE *v.* DOOLUN RAE [2 N. W., 183

20. ——— **Omission to raise material issue.**—*Suit for arrears of rent.—Parties.*—A case was remanded for re-trial on its merits because it was found, on special appeal, that material error had been committed in consequence of the omission on the part of the lower Appellate Court to frame issues between the parties,—*e.g.*, the suit being for arrears of rent, the issue *inter alia* whether the plaintiffs, who were shareholders with others, were entitled to claim the fraction of the rent for which they sued. SHEO SAHOY SINGH *v.* BECHUN SINGH . 22 W. R., 31

21. ——— *Improper demand by Appellate Court.—Raising fresh issues.—A.* sued to eject a ryot on the ground of his holding over after the term of his pottah had expired. The ryot denied that he had ever held under a pottah from *A.*, and alleged that the jote belonged to *B.* Plaintiff's allegations were found to be false, and his suit was dismissed. The lower Appellate Court directed *B.* to be made a defendant, and remanded the suit to have the question of ownership tried between *A.* and *B.*, at the same time agreeing with the Court of first instance that the allegations in the plaint were false. *Held* that the lower Appellate Court should have dismissed the case, and was wrong in so remanding it. *Per* CUNNINGHAM, *J.*—The right of framing new issues arises where the issues framed are insufficient to dispose of the matters raised in the plaint. *Ram Dhun Khan* v. *Haradhun Puramanik, 9 B. L. R., 107, note : 12 W. R., 404,* cited and distinguished. BHOOBUN DASS MUNDUL *v.* BILASHMONEY DASSEE [1 C. L. R., 415

22. ——— **Raising fresh issues.**—*Appellate Court.—Reference of issues for trial.*—An Appellate Court cannot remand a case for trial with instructions to frame new issues. It may refer any issues for trial by the lower Court, whose finding and evidence are to be returned to the Appellate Court for a final decision. CHUNDERNATH SURMA *v.* ROMANATH SURMA . . 1 W. R., 69

23. ——— *Appellate Court.—Defective or insufficient issues.*—Where no preliminary point has been wrongly decided by the Court of first instance, and no evidence has been excluded, and the Appellate Court considers the issues, nevertheless, to have been defective or insufficient, it is the duty of the latter not to remand the case, but to re-settle the issues and to determine the case itself. FUTTEHOOLLAH *v.* OOMDANISSA BIBEE [14 W. R., 69

24. ——— *Trial on erroneous issues.—Appellate Court.*—Where the Munsif, acting erroneously, forced the plaintiffs to amend their plaint, and, in consequence of that amendment, the Munsif also amended the issues and tried the suit on an entirely erroneous issue, the Judge of the lower Appellate Court, as a Court of Equity, should, of his own motion, have sent the case back to the Munsif, directing him to try it on its merits, and pointing out that he had taken a wrong view of the law. GURU PRASHAD ROY *v.* KAS MOHUN MUKHOPADHYA . . . . 1 C. L. R., 431

25. ——— *Illegal remand.—Civil Procedure Code, 1859, s. 354.*—In a suit for a declaration of plaintiff's title to and possession of a share of certain property, she alleged that her title was derived by purchase from one *R.*, who held under a deed of gift from *T.*, the wife of the original holder. Defendants' case was that their title was derived from the three grandsons of one *R. K.* by his daughter *C.* The first Court dismissed the suit, considering that the defendants' title was proved, and that *T.* was not competent to dispose of the property by gift to plaintiff's vendor. The lower Appellate Court, finding that it was not satisfactorily proved that the defendants' alleged three vendors were really the daughter's sons of *R. K.*, remanded the case for a finding on that issue. *Held*, with reference to section 354, Act VIII of 1859, that the order of remand was illegal. HUROSOONDUREE DEBIA *v.* UNNO POORNA DEBIA . . . 11 W. R., 550

26. ——— **Dismissal of case on point not arising.**—*Suit under s. 230, Civil Procedure Code, 1859.*—Where a lower Appellate Court found that a suit falling substantially under section 230, Act VIII of 1859, which had been received and numbered as such, had been subsequently dismissed by the Court of first instance upon a point which did not properly arise under that section,—*Held* that it should have remanded the case to the first Court for trial and decision under that section. SABIR KHAN *v.* RAM LUCKHEE CHOWDHRAIN . 10 W. R., 438

27. ——— **Remand for further evidence.**—*Civil Procedure Code, 1859, ss. 352, 354.—Held* by JACKSON, *J.* (whose opinion prevailed), that where a lower Appellate Court is of opinion that further evidence should be taken, it may take such evidence itself, or require the first Court to do so, but it is not competent to remand a case for a second decision upon any of the issues, such a course being forbidden by section 352, Act VIII of 1859. *Held* by MARKBY, *J.* (dissenting), that a lower Appellate Court has power, under section 354, to send back a case for trial upon an issue not satisfactorily tried by the Court of first instance. UMBIKA CHURN MUNDUL *v.* RAMDHUN MOHURRIR . 11 W. R., 35

28. ——— **Remand for re-trial on particular issue.**—*Improper remand.—Civil Procedure Code, 1877, ss. 562, 566, 567.—Decision by lower Court on the merits.*—A decree in a suit having been passed on the merits by the Court of first instance, the Court of Appeal, being of opinion that an issue not tried by the former Court ought to have been tried, reversed the decree, and, under section 562 of the Civil Procedure Code, remanded the case for

REMAND—*continued.*

2. GROUND FOR REMAND—*continued.*

Remand for re-trial on particular issue —*continued.*

trial upon that issue. *Held* that the order reversing the decree and remanding the case for trial of the issue was improper, and that the proper course for the Appellate Court to have taken was that laid down by sections 566 and 567 of the Code. MOKUND LAL *v.* HURBULLUBH NARAIN SINGH . **12 C. L. R., 136**

29. ——— Obscurity in judgment.—*Affirming judgment of lower Court.*—Where an Appellate Court has considered a case and come to the same conclusion as the Court of first instance, occasional obscurity in the judgment of the former does not constitute a proper ground for a remand. BROJO NATH SEN *v.* SOORJA KANT SEN . **25 W. R., 276**

30. ——— Omission to try ground of appeal taken.—*Review of judgment.*—Where a ground of appeal stated in the written memorandum is not alluded to when the appeal comes on for hearing, the Court is not at fault if no decision is passed upon it. If, having had his attention called to it, a Judge fails to decide such point, the proper course for the parties aggrieved is to ask him to review his judgment. In neither case is the omission ground for remand on appeal. YUSOOF ALI CHOWDHRY *v.* FYZOONISSA KHATOON CHOWDHRAIN . . . . . **15 W. R., 296**

31. ——— Omission to decide point raised.—*Issue, though trifling, left undecided.*—Where the lower Courts have come to no decision on a point raised, the plaintiff in special appeal has a right to a remand for the point to be tried, even though very trifling. MULLICK AMANUT ALI *v.* UKLOO PASEE . . . . . **25 W. R., 140**

32. ——— Improper reception of evidence by lower Court.—*Ground for decision, Consideration of.*—On second appeal, the High Court has, generally speaking, no right to look at the evidence to decide whether the remaining evidence, in a case other than that which has been improperly admitted, is sufficient to warrant the finding of the Court below. The only cases which can be, with propriety, disposed of under such circumstances without a remand, are those where, independently of the evidence improperly admitted, the lower Court has apparently arrived at its conclusions upon other grounds. WOMES CHUNDER CHATTERJEE *v.* CHONDER CHURN ROY CHOWDHRY **[I. L. R., 7 Calc., 293**

33. ——— Mistake in admitting or rejecting evidence.—*Error affecting merits.*—An act done by a party with the view of defeating a claim made against him does not estop him from disputing afterwards the validity of that act. BYKUNT NATH SEN *v.* GOBOOLLA SIKDAR . **24 W. R., 392**

34. ——— Omission to consider evidence.—*Civil Procedure Code, 1859, s. 372.*—When important evidence has not been carefully examined by the Judge in the lower Court, the Appellate Court will, on special appeal, remand the suit under section 372 of Act VIII of 1859. DEGUMBER DOSSEE *v.* KISSEN DHUR NUNDY . **1 Ind. Jur., N. S., 35**

REMAND—*continued.*

2. GROUND FOR REMAND—*continued.*

Omission to consider evidence—*continued.*

35. ——— Omission to decide material issue.—*Decree based on point not in issue.*—The lower Appellate Court not having decided material issues and having based its decree on a document not recorded in the case, the decree was reversed, and the case remanded for a fresh decision on the merits. NICHHABHAI PRAGJI *v.* ISSE KHAN HAJI ABDULL KHAN . . **2 Bom., 313 : 2nd Ed., 267**

DALPAT SINGH *v.* NANABHAI **[2 Bom., 323 : 2nd Ed., 306**

BAI VIJKOR *v.* FAKIRBHAI **[2 Bom., 335 : 2nd Ed., 317**

CHANDRABHAGABHAI *v.* KASHINATH VITHAL **[2 Bom., 341 : 2nd Ed., 323**

BALAJI VISHVANATH JOSHI *v.* DHARMA **[2 Bom., 385 : 2nd Ed., 363**

LUCHEE RAM *v.* MAHANI RAM . **1 Agra, 10**

GOOLJEHAN *v.* BUNNO . . **1 Agra, 252**

SHAMA NUND *v.* RAMAVATAR PANDEY **[1 Agra, Rev., 1**

SAJAN *v.* ROOP RAM . . **2 Agra, 61**

SHIAM LALL *v.* NARAIN DASS . **2 Agra, 106**

SHADEE RAM *v.* SURMA . . **2 Agra, 110**

LUTCHMUN *v.* JOGUL KISHORE . **3 Agra, 99**

MUHAMMAD VALAD ABDUL MULNA *v.* IBRAHIM VALAD HASAN . **3 Bom., A. C., 160**

PARVATI *v.* BHIKU . **4 Bom., A. C., 25**

AJURAM MANIRAM *v.* KUSAJI **[4 Bom., A. C., 43**

GOLUCK CHUNDER DUTT *v.* ANUNT KISHORE GOSSAIN . . . . **25 W. R., 38**

36. ——— *Civil Procedure Code.*—After a case is closed in the lower Court and is brought up on appeal to the superior Court, it cannot be remanded for re-trial on fresh evidence, on the ground that the Judge below failed to try one of the issues. The Court of Appeal is bound, under section 353, Act VIII of 1859, to decide the case itself. FUZEELUN BEEBEE *v.* OMDAH BEEBEE **[10 W. R., 469**

37. ——— Omission to try issue.—*Reversal of finding on first issue.—Omission to decide second issue.*—The finding of the Court below on the first issue being reversed, the suit was remanded for trial of the second issue, the Judge having omitted to determine that, and the defendant not having given the evidence upon it, in consequence of the first issue being found for him on the evidence given by the plaintiff. MAGANBHAI HEMCHAND *v.* MANCHABHAI KALLIANCHAND **[3 Bom., O. C., 79**

REMAND—*continued.*

2. GROUND FOR REMAND—*continued.*

Omission to try issue—*continued.*

38. ——————— *Civil Procedure Code, 1859, ss. 351, 352.*—In remanding a case to a Court of first instance for the trial of an issue which that Court had been directed to try, but had not tried, a Judge was held to have acted with strict propriety and in conformity with the provisions of sections 351 and 352, Act VIII of 1859. RAM CHAND MOOKERJEE *v.* KAMENEE DEBEA **[10 W. R., 236**

39. ——————— *Finding on issues framed.*—The High Court will not in a special appeal remand the case where there has been a distinct finding by the District Judge on the only issue framed by him, though he may have omitted to find on another issue raised before the Munsiff, but not called for by either party on appeal. MOTI BHAGVAN *v.* HARJIVAN GIRDHURDAS **[2 Bom., 34: 2nd Ed., 32**

40. ——————— *Civil Procedure Code, 1859, s. 352.*—Where the lower Court had decided a case on the merits, and the Appellate Court did not find that there had been any omission to try any issue or determine any question essential to the decision of the case on the merits, or that further evidence was necessary to enable it to determine any such issue or question,—*Held,* the Appellate Court was in error in remanding the case under section 352 for a fresh trial. MAHESH CHUNDRA DAS *v.* MADHAB CHANDRA SIRDAR **[2 B. L. R., S. N., 13: 10 W. R., 388**

41. ——— **Insufficiency of evidence for decision of material issue.**—*Civil Procedure Code, 1859, ss. 351, 354.*—Where there is no sufficient evidence before the Appellate Court for the disposal of an issue which is material to the determination of the suit, the proper course to be followed is to remand the case under section 354, and not under section 351. RAM PERSHAD *v.* KISHNA **[3 Agra, 146**

42. ——————— *Civil Procedure Code, 1859, s. 354.*—Where an Appellate Court finds that there is no evidence upon the record to enable it to decide a question at issue between the parties, and remands the case under section 354 of the Code for additional evidence, it ought to require such evidence with the finding of the first Court to be sent up to it for decision. SHUMBOO CHUNDER SURNOKAR *v.* RUSSICK CHUNDER CHUNG . **15 W. R., 346**

43. ——————— *Absence of evidence on material issues.*—The lower Appellate Court has no power to remand a case, which has come before it on appeal, to the Court of first instance for a second trial, except where the first Court has decided the case upon a preliminary issue in such a way as to cause an absence of material evidence bearing upon the issues on the merits between the parties. LALLA SHOOBH NARAIN *v.* NURSINGH NARAIN **[20 W. R., 148**

REMAND—*continued.*

2. GROUND FOR REMAND—*continued.*

44. ——— **Case decided on preliminary point.**—*Hearing on entire evidence.*—Where all the evidence has been taken and the case decided on a preliminary point, no remand should be made. RAMA KOER *v.* LALLA BHUGWAN LALL **[22 W. R., 224**

45. ——— **Point not raised in Court below.**—*Sufficiency of evidence for decision.*—The Appellate Court will not remand a case for re-trial on a point not raised in the Court below if the evidence already recorded is sufficient to enable the Appellate Court itself to decide the point. HARIDAS PURSHOTAM *v.* GAMBLE . . . . **12 Bom., 23**

46. ——— **Decision on sufficient evidence.**—*Appellate Court.—Improper remand.*—A case should not be remanded when the Appellate Court is of opinion that the lower Court cannot properly come to a different decision upon the evidence than that to which it has already come. BONOMALEE CHURN MYTEE *v.* SHOROOP HOOTAIT **[14 W. R., 60**

47. ——— **Decision on preliminary point.**—*Appellate Court having all the evidence before it.*—Where a lower Appellate Court has before it all the evidence which the parties wish to adduce, and decides upon a preliminary point (*e.g.*, the genuineness of a pottah), it has no authority to remand the case, but should itself try it. RAM JOY SEIN *v.* NUNDO MOYEE DABEA . . **10 W. R., 374**

48. ——— **Decision on one issue out of many.**—*Decision after hearing all the evidence.—Civil Procedure Code, 1882, ss. 562, 565, 566.—Illegal order of remand.*—A District Munsif having taken all the evidence offered on the issues in a suit, disposed of the suit upon his finding on one of the issues without deciding the rest. On appeal the District Judge reversed the decree and remanded the suit for the trial of the issues left untried. *Held* that, under section 562 of the Code of Civil Procedure, the order of remand was illegal. AMMA *v.* KUNHUNNI **[I. L. R., 9 Mad., 355**

49. ——— **Omission to decide on point for decision.**—The District Judge not having come to any positive finding in his decree on the point for decision laid down by himself on appeal, the suit was remanded for a trial on the merits. RAMDAS SAKHARLAL *v.* GANGADHAR RAGHUNATH DONGRE **[2 Bom., 186: 2nd Ed., 178**

50. ——— **Order of execution on insufficient evidence.**—*Duty of Appellate Court.*—When a lower Court, on insufficient evidence of a decree having been kept in force, orders execution, the Appellate Court should not summarily reverse the order, but should remit the case, that the decree-holder may give further proof of the fact. NILKUNT CHUCKERBUTTY *v.* SHEO NARAIN KOONWAR **[8 W. R., 276**

51. ——— **Omission to decide on merits of case.**—*Suit dismissed on preliminary point.*—

REMAND—*continued.*

2. GROUND FOR REMAND—*continued.*

Omission to decide on merits of case— *continued.*

Power to decide case if reversed on that point on appeal.—Remand.—When a Court of first instance, after taking evidence, dismisses a suit upon a preliminary objection without giving a decision upon the merits of the case, and the decree is reversed on appeal, the Court of Appeal, if it considers the evidence on record sufficient, may decide the case, and is not bound to remand it for trial under section 562 of the Civil Procedure Code, 1877. BANDI SUBBAYYA *v.* MADALAPALLI SUBANNA . **I. L. R., 3 Mad., 96**

52. ——— **Decision by lower Court on preliminary point.**—*Civil Procedure Code, 1859, s. 351.*—An Appellate Court is not justified in sending back a case for re-trial under section 351 of the Code of Civil Procedure, merely because the lower Court has disposed of it upon a preliminary point, unless such point has been so disposed of as to exclude evidence of fact which appears to the Appellate Court essential to the rights of the parties. JOOGMAYA DEBIA *v.* RAMCHUNDER CHATTERJEE **[10 W. R., 378**

53. ——— **Evidence insufficient for decision on merits.**—*Decision in favour of suit proceeding, Reversing lower Court's.*—The Judge, after disposing of the case on the only point on which the Munsif had decided,—*viz.*, whether there was a cause of action,—and having satisfied himself that there was not sufficient evidence on the record to enable him to pass a proper decision upon the merits, was held clearly right in remanding the case to the Munsif. BROMMO MOYEE DEBIA *v.* KOOMODINEE KANT BANERJEE. BURODA KANT BANERJEE *v.* KOOMODINEE KANT BANERJEE . **17 W. R., 466**

54. ——— **Evidence sufficient, but further inquiry necessary.**—*Reference of issue for trial.—Civil Procedure Code, 1859, s. 354.*—Section 351, Act VIII of 1859, is meant for those cases in which a lower Court has disposed of a case on a purely preliminary point. When abundant evidence has been taken, if the lower Appellate Court think any further inquiry necessary, the proper course is not to remand the case to the lower Court, but to frame an issue, and to refer the same to the lower Court for trial under section 354. RAM CHUNDER GOOPTA *v.* BHAGESSUR SURMA **[W. R., 1864, 357**

LUCHMUN LALL DOOBEY *v.* HURSOHOY LALL **[W. R., 1864, 361**

HUREENARAIN GOSSAIN *v.* SUMBHOONATH MUNDUL . . . . . **1 W. R., 6**

HERRIKOSIMA *v.* STEPHENSON . **1 W. R., 298**

HILLS *v.* OSMAN BISWAS . . **25 W. R., 35**

BUNGO CHUNDER BANERJEE *v.* CHUNDER NATH CHUCKERBUTTY . . . **25 W. R., 47**

GOLUCK CHUNDER SEN *v.* PURESH MAHOMED **[25 W. R., 284**

REMAND—*continued.*

2. GROUND FOR REMAND—*continued.*

55. ——— **Preliminary issue as to right to bring suit.**—*Remand for trial on merits.*—Where a suit for rent was decided and dismissed by the lower Court, on the issue whether or not the plaintiff's title to sue could be made out,—*Held* that it was not competent to the lower Appellate Court to remand the case in order that it might be tried on its merits. GOPAL CHUNDER GOOHO *v.* JUGGODUMBA DOSSIA . . . . . **10 W. R., 411**

56. ——— **Dismissal of suit as brought in wrong Court.**—*Suit instituted in Revenue instead of Civil Court.—Appellate Court, duty of.—N.-W. P. Rent Act, 1881, s. 208.*—Where a suit instituted in the Revenue Court is dismissed by the Court of first instance, on the ground that it should have been instituted in the Civil Court, and the Appellate Court affirms the decision of the first Court, the Appellate Court should, under section 208 of the N.-W. P. Rent Act, 1881, remand the case to the Civil Court competent to entertain it for disposal on the merits. AHMAD-UD-DIN KHAN *v.* MAJLIS RAI **[I. L. R., 5 All., 438**

57. ——— *Suit instituted in Revenue instead of Civil Court.—N.-W. P. Rent Act, 1881, ss. 207, 208.*—In a suit instituted in the Court of an Assistant Collector, an objection was taken that the suit was not maintainable in the Revenue Court. The objection was allowed, and the suit dismissed. On appeal by the plaintiff, the Assistant Collector's decision was affirmed. The Appellate Court had not before it the materials necessary for the determination of the suit. *Held*, reading together sections 207 and 208 of Act XII of 1881 (N.-W. P. Rent Act), that though the objection to the jurisdiction was taken in the first Court and repeated before the Appellate Court, the latter should only have *pro tanto* entertained it for the purpose of determining to what Court it should direct its order of remand, and should not have passed an order the effect of which was to maintain the dismissal of the suit. DEBI SARAN LAL *v.* DEBI SARAN UPADHIA **[I. L. R., 6 All., 378**

SHEO PRASAD *v.* ANRUDH SINGH **[I. L. R., 6 All., 440**

58. ——— **Reversal of lower Court on point of limitation.**—*Trial on merits and limitation.—Remand for trial on merits.*—The lower Court found the suit barred by limitation, but also heard and dismissed the suit on its merits. *Held* that, though in appeal limitation be held not to bar the suit, there should be no remand for re-trial on the merits. KERTEENARAIN CHOWDHRY *v.* PERTHENARAIN CHOWDHRY . . . **1 W. R., 32**

59. ——— **Suit held not barred by limitation.**—*Trial on merits.—Civil Procedure Code, 1859, s. 351.*—Where an Appellate Court decides that a suit is not barred by limitation after it has taken evidence and gone into the whole case, the decision is not one within section 351, and the Court is not competent to remand the case, but ought to try it

REMAND—*continued.*

2. GROUND FOR REMAND—*continued.*

Suit held not barred by limitation—*continued.*

upon the evidence. HUSSUN ALI CHOWDHRY *v.* MANOOWAR ALI . . . **21 W. R., 413**

60. ——— Decision on limitation and on the merits.—*Insufficiency of evidence.—Civil Procedure Code, 1859, ss. 353, 357.—Power to remand.*—Where the Court of first instance decides both on the general merits and the plea of limitation, and the Judge of the Appellate Court considers that the evidence upon the record is not sufficient to allow of a satisfactory judgment, and that he is in a position legally to order further evidence to be taken, he ought to proceed in the manner provided in sections 354 to 357 of the Code of Civil Procedure, but has no right to set aside the first Court's decree and remand the case for re-trial. GOOROO PERSHAD DUTT *v.* SREENATH BANERJEE . **15 W. R., 314**

61. ——— Decision on merits.—*Insufficiency of evidence.—Civil Procedure Code, 1859, s. 351.*—When the decision of a lower Court is not on a preliminary point, the lower Appellate Court cannot remand the suit to that Court, with directions to take further evidence and to re-try the case, but the appeal must be kept pending on the file, and the record must be sent to the lower Court, with orders to take the necessary evidence. KALLEE SUNKUR ROY *v.* KISHTO DOOLAL CHOWDHRY **[W. R., 1864, 296**

62. ——— Additional evidence.—*Issue, Trial of, by lower Court.—Defect of parties—Successor of Judge making remand, Power of*—When an Appellate Court remands a case under section 351 of the Civil Procedure, Code, 1859, for the trial of an issue which the lower Court may have omitted to raise or to try, it is not limited to the evidence then on the record, but may keep the case pending on its own file until the return of the first Court's finding on the issue, with the evidence recorded on the trial thereof, or the Appellate Court may itself try the issue so raised. Where the evidence is accepted by a Subordinate Judge as sufficient to warrant a decree, and the case is only remanded for a defect of parties, his successor is justified, when the case is returned by the first Court, in respecting the former judgment and looking upon the evidence as *primâ facie* good and sufficient. WISE *v.* ISHAN CHUNDER BANERJEE . . **14 W. R., 380**

63. ——— Decision as to costs.—*Power to remand case for trial on merits where appeal is only as to costs.*—On an appeal as to costs only, the Appellate Court had no jurisdiction to return the case for trial on its merits. MUTHRA PERSHAD *v.* BUNDEE ROY . . . . **4 N. W., 20**

64. ——— Decision on second trial.—*Insufficiency of evidence.—Evidence taken at first trial.*—In a suit to obtain possession of miras land, the Court of original jurisdiction decreed for plaintiff on the evidence, but on appeal its decision was

REMAND—*continued.*

2. GROUND FOR REMAND—*continued.*

Decision on second trial—*continued.*

reversed, on the ground that the claim had not been properly valued, and plaintiff was permitted to bring a fresh action. At the trial of the second action the Munsif recorded his previous decree and some additional evidence, which the District Judge on appeal considered to be insufficient. *Held* that, under the peculiar circumstances of the case, the Judge, if not satisfied with the evidence taken at the second trial, should have allowed the plaintiff to give again the evidence adduced at the former trial. The lower Court's decree was therefore reversed, and the suit remanded in order that this might be done. JOTI BIN NIMBAJI *v.* SOMAJI BIN BAPAJI GURAV **[1 Bom., 166**

65. ——— Decision as to admission of evidence.—*Additional evidence.—Civil Procedure Code, 1859, s. 354.*—The defendant pleaded payment and produced a letter of acknowledgment said to have been written by the plaintiff. The plaintiff denied its genuineness, and the Principal Sudder Ameen rejected the testimony of two pyadas who deposed to the payment. On appeal the Judge remanded the case, requiring the lower Court to give the appellant the opportunity of proving the letter, and after recording a fresh finding to return the case to his Court. *Held* that the lower Court was bound to pronounce a distinct opinion as to the value of the evidence, and not to have rejected it altogether. *Held*, also, that the Judge was wrong in remanding the case under section 354, Act VIII of 1859, as he could have decided the case himself, taking such additional evidence as might appear necessary. RUNPAL SINGH *v.* JOY MUNGUL SINGH. . . **11 W. R., 106**

66. ——— Finding on evidence.—*Improper remand.—Duty of Appellate Court.*—Where the ground of regular appeal to the lower Appellate Court was that the Court of first instance ought to have found that an ijara existed, it was the duty of the Appellate Court to determine whether that fact had been proved, and not to remand the case for re-trial. MAHOMED AHSAN *v.* MAHOMED YASIN **[9 W. R., 106**

67. ——— Issue of minority raised on appeal.—*Facts entitling mortgagee to decree.*—Where, in a suit to make absolute a conditional sale, and to obtain a share in a certain village mortgaged to plaintiff (the usual year of grace having been given and money been paid into Court in satisfaction considerably after the term allowed by law), there is no issue respecting the minority of some of the mortgagors, the case will not be sent back to the Appellate Court for inquiry whether certain of the mortgagors were minors, or whether the others mortgaged for such purposes as would bind the minors, notwithstanding one of the lower Courts has found the fact of the minority of one of the mortgagors. SUBDUL *v.* BULDEO . . . . . **2 N. W., 23**

68. ——— Case inconsistent with plaint.—*Power of Appellate Court to remand.—Civil Pro-*

REMAND—*continued.*

2. GROUND FOR REMAND—*continued.*

Case inconsistent with plaint—*continued.*

cedure Code, 1859, s. 354.—If the Appellate Court is of opinion that the plaintiff, in argument before itself, is endeavouring to obtain something other than what he claims in the plaint, it is bound to dismiss the suit; but if it thinks that the plaint can be reconciled with the argument used on the appeal, and the case resulting is supported by the evidence, it is bound to determine the appeal—not to make an order under Act VIII of 1859, section 354. TILUCK CHUNDER DUTT CHOWDHRY *v.* BROJO SOONDUR MITTER . . . . . **24 W. R., 121**

69. ——— **Decision of only portion of claim,**—*Improper order of remand.—Confirmation of portion of case while remanding substantial issue.*—A lower Appellate Court which remanded a suit to the first Court for decision of the substantial part of the dispute, should not have confirmed the decision of the first Court regarding only one part of the claim. MADHUB CHUNDER DEY *v.* RAM DYAL GUHO . . . . . **8 W. R., 303**

3. SECOND REMAND.

70. ——— **Power of Appellate Court.**—*Decree reversed on appeal.—Error or defect affecting merits of case or jurisdiction.*—An Appellate Court can remand a case a second time on account of error, defect, or irregularity of procedure in passing a decree or order, provided the error, defect, or irregularity be such as to affect the merits of the case or the jurisdiction of the Court. When a suit has been regularly heard and determined, and on appeal the decree is reversed, the Appellate Court has the discretionary power to remand the case only if the decree should have been upon a preliminary point, and have the effect of excluding the consideration of evidence essential to the rights of the parties. MUNIAPPAH NAIDU *v.* IYASAMY MUDELY **[5 Mad., 313**

71. ——— **Omission to carry out first order of High Court.**—*Substantial trial on the merits.*—Where the lower Court had not fully carried out an order of the High Court remanding the case, but the case appeared to have been substantially tried fully on its merits, the High Court thought there should not be a second remand. KASHEENATH DEB *v.* SHIBESSUREE DEBIA . **8 W. R., 503**

72. ——— **Remand after trial and decision on evidence.**—*Appellate Court, Powers of.—Objection taken on appeal.—Act VIII of 1859, s. 351.—Costs.*—A lower Appellate Court is not competent to remand a case for a second decision, except as provided by section 351, Act VIII of 1859, and therefore has no power to remand a case when a Court of first instance has investigated the merits of the case and passed its judgment upon the evidence. The objection that a case has been improperly remanded by the lower Appellate Court can be taken in special appeal from the decree passed upon the remand, although a special appeal might have been

REMAND—*continued.*

3. SECOND REMAND—*continued.*

Remand after trial and decision on evidence—*continued.*

preferred from the order of remand, but the appellants were held not entitled to their costs. MAJORAM OJHA *v.* NILMONEY SINGH DEO **[13 B. L. R., 198; 21 W. R., 326**

BRINDABUN DEY *v.* BISONA BIBEE **[13 B. L. R., 200, note: 13 W. R., 107**

73. ——— **Form of second order of remand.**—*Defects in lower Court's judgment on first remand.*—A lower Appellate Court, in remanding a case a second time, ought to state what the main requirements of the first order were, and how the lower Court's decision shows that they have not been carried out. RADHABULLUB SURMA *v.* ANUNDMOYEE DEBEA . . **W. R., 1864, Mis., 39**

4. PROCEDURE ON REMAND.

74. ——— **Order of remand, Effect of.**—*Civil Procedure Code, 1859, s. 354.*—An order of remand to a lower Appellate Court implies a reversal of the first judgment of that Court. KEBUL KISHEN MOZOOMDAR *v.* AMBALA . **7 W. R., 326**

75. ——— *Reopening of entire case.*—The effect of an order of remand for a new trial is entirely to nullify the first decision and to reopen the whole case. TARINEE KANT LAHOOREE *v.* KOONJ BEHAREE AWASTEE **[12 W. R., 112**

76. ——— *Remand for retrial.—Reopening of whole case.*—Where a suit was remanded by the lower Appellate Court for a "retrial," the intention of the order of remand was held to be that the whole case was to be gone into *de novo*, the plaintiff being allowed to prove her case in any way she could. GUDADHUR DUTT *v.* SHUSHEE MONEE DOSSIA . . . **21 W. R., 7**

77. ——— *Reopening of case as regards limitation.—Res judicata.*—Where a case is sent back for trial on its merits, the order of remand shuts out objections regarding limitation or *res adjudicata.* SHEO SAHOY TEWAREE *v.* RAM PERSHAD NARAIN TEWAREE . **24 W. R., 333**

78. ——— **Power of Court hearing remanded cases.**—*Remand on particular issue.—Power to proceed on other issues.*—A Court to which a case is remanded for re-trial on a particular issue, amongst others, cannot, on remand, allow that issue to be abandoned, and proceed to try the case upon the other issues raised. SHIB CHUNDER LAHIRI *v.* JOYMALA DASI . . . **7 C. L. R., 103**

79. ——— *Remand on one point.—Reopening of others.*—When a case is remanded to the lower Appellate Court for decision of a question—*e.g.* one of title—that Court has no authority to go beyond the order of remand and reopen a

REMAND—*continued.*

4. PROCEDURE ON REMAND—*continued.*

Power of Court hearing remanded cases —*continued.*

matter already adjudicated upon between the parties. SHAHEB TEWAREE *v.* KISHOREE SAHOY SINGH [24 W. R., 330

80. ——————— *Remand for trial of issue under s. 354, Civil Procedure Code, 1859, Effect of.*—Where an Appellate Court, in pursuance of Act VIII of 1859, section 354, sends an issue down to the first Court in order that such evidence as the parties desired to adduce upon it may be taken and returned, the result is not to remand the case for re-trial; the first Court being *functus officio* in respect to such portion of the matter as it had already considered and determined. GOSSAIN DOWLUT GEER *v.* BISSESSUR GEER . 22 W. R., 207

81. ——————— *Case remanded for consideration except on one point.—Finding of error on that point.*—Where a case was remanded for reconsideration of the whole evidence with the exception of one specified point, and the Judge after consideration came to the conclusion that his finding on that point had been erroneous, it was held that he could not, without a miscarriage of justice, allow that finding to remain unchanged. HURKE NATH SHAHA *v.* ISSEN CHUNDER SHAHA [24 W. R., 316

82. ——————— *Absence of Judge who passed decree.—Jurisdiction of his successor.*—Where a case is remanded to the lower Court to record reasons for its judgment, if the Judge who passed the decree is absent, the superior Court should be informed of it by his successor. Under such circumstances his successor has no jurisdiction. Application should be made to the Bench which granted the order of remand for an order for the present Judge to re-try the case *de novo.* MANICK SETT *v.* KHETTERMOHUN GOSSAMEE [1 Ind. Jur., N. S., 101

83. ——————— *Remand for record of reasons.—Re-trial de novo by Judge's successor.*—When a case is remanded to a particular Judge merely for him to record the reasons for his finding, his successor, if the deciding Judge has left the district, acts without jurisdiction when he rehears the whole appeal *de novo.* BHYRUB SHEET *v.* KHETTUR MOHUN GOSSAIN . 5 W. R., 124

LALLA BHOYRO LALL *v.* LALLA MOKOOND LAL [2 W. R., 275

84. ——————— *Remand for particular issue.—Right to open case in full.*—A rent case having been remanded to a lower Appellate Court with a view to its being ascertained whether an amulnamah produced by the plaintiff was the same as a pottah filed in a survey case, the Judge found that it was the same, but the pottah was not the one which the defendant had given to the plaintiff to file in the survey case. He accordingly reversed his predecessor's decree for rent, and adjudged plaintiff to pay damages under section 3, Act VI of 1862. *Held* that the additional finding was not opposed to the order of remand; that the whole case was reopened; and that the Judge had authority to award the damages without appeal on that point. RAM CHUNDRA SURMA CHOWDHRY *v.* DAGOO KHAN [10 W. R., 339

85. ——————— *Case remanded on issue of limitation—Right to open whole appeal.*—In a case remanded to the lower Appellate Court for trial, by the Court of first instance, of the issue of limitation, which the appellant had not been allowed the opportunity of meeting, it was ruled that, upon the decision of that issue, it would be open to the parties to appeal upon the whole case, notwithstanding the appeal already had. RUGHOO NUNDUN PERSHAD SINGH *v.* CHUTTUR PAUL SINGH [10 W. R., 335

86. ——————— *Reopening of case.*—Under an order of remand in a boundary suit in which the Privy Council had made an order in a former appeal,—*Held* that the High Court had no power to go behind the order of the Privy Council, and that so much of the High Court's decision as reopened on fresh evidence what had previously been decided must be set aside, but that the evidence that had thus been brought to bear on the case was entitled to consideration so far as it bore on those portions of the suit in respect of which the former decision of the Privy Council was not conclusive. COURT OF WARDS *v.* LEELANUND SINGH [25 W. R., P. C., 157

87. ——————— *Case sent by Judge to lower Court for further evidence.*—In a suit for enhancement of rent, which had been remanded to the lower Appellate Court, with the instruction that the defendant had produced sufficient evidence to raise the presumption that he held his tenure at a fixed rate from the Permanent Settlement, and that it was for the Judge to give an opinion how far the plaintiff was able to rebut that presumption,—*Held* that there was nothing objectionable in the Judge directing the first Court to hear further evidence upon the point. RAKHAL CHUNDER TEWAREE *v.* KINOORAM HALDAR . . 10 W. R., 442

88. ——————— *Giving evidence on issue raised on remand.*—Where a case is remanded for the trial of an issue which had not been laid down by the Court which tried the case, the parties are entitled to have the opportunity of giving evidence upon it, although the order of remand contains no express direction to that effect. KISTO CHURN CHUCKERBUTTY *v.* MUGGUN CHUCKERBUTTY [10 W. R., 491

89. ——————— *Additional evidence, Power to take.*—Where a case is remanded with a view to some special evidence being taken,

REMAND—*continued.*

4. PROCEDURE ON REMAND—*continued.*

Power of Court hearing remanded cases —*continued.*

the Court receiving the order of remand is not at liberty to allow the parties to produce other additional evidence. RAM JEEWAN LALL *v.* ARJUN CHOWBEY [10 W. R., 303

90. ——— *Object of remand.*—*Civil Procedure Code, 1859, s. 354.*—The object of a remand under section 354, Act VIII of 1859, is not that the Judge should try the issues on the evidence already taken, because that the Court sitting in regular appeal can do for itself, but that he should take such evidence as the parties may have to offer for the determination of the issues. ABDOOL KHYRAT *v.* JUMALOODDEEN HOSSEIN [10 W. R., 244

91. ——— *Remand to Appellate Court.*—*Power to take additional evidence.* —Where a case is remanded to a lower Appellate Court under section 354 of the Civil Procedure Code, 1859, the Judge may, under section 355, admit additional evidence, provided he records his reasons for doing so on the proceedings of the Court. KALIKRISTO TAGORE *v.* JUDOO LALL MULLICK . . . . . 24 W. R., 20

92. ——— Remand with fresh issues. — *Fixing day for further evidence.* — When fresh issues are fixed by the Appellate Court, and remanded to the lower Court to be tried, the parties are entitled to have a day fixed for the reception of any further evidence which they may wish to adduce thereon. WATSON *v.* KUNHYE BAHADOOR [9 W. R., 294

93. ——— Examination of witnesses. —*Fresh evidence.*—In a case remanded for a finding as to whether a confirmatory pottah had been really given or not, it was held that as the order of remand did not restrict the Judge to the evidence on the record, he was at liberty to examine the witnesses who were in Court. RAM SUNKER SEIN *v.* NILKANT BISWAS . . . 20 W. R., 392

94. ——— Hearing fresh evidence.— *Hearing defendant who did not appear on original hearing.*—When a suit has been dismissed upon a preliminary point, and the decision on that point has been reversed by the Appellate Court, and the case goes down with a view to trial on its merits, evidence may properly be received even from defendants who had appeared, and *a fortiori* from a defendant who had not appeared. KOONJ BEHARY AWUSTHE *v.* TARINEE KANT LAHOREE [8 W. R., 285

95. ——— Objection taken at former hearing and disposed of.—*Remand for rehearing.*—*Objection to chitta.*—Where a review had been granted for the purpose of seeing whether a chitta ought not to be used, and the case was remanded for re-hearing, the party was held to be concluded from objecting that the chitta was improperly made use of upon the re-hearing. MAKHUN KOOER *v.* TINCOWREE DUTT . 14 W. R., 22

REMAND—*continued.*

4. PROCEDURE ON REMAND—*continued.*

Objection taken at former hearing and disposed of—*continued.*

96. ——— Remand assuming possession.—*Power of Judge to try question of possession.*—Where the High Court, proceeding on the assumption that appellants (plaintiffs) were in possession, remanded a case to a Zillah Court, with instructions to pass a declaratory decree, if that Court was satisfied that the act complained of was so recent and of such a nature as to entitle plaintiffs to a declaratory decree, it was held (by KEMP, *J.*, decreeing the appeal) that the Zillah Judge was wrong in reopening the whole question of possession. *Held* (by JACKSON, *J.*) that the issue of possession being one which clearly arose on the statements of the parties, the Zillah Judge was not in error in trying it. PUREE JAN KHATOON *v.* BYKUNT CHUNDER CHUCKERBUTTY [9 W. R., 380

Held on appeal under the Letters Patent that the lower Appellate Court was competent, under the terms of the order of remand, to inquire into the question of possession. BYKUNT CHUNDER CHUCKERBUTTY *v.* PUREE JAN KHATOON [11 W. R., 77

97. ——— Full Bench ruling.—*Alteration of law since remand.*—Where a Full Bench ruling is brought to the notice of a Judge re-trying a case on remand, he is bound, whether the ruling has been published or not, either to ask the pleader to produce the decision relied on, or to take other means for satisfying himself as to the ruling of the High Court, so as to apply the correct law to the case. TUMEEZOODDEEN KHONDKAR *v.* MOHIMA CHUNDER MOOKERJEE . . 11 W. R., 227

98. ——— Trial on issue not stated in order of remand.—*Effect of irregularity.*— Where the High Court had been misled into making an order of remand upon an issue other than that on which the case at the time ought to have been made to depend as between the parties, and the lower Appellate Court on remand came to a finding of fact which correctly disposed of the case, it was held that though the latter did not deal properly with the evidence on the record with reference to the precise issue sent down to it, its default ought not to govern the final result between plaintiff and defendant. MAHOMED HASHIM *v.* KALEECHURN BANERJEE . . . . . 13 W. R., 91

99. ——— Reference of remanded case to arbitration.—*Civil Procedure Code, 1859, s. 354.*—*Irregularity in remand order and trial.*—*Objection on special appeal.*—An Appellate Court, in referring a case under Act VIII of 1859, section 354, has no power to order the first Court to call upon the parties to the suit to agree to arbitration, or, on their failing to do so, to appoint arbitra-

REMAND—*continued.*

4. PROCEDURE ON REMAND—*continued.*

Reference of remanded case to arbitration—*continued.*

tors. Where this is done, and the parties waive the irregularity and consent to the matter being tried by arbitrators, they cannot afterwards on special appeal object to the proceedings. PUNA BIBEE *v.* KHODA BUKSH BEPAREE . . . **22 W. R., 396**

100. ——— Effect of repeal.—*Suit for rent instituted under Act X of 1859.—Remand after Beng. Act VIII of 1869 (s. 108) came into operation.*—A suit was instituted under Act X of 1859, and after Bengal Act VIII of 1869 came into operation it was remanded by the High Court and tried by the Munsif and District Judge. *Held* that, under Bengal Act VIII of 1869, section 108, all proceedings should have been continued under the older Act and the remand should have been to the Collector, and that the proceedings before the Munsif and Judge were nullities. DEELUN CHOWDHRY *v.* JEETOO KAIJEE . . **24 W. R., 353**

5. OBJECTIONS TO FINDING ON REMAND.

101. ——— Time for filing objections.—*Civil Procedure Code, 1859, s. 354.*—Sufficient time must be allowed to the parties under section 354, Act VIII of 1859, to file their objections to the revised finding of the lower Court. BUKHTOUREE *v.* MEHEEN LALL . . . **3 Agra, 96**

102. ——— *Civil Procedure Code, 1859, s. 354.—Objections taken after remand and not within time fixed.*—Where the Appellate Court remanded a case to the lower Court, and, under the provisions of section 354, Act VIII of 1859, allowed the parties a week's time within which to file objections,—*Held* that the terms of the section were merely permissive, and that though no objections had been taken within the time specified, there was nothing in the law to the effect that an objection taken after the time fixed shall not be listened to. MUNRAKHUN LALL *v.* RAHEEM BUKSH **[4 N. W., 72**

103. ——— Alteration of findings to which no objection is taken.—*Civil Procedure Code, 1859, s. 354.—Objections taken after time.*—When a case has been remanded under section 354, Act VIII of 1859, and a time fixed within which objections to the findings on remand are to be taken, the Appellate Court is not competent to alter such of the findings in respect of which no objection is preferred within the time fixed. NOORUN *v.* KHODA BUKSH . . . . **1 Agra, 50**

Nor will the parties be allowed to take objections filed after time. SHEO GHOLAM *v.* RAM JEAWUN SINGH . . . . . **5 N. W., 114**

104. ——— Objections taken after time.—*Civil Procedure Code, 1859, s. 354.—Memorandum of objections.—Procedure.*—Where an Appellate Court, under section 354 of Act VIII of 1859, refers issues for trial to a lower Court and

REMAND—*continued.*

5. OBJECTIONS TO FINDING ON REMAND—*continued.*

Objections taken after time—*continued.*

fixes a time within which, after the return of the finding, either party to the appeal may file a memorandum of objections to the same, neither party is entitled, without the leave of the Court, to take any objection to the finding, orally or otherwise, after the expiry of the period so fixed without his having filed such memorandum. RATAN SINGH *v.* WAZIR **[I. L. R., 1 All., 165**

105. ——— *Civil Procedure Code, 1882, s. 567.—Discretion of Court.*—Where a first Appellate Court has remanded a case to the Court of first instance for the trial of issues, and where, on the return of findings on these issues, objections under section 567 of the Civil Procedure Code have not been filed until after the expiration of the prescribed period, the Appellate Court, though not bound to entertain the objections, should nevertheless, upon the hearing of the remand, allow the party filing them to be heard with regard to them. *Ratan Singh* v. *Wazir, I. L. R., 1 All., 165;* and *Akbari Begam* v. *Wilayat Ali, I. L. R., 2 All., 908,* referred to. An Appellate Court, because it remands issues, does not therefore, in the absence of subsequent objection by either or both of the parties to the findings when returned, divest itself of its power to exercise its judicial mind as to the propriety of such findings; but, apart from any objection by the parties, it should examine and test them to see whether or not they ought to be accepted. *Akbari Begam* v. *Wilayat Ali, I. L. R., 2 All., 908,* followed. *Umed Ali* v. *Salima Bibi, I. L. R., 6 All., 383,* referred to. MUMTAZ BEGAM *v.* FATEH HUSAIN . . . **I. L. R., 6 All., 391**

106. ——— *Reference of issue to lower Court.—Memorandum of objections.—Civil Procedure Code, 1859, s. 354.*—In a case in which an issue referred under section 354 of Act VIII of 1859 to the lower Court was tried there, and the finding was returned with the evidence, as no memorandum of objections was filed within the time fixed by the Court, the Court declined to allow objections to be taken when the appeal came on for final determination. ASHRUFOONISSA BEGUM *v.* STEWART . . . . **9 W. R., 438**

107. ——— Findings to which no objection is preferred.—*Civil Procedure Code, 1877, s. 566.—Appellate Court, Powers of.—Error or irregularity.—Held* that an Appellate Court is not bound to accept a finding returned to it by a Court of first instance, under section 566 of Act X of 1877, merely because no objections to such finding are preferred, but is competent to examine the evidence on which such finding is founded, and to satisfy itself that it is correct and fit to be accepted. *Noorun* v. *Khoda Baksh, 1 Agra, 50,* dissented from. *Ratan Singh* v. *Wazir, I. L. R., 1 All., 165,* followed. *Held* also that, assuming that an Appellate Court, in deciding a case in a manner inconsistent with and opposed to the finding returned to it by the Court of

REMAND—*continued.*

5. OBJECTIONS TO FINDING ON REMAND —*continued.*

Findings to which no objection is preferred—*continued.*

first instance under that section, in the absence of objections, acted irregularly, its decree could not be reversed, or the case remanded on account of such irregularity, such irregularity not affecting the merits of the case or the jurisdiction of the Court. AKBARI BEGAM *v.* WILAYAT ALI [I. L. R., 2 All., 908

108. ——————— *Duty of Appellate Court.—Civil Procedure Code, 1882, ss. 567, 574.*—Where a first Appellate Court has remanded a case to the Court of first instance for the trial of issues, and where, on the return of the findings on these issues, no objections have been preferred under section 567 of the Civil Procedure Code, the Appellate Court, after the period fixed for presenting objections, may, at its discretion, receive or decline to receive any written objection, but is, in any case, bound to consider the findings of the lower Court on the merits, and is not precluded from hearing arguments for and against the findings at the hearing of the appeal. *Akbari Begam v. Wilayat Ali, I. L. R., 2 All., 908,* followed. The imperative provisions of section 574 of the Civil Procedure Code apply alike to cases remanded by the first Appellate Court for the trial of issues, and to those in which no such remand has taken place. UMED ALI *v.* SALIMA BIBI [I. L. R., 6 All., 383

6. CASES OF APPEAL AFTER REMAND.

109. ——— **Remand for specific purpose.**—*Statement on merits of whole case.*—Where the Appellate Court remands a case for a specific inquiry, it will not receive any statement on the part of the Zillah Judge as to what he considers the merits of the whole case. DONZELLE *v.* RAMNARAIN SINGH . . 1 Ind. Jur., N. S., 51

110. ——— **Appeal from order of remand.**—*Civil Procedure Code, 1877, s. 562.—What questions can be raised.—Extent of appeal from order of remand.*—An appeal from an order on appeal remanding a suit for re-trial is not to be confined to the question whether the remand has been made contrary to the provisions of section 562 of Act X of 1877 or not, but the question whether the decision of the Appellate Court on the preliminary point is correct or not may also be raised and determined in such an appeal. BADAM *v.* IMRAT [I. L. R., 3 All., 675

111. ——————— *Disposal of suit on preliminary point.—Reversal by Appellate Court of decree on such point and irregular remand of case under section 562, Civil Procedure Code, 1877, for trial of a certain issue.—Power of succeeding Judge of Appellate Court to re-try such point.*—A Court of first instance dismissed a suit upon a preliminary point. On appeal by the plaintiff against the decree of such Court, the then Judge of the appellate Court, Mr. *B.*, reversed the decree upon such preliminary point and remanded the suit under section 562 of Act X of 1877 for the trial of a certain issue. The Court of first instance tried such issue and made a decree in accordance with its finding thereon. On appeal against the decree of the Court of first instance, the defendant again raised such preliminary point. The then Judge of the Appellate Court, Mr. *K.*, dismissed the suit upon such preliminary point. *Held* that as although Mr. *B.* had irregularly remanded the suit under section 562 of Act X of 1877, his decision disposed of such preliminary point, and only left open for trial the issue which he had directed to be tried, Mr. *K.* was not competent to re-try and decide such preliminary point. SURAJ DIN *v.* CHATTAR . . . I. L. R., 3 All., 755

REMAND—*continued.*

6. CASES OF APPEAL AFTER REMAND —*continued.*

Appeal from order of remand—*continued.*

112. ——————— *Practice.—Civil Procedure Code, 1877, s. 588.*—Upon an appeal under section 588, clause (*w*) of the Civil Procedure Code, from an order of an Appellate Court under section 562, remanding a case which has been disposed of upon a preliminary point in the Court of first instance, the High Court may enter into the merits of the adjudication by the Court of first instance on the preliminary point, and may, if it finds the order of the lower Appellate Court defective, allow the party who had the benefit of a decree in the first Court to retain that benefit. LOKI MAHTO *v.* AGHOREE AJAIL LALL [I. L. R., 5 Calc., 144 : 4 C. L. R., 465

113. ——————— *Civil Procedure Code, 1882, ss. 562, 564, 566, 584, 588 (28), 590.*—Where a lower Appellate Court, instead of remanding a suit under section 566 of the Civil Procedure Code, erroneously remands it under section 562, and the party aggrieved by its order appeals to the High Court, under clause (28), section 588, the High Court cannot deal with the case as if it were a first appeal from a decree. All that the High Court can do is to rectify the procedure of the lower Appellate Court, and to direct that it decide the case itself on the merits. *Badam* v. *Imrat, I. L. R., 3 All., 675,* distinguished. *Ramnarain* v. *Bhawanidin, Weekly Notes, All., 1882, p. 104;* and *Sheoamber Singh* v. *Lallu Singh, Weekly Notes, All., 1882, p. 158,* referred to. SOHAN LAL *v.* AZIZ-UNNISSA BEGAM . I. L. R., 7 All., 136

114. ——————— *Power of successor of Judge to set aside order of remand.*—An order of remand by a Subordinate Judge is final so far as the purpose of the remand goes, and cannot be set aside by his successor. LULEET PANDEY *v.* BYJNATH SINGH . . . 14 W. R., 285

115. ——————— *Power of successor to alter order.—Remand a second time on mistake of Judge on first remand.*—An Acting District Judge, having made a decree reversing the decree of the Munsif, who threw out plaintiff's claim, omitted to pass a decree himself in favour of the plaintiff, which his finding showed he intended to do

REMAND—*continued.*

6. CASES OF APPEAL AFTER REMAND —*continued.*

Appeal from order of remand—*continued.*

The case was remanded on special appeal by the High Court to the District Judge (who had meanwhile returned to his appointment), who reopened the whole case, and passed a decree directly opposed to that of his predecessor, in which he confirmed the Munsif's decree. *Held* that the decree of the Judge should be reversed, and the suit again remanded, in order that he might pass a decree for the plaintiff, in accordance with the view of the case expressed by the Acting Judge, with which the High Court saw no ground, upon the special appeal before it, to interfere. BABAJI BIN RAMJI *v.* KASIMBHAI VALAD AZAMBHAI [3 Bom., A. C., 60

116. ——— *Procedure when case comes on appeal after remand.—Erroneous order of remand.*—A Subordinate Judge on appeal, having framed an issue, remanded the case under section 351, Civil Procedure Code, 1859, to the first Court for trial thereof, but instead of directing that the finding should be returned to his own Court, he directed the Munsif to give the plaintiff a decree in accordance with the finding at which he might arrive. The Munsif having decided the case accordingly, it went up on appeal to the Additional Judge. *Held* that the proper course for the Additional Judge was simply to confine himself to considering whether the decision of the Court below on the issue directed was correct or not: he had no power to go behind the order of the Subordinate Judge on the previous occasion. BODUN BUROOAH *v.* ABDOOL GUNNY [19 W. R., 281

7. CRIMINAL CASES.

117. ——— **Object of remand.**—*Criminal Procedure Code (Act VIII of 1869), s. 422.—Act X of 1872, s. 282.—Power of Appellate Court.*—A remand of a case under section 422, Act VIII of 1869, could only be for the purpose of taking further evidence, and certifying the result thereof to the Appellate Court, and not for the purpose of re-trying the case upon such fresh evidence. After remand under this section, the Appellate Court could only try the case as an ordinary appeal, and had no power to enhance the punishment. ANONYMOUS [3 B. L. R., A. Cr., 62

118. ——— **Ground for remand.**—*Improper admission of examination of accused.—Criminal Procedure Code, 1861, s. 205.*—When the examination of the prisoner had not been recorded in full as required by section 205 of the Criminal Procedure Code, 1861, and was therefore inadmissible without further proof of it, but if admissible, would either alone or with other evidence be sufficient for the conviction of the accused, the proper course was held to be to remand the case to the Court of Session, in order that proof might be taken of the examination. When the evidence, exclusive of the inadmissible examination, is sufficient to support the conviction, it may be

REMAND—*continued.*

7. CRIMINAL CASES—*continued.*

Ground for remand—*continued.*

affirmed by the High Court without remanding the case. REG. *v.* KALLA LAKHMAJI [2 Bom., 419 : 2nd Ed., 395

REG. *v.* PEVADI BIN BASSAPPA [3 Bom, 420 : 2nd Ed., 397

REG. *v.* VITHOJI . 2 Bom., 421 : 2nd Ed., 398

REG. *v.* GANU BAPU [2 Bom., 422 : 2nd Ed., 398

119. ——— **Remand for further evidence.**—*Criminal Procedure Code, 1861, s. 422, and ss. 169 and 171.—Jurisdiction of Magistrate.*—When an Appellate Court directed further evidence to be taken by a Subordinate Court under section 422 of the Code of Criminal Procedure, it was competent to the subordinate Court before which such evidence was given, if any offence against public justice, as described in section 169, was committed before such Court by a witness whose evidence was being recorded therein, to send the case for investigation to a Magistrate under the provisions of section 171. QUEEN *v.* BAKTEAR MAIFARAZ [6 B. L. R., F. B., 698 : 15 W. R., Cr., 64

120. ——— **Remand for further inquiry.**—*Power to remand.—Criminal Procedure Code, 1861, s. 422.—Omitting to give information of an offence.*—Where a person had been found guilty by a Magistrate of the offence of intentionally omitting to give information of an offence which he was bound to give, and on appeal the Judge found that there had been no evidence given of the omission,—*Held per* KEMP, *J.* (GLOVER, *J.*, *contra*), the Judge could not remand the case for additional inquiry under section 422 of the Criminal Procedure Code. IN THE MATTER OF THE PETITION OF UDAI CHAND MUKHOPADHYA . . 9 B. L. R., Ap., 31

S. C. IN RE WOODOY CHAND MOOKHOPADHYA [18 W. R., Cr., 31

121. ——— **Detention of prisoner in custody pending remand.**—*Power of Magistrate.*—A remand properly made after taking sufficient evidence given on oath or solemn affirmation is the only ground on which a Magistrate can retain an accused person in custody. IN THE MATTER OF THE PETITION OF ZUHURUDDEEN HOSSEIN [25 W. R., Cr., 8

See MUTHOORANATH CHUCKERBUTTY *v.* HEERA LALL DOSS . . . 17 W. R., Cr., 55

RE-MARRIAGE OF WIDOW.

See CASES UNDER HINDU LAW—WIDOW—DISQUALIFICATIONS—RE-MARRIAGE.

REMOTENESS.

See CASES UNDER DAMAGES—REMOTENESS OF DAMAGES.

REMOTENESS—*continued.*

See CASES UNDER HINDU LAW—WILL—CONSTRUCTION OF WILLS — SPECIAL CASES OF CONSTRUCTION—REMOTENESS.

See CASES UNDER WILL—CONSTRUCTION.

RENT.

——— Arrears of—

See CASES UNDER INTEREST—MISCELLANEOUS CASES—ARREARS OF RENT.

See CASES UNDER RENT, SUIT FOR—

See CASES UNDER SALE FOR ARREARS OF RENT.

——— Arrears of, Application for execution of decree for—

See BENGAL RENT ACT, 1869, S. 58. [I. L. R., 3 Calc., 547

——— Arrears of, Suit for ejectment for—

See CASES UNDER BENGAL RENT ACT, 1869, S. 52.

——— as distinguished from revenue.

See GRANT—POWER TO GRANT. [B. L. R., Sup. Vol., 75, 774

——— Assessment of, on service tenure.

See LIMITATION ACT, 1877, ART. 130 (1871, ART. 130). [I. L. R., 1 Bom., 586

See SERVICE TENURE. [I. L. R., 1 Bom., 586

——— in kind, Suit for money-equivalent of—

See ENHANCEMENT OF RENT—EXEMPTION FROM ENHANCEMENT BY UNIFORM PAYMENT, &C.—VARIATION BY CHANGE IN NATURE OF RENT, &C.
[I. L. R., 1 All., 301
6 B. L. R., Ap., 25
1 Ind. Jur., N. S., 29: 4 W. R., Act X, 23
6 N. W., 371
8 W. R., 170

——— Non-payment of—

See CASES UNDER LANDLORD AND TENANT—PAYMENT OF RENT—NON-PAYMENT.

See CASES UNDER RIGHT OF OCCUPANCY—LOSS OR FORFEITURE OF RIGHT.

——— Payment and acceptance of—

See CASES UNDER LANDLORD AND TENANT—CONSTITUTION OF RELATION—ACKNOWLEDGMENT OF TENANCY.

RENT—*continued.*

——— Payment of—

See CASES UNDER CO-SHARERS—SUITS BY CO-SHARERS WITH RESPECT TO THE JOINT PROPERTY—RENT.

See CO-SHARERS—SUITS BY CO-SHARERS WITH RESPECT TO THE JOINT PROPERTY—ENHANCEMENT OF RENT.
[I. L. R., 5 Calc., 574
3 C. L. R., 21
I. L. R., 4 Calc., 96, 350

See ESTOPPEL—LANDLORD AND TENANT—DENIAL OF TITLE.
[B. L. R., Sup. Vol., 588
24 W. R., 101
6 N. W., 333
I. L. R., 4 Bom., 79

See CASES UNDER LANDLORD AND TENANT—PAYMENT OF RENT.

See TITLE—EVIDENCE OF TITLE—GENERALLY . . . 7 B. L. R., 211

——— Receipt of—

See CASES UNDER LANDLORD AND TENANT—CONSTITUTION OF RELATION—ACKNOWLEDGMENT OF TENANCY BY RECEIPT OF RENT.

See UNSETTLED POLLIAM. [14 B. L. R., 115

——— Sale for arrears of—

See CASES UNDER SALE FOR ARREARS OF RENT.

RENT, SUIT FOR—

See CASES UNDER BENGAL RENT ACT, 1869.

See CERTIFICATE OF ADMINISTRATION—RIGHT TO SUE OR EXECUTE DECREE WITHOUT CERTIFICATE. [B. L. R., Sup. Vol., 588

See CIVIL PROCEDURE CODE, 1882, S. 108 (1859, S. 119) . 7 B. L. R., 207

See ESTOPPEL—ESTOPPEL BY CONDUCT. [I. L. R., 4 Calc., 783

See CASES UNDER JURISDICTION OF REVENUE COURT.

See CASES UNDER LANDLORD AND TENANT.

See CASES UNDER PARTIES—PARTIES TO SUITS—RENT SUITS FOR AND INTERVENORS IN SUCH SUITS.

See CASES UNDER RES JUDICATA—COMPETENT COURT—REVENUE COURTS.

See CASES UNDER RES JUDICATA—ESTOPPEL BY JUDGMENTS.

See CASES UNDER SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—RENT.

RENT, SUIT FOR—*continued.*

See CASES UNDER SPECIAL APPEAL—SMALL CAUSE COURT SUITS—RENT.

See TENDER . **I. L. R., 4 Calc., 572**

——— **Arrears of—**

See APPEAL—N.-W. P. ACTS. **[I. L. R., 1 All., 366**

See CASES UNDER BENGAL RENT ACT, 1869, s. 29.

See BENGAL RENT ACT, 1869, s. 31. **[I. L. R., 4 Calc., 714**

See CASES UNDER CO-SHARERS—SUITS BY CO-SHARERS WITH RESPECT TO THE JOINT PROPERTY—RENT.

See CASES UNDER INTEREST—MISCELLANEOUS CASES—ARREARS OF RENT.

See CASES UNDER JURISDICTION OF REVENUE COURT.

See CASES UNDER LIMITATION ACT, 1877, ART. 110 (1859, s. 1, CL. 8).

See ROAD CESS ACT. **[I. L. R., 4 Calc., 576**

——— **Balance of account of—**

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—ACCOUNT. **[I. L. R., 1 Calc., 123 14 W. R., 53 10 W. R., 83**

——— **Money paid as excess of—**

See RELINQUISHMENT OR OMISSION TO SUE FOR PORTION OF CLAIM. **[I. L. R., 5 Calc., 24**

See SPECIAL APPEAL—SMALL CAUSE COURT SUITS—MONEY . **2 B. L. R., A. C., 172**

——— **Separate share of—**

See CASES UNDER CO-SHARERS—SUITS BY CO-SHARERS WITH RESPECT TO THE JOINT PROPERTY—RENT.

——— **under Rs. 100.**

See CASES UNDER BENGAL ACT, 1869, s. 102.

1. ——— **Nature of suits under Act X of 1859.**—*Regular suits.*—Suits for rent under Act X of 1859 were not summary suits, but to all intents and purposes regular suits, only tried by Collectors. NUBO TARINEE DOSSEE *v.* GRAY **[11 W. R., 7**

S. C. BHABATARINI DASI *v.* GREY **[2 B. L. R., A. C., 152**

2. ——— **Suits cognisable under Rent Act.**—*Suit partly for rent in district where Act not in force.*—*Held* that a suit brought to recover rent, partly due in respect of estates situate in a district in which the Act was not in force, could be brought under the Rent Act. OOSMAN KHAN *v.* CHOWDHRY SHEORAJ SINGH . **5 N. W., 42**

RENT, SUIT FOR.—Suits cognisable under Rent Act—*continued.*

3. ——— *Basis of suit.*—*Jurisdiction of Collector.*—A suit for rent was cognisable only by the Collector, under clause 4, section 23, Act X of 1859, whether it was based upon a kabuliat or agreement, or neither. DHUNPUT SINGH *v.* MILLS . . . . . **7 W. R., 473**

4. ——— *Suit for rent of lands held in excess.*—The Revenue Courts had under Act X of 1859 jurisdiction in a suit for rent in respect of lands held in excess of the lands for which the defendant was paying rent, where there was no lease or express contract limiting the lands of the tenancy. SHAM JHA *v.* DOORGA ROY **[7 W. R., 122**

5. ——— *Suit for rent payable under agreement.*—*Variable rate.*—A suit will lie under the Rent Act for rent payable under an agreement that land taken and occupied without an actual demise should be paid for at certain rates. A variation in the rates of rent in accordance with the crops under a distinct agreement to that effect is not in the nature of enhancement of rent. JADOOBUR SINGH *v.* BEHAREE SINGH . . **2 N. W., 437**

6. ——— *Suit for rent in kind.*—*Bengal Act VIII of 1869.*—A suit for rent in kind is cognisable under Bengal Act VIII of 1869. MULLICK AMANUT ALI *v.* UKLOO PASEE **[25 W. R., 140**

KRISHTO BUNDHOO BHUTTACHARJEE *v.* ROTISH SHAIKH . . . . . **25 W. R., 307**

See LACHMAN PRASAD *v.* HOLAS MAHTOON **[2 B. L. R., Ap., 27 : 11 W. R., 151**

and RAIKISORI DASI *v.* BONOMALI CHARAN MAITI **[1 B. L. R., S. N., 14 : 10 W. R., 209**

7. ——— *Suit for rent in kind.*—The Rent Act applies where rent is reserved in kind, just the same as in the case of suits for rent in money, but not where articles are to be delivered under a separate agreement unconnected with the question of rent. BHUBO SOONDUREE DEBIA *v.* JYNUL ABDIN . . . . . **8 W. R., 393**

8. ——— *Suit for rent in kind.*—*Beng. Act VIII of 1869.*—*Jurisdiction.*—The defendant took from the plaintiff's ancestor a small portion of endowed land for a garden, and in consideration thereof paid him a certain fixed amount of grain for his maintenance and support, and subsequently that payment was commuted into a monthly allowance of R3-8, which was regularly paid till 1276, and then stopped. To a suit under Bengal Act VIII of 1869 to recover the amount, the defence was that a suit for a claim of such a nature could not be brought under that Act; but the objection was overruled, and the plaintiff held entitled to recover the amount sued for. JALLALOODDEN *v.* BURNE **[15 B. L. R., 261, note : 18 W. R., 99**

9. ——— *Suit for rent in kind.*—*Damages.*—*Held* that damages on account of

RENT, SUIT FOR.—Suits cognisable under Rent Act—*continued.*

the wanton destruction of trees, though stipulated for in a kabuliat, cannot be claimed as rent; but that a stipulation to supply a number of mangoes yearly is one to pay a part of the rent in kind, and the value of the mangoes is realisable as rent in a Revenue Court. NUBO TARINEE DOSSEE *v.* GRAY [11 W. R., 7

S. C. BHABATARINI DASI *v.* GREY [2 B. L. R., A. C., 152

10. ——— *Suit to maintain money-rent and prevent substitution of rent in kind.*—*Held* that a suit for maintenance of money-rent, and to prevent the zemindar from substituting a rent in kind for the money-rent previously paid, is not a suit cognisable under the Rent Acts (Act X of 1859 or Act XIV of 1863). BAINEE *v.* MAHOMED ALI KHAN . . . . . 2 Agra, 307

11. ——— *Suit to enhance julkur tenure.*—A suit for enhancement of a julkur tenure is cognisable under the Rent Act. PURAN SAUTRA *v.* TAJOODDEEN . 5 W. R., Act X, 20

ALLUM CHUNDER SHAHA *v.* BHURUT BABOO [5 W. R., Act X, 92

And so is a suit for a kabuliat for payment of the rent of a fishery. KOYLASH CHUNDER DEY *v.* JOY NARAIN JALOOAH . . . 7 W. R., 93

12. ——— *Suit for rent of land in a town.—Beng. Act VIII of 1869.*—Bengal Act VIII of 1869 relates only to agricultural holdings, and its provisions have no application to land forming part of a street in a town. COLLECTOR OF MONGHYR *v.* MADAR BUKSH . 25 W. R., 136

13. ——— *Suit for rent of house situated in town.*—A suit for a kabuliat or surkhut will lie under Bengal Act VIII of 1869 in the case of a house situated in a town. RAM LALL *v.* CHUMMON GHUTTUCK . . 24 W. R., 271

14. ——— *Enhancement of rent of a dwelling-house in village.*—A suit for enhancement of rent of a dwelling-house in a village is cognisable under the Rent Act. ABDOOL HAMID *v.* DONAGRAM DEY . . 3 B. L. R., Ap., 133

15. ——— *Suit for rent of land covered with buildings.*—A suit for the rent of land is not altered by the fact of houses or buildings standing thereon, and therefore such a suit is one cognisable under the Rent Act X of 1859. MATHURANATH KUNDU *v.* CAMPBELL [9 B. L. R., 115, note: 15 W. R., 463

16. ——— *Suit for rent of land with buildings.—Jurisdiction.*—The Revenue Courts had no jurisdiction to entertain a suit for rent of land with buildings upon it, when the rent included the rent of the buildings as well as of the land. DHIRAJ MAHATAB CHAND BAHADUR *v.* MAKUND BALLABH BOSE [9 B. L. R., Ap., 13: 14 W. R., 246

17. ——— *Suit for house-rent including ground-rent.*—Where house-rent includes the rent of the ground upon which the house stands, and the ground-rent can be separated from the other items forming the aggregate of the house-rent, the claim to the extent of the ground-rent may be cognisable by the Revenue Court under Act X of 1859. RAM CHURN SINGH KETTREE *v.* MEADHUN DURJEE . . . . . 8 W. R., 90

18. ——— *Liquidated damages under agreement with respect to house.*—The defendant bought a house belonging to the plaintiff and standing on his own land, on the condition that, as long as the house was not removed, he would pay the plaintiff a certain sum per month. The house not having been removed, the plaintiff sued for the stipulated sum from date of purchase. *Held* that this was not an action for rent, but a suit for liquidated damages, and as such cognisable in the Civil Court. DEBNATH ROY CHOWDHRY *v.* KALLY KISTO ROY CHOWDHRY . . . . 1 W. R., 2

19. ——— *Jurisdiction under Beng. Act VIII of 1869.—Suit for rent of houses.*—The rulings applicable to suits for rent of houses, or of portions of land covered with houses or markets, have no reference to suits in which rent is claimed in respect of a mouzah or of an entire estate, or the aliquot part of an estate. Hence a suit for rent of 8 annas of a mouzah which was part of the plaintiff's zemindari held in farm as a whole by the defendant, may be properly brought in a Civil Court under the provisions of Bengal Act VIII of 1869. GANEEMUT HOSSEIN *v.* RUNGOO SAHOO [3 C. L. R., 8

20. ——— *Suit for rent of land covered by arhats, ghâts, and bazars.*—A suit for rent of lands where the rent comes from arhats, ghâts, and bazars situated upon it, as well as from the land, was held not to lie under the Rent Act. HARI MOHAN SIRKAR *v.* MONCRIEFF [9 B. L. R., Ap., 14: 15 W. R., 464, note

MADAN SING *v.* MADAN RAM DEB [1 B. L. R., S. N., 11

21. ——— *Suit for rent of bastu lands.*—Where the rent for bastu lands was paid by the ryots to their landlord separately from the rent paid for the cultivated lands, but the tenure of the bastu lands was a ryotwari tenure, it was held that, as a matter of law, the distinction in the mode of paying the rent did not exclude those lands from the operation of Act X of 1859 or Bengal Act VIII of 1869. POGOSE *v.* RAJOO DHOPEE [22 W. R., 511

22. ——— *Suit for rent of garden attached to a house.—Held* that a suit by a lessee against a sub-lessee to obtain rent of a garden which was attached to a house, and was ancillary to the enjoyment of the house, was not cognisable by the Revenue Court, but by the Civil Court. SHYAM SINGH *v.* PUNCHUM MAJEE . . 2 Agra, 243

23. ——— *Suit for rent of lands appurtenant to dwelling-house.*—The defend-

RENT, SUIT FOR.—Suits cognisable under Rent Act—*continued.*

ant had been declared entitled, under section 9, Bengal Regulation XIX of 1814, to hold certain lands as attached to his dwelling-house, at an equitable rent payable to the landlord. The landlord subsequently sued under the Rent Act for enhancement of rent of these lands. *Held* that a suit for the rent of such lands could not be maintained under that Act. KHAIRUDDIN AHMED *v.* ABDUL BAKI
[3 B. L. R., A. C., 65 : 11 W. R., 410

24. ——————— *Suit for house and ground.*—If a house and two parcels of ground were held and enjoyed together, forming, as it were, one compound or set of premises, the suit as to the whole was not cognisable under the Rent Act. If one of the parcels of land lies at a distance, or is wholly separate and distinct from the other, the suit as to the former was cognisable under that Act. BIPRODOSS DEY *v.* WOLLEN . . **1 W. R., 223**

TAREENY PERSAUD GHOSE *v.* BENGAL INDIGO COMPANY . . . **2 W. R., Act X, 9**

25. ——————— *Suit for rent of land let for purpose of factory and dwelling-house.*—A suit lies under Act X of 1859 for the rent of land let for the purposes of a factory including the dwelling-house of the proprietor of the factory, it being immaterial for what purposes the lands were demised. TAREENY PERSAUD GHOSE *v.* BENGAL INDIGO COMPANY . . . . **2 W. R., Act X, 9**

26. ——————— *Suit for rent of land on tenancy not strictly agriculturable.*—The class of cases cognisable under the Rent Act includes suits for rent in cases of tenancies not strictly agriculturable, provided the subject of the lease is land and the rent issues out of the land, and is due on account of and for the use of the land, whatever may be the purpose for which the surface of the land is used. WATSON *v.* GOBIND CHUNDER MOZOOMDAR
[W. R., 1864, Act X, 46

27. ——————— *Garden land where trees are removed, Suit to fix rent of.—Act X of 1859, s. 23, cl. 1.*—Where land has been held as a bagh, and no other right or interest therein is shown, it becomes ordinarily, on removal of the trees, a portion of the malguzari land of the village, and the occupant who brings it under cultivation is liable to the payment of rent. If the landowner and himself cannot by agreement fix the rent, a suit for the determination of the rate was maintainable under clause 1, section 23 of Act X of 1859. But where the occupant who brings the bagh under cultivation sets up a right inconsistent with the existence of the relation of landlord and tenant, and there is a contest between the parties as to their respective rights and positions, the clause was inapplicable. SHROPAL SINGH *v.* RAI SEETARAM . . **3 N. W., 18**

28. ——————— *Suit for ground-rent of land on which golah is built.*—A suit for ground-rent of the land on which a golah stands is not cognisable under the Rent Act. DELAWUR ALI *v.* DABEE PERSHAD . . **11 W. R., 203**

RENT, SUIT FOR.—Suits cognisable under Rent Act—*continued.*

29. ——————— *Suit for tolls from persons coming to hât.—Beng. Act VIII of 1869.*—A suit for rent derivable by a lessor from tolls collected by the lessee from persons resorting to a hât is not cognisable under Bengal Act VIII of 1869. SAVI *v.* ISSUR CHUNDER MUNDUL
[20 W. R., 146

30. ——————— *Suit to enforce right to erect golahs at ghâts and to collect duties.—Act X of 1859, s. 23.*—A suit for enforcing an alleged right to erect golahs at certain ghâts, and to collect duties from persons using them, was not a suit "on account of any right of pasturage, forest right, fisheries, or the like," within section 23 of Act X of 1859, and the Collector had no jurisdiction to entertain it. FURLONG *v.* JOHURREE LOLL
[Marsh., 194 : 1 Hay, 453

31. ——————— *Suit for rent from a toll on river or canal.—Act X of 1859, s. 23, cl. 4.*—A suit to recover rent on lease of toll arising from a canal or river navigation was not cognisable under clause 4, section 23, Act X of 1859. GARLAND *v.* RAI MOHUN HAZRAH . . **1 W. R., 15**

32. ——————— *Suit for tolls for use of a ferry.—Act X of 1859, s. 23, cl. 4.*—A suit for tolls for the use of a ferry belonging to the plaintiff was not maintainable under Act X of 1859, section 23, clause 4. FURLONG *v.* TREELOCHUN SINGH
[Marsh., 504 : 2 Hay, 598

33. ——————— *Beng. Act VIII of 1869.—Suit for dustoorut.—Objection on appeal.*—A suit for dustoorut is not a suit for rent, and is therefore not cognisable under Bengal Act VIII of 1869. The ground that, even supposing the suit was not a suit for rent, it was not liable to be dismissed in order that a fresh suit might be instituted under Act VIII of 1859, not having been taken in the Court below, nor in the grounds of special appeal, was overruled at the hearing of the special appeal. RAM CHURN BANERJEE *v.* TOBITA CHURN PAUL
[18 W. R., 343

34. ——————— *Suit for rent of stone quarries.—Act X of 1859, s. 23, cl. 4.*—In a suit for rent under a lease of eight annas of a certain hill and of fourteen bighas of land, by which the lessee reserved a yearly rent of R200 for the land, and the right of levying a yearly tax on the parties who were employed in quarrying the stone,—*Held* that this was not a suit cognisable under Act X of 1859. *Khalut Chunder Ghose* v. *Minto, 1 Ind. Jur., N. S., 426,* considered and approved. SHALGRAM *v.* KUBIRUN . **3 B. L. R., A. C., 61 : 11 W. R., 400**

35. ——————— *Suit to recover payment for use of land for stacking timber.*—In a suit to recover money due, or payment in kind, for the use of the plaintiffs land by stacking timber thereon and keeping it there for a specified time,—*Held* that the claim was of the nature of one for rent and governed by the law of limitation applicable to money

RENT, SUIT FOR.—Suits cognisable under Rent Act—*continued.*

claims of that kind. Where there are well-known terms upon which the use of land for stacking timber is permitted by its owner and a party with the knowledge of this custom or practice uses the land in this way, he is bound as by an implied agreement to pay accordingly for such use. JUMNA DOSS *v.* GAWSEE MEAH . . . **21 W. R., 124**

36. ——————— *Usufructuary mortgage.—Huqajiri.—Reserved rent.*—The plaintiff had borrowed money on security of a zur-i-peshgi lease of property which, after some years, he sued to redeem by payment of an alleged balance, claiming credit for huqajiri of the hypothecated land owing to him for the intervening period. *Held* that huqajiri is not rent (*see Hyder Buksh* v. *Hossein Buksh, 4 W. R., 103*), and if it were, it was not claimed as such in this case: moreover, there being a rent reserved would not alter the essential character of the arrangement, which was one of usufructuary mortgage. *Held* that the words of section 25, Act X of 1859, imply that a suit by a zemindar to recover a rent reserved on land which has been let out on a zur-i-peshgi lease should be brought in a Civil Court. *Held*, also, that the plaintiff was justified in bringing his suit in a Court where he could obtain substantial relief although the remedy sought by him involved in its details different jurisdictions. SHEO GOLAM SINGH *v.* ROY DINKUR DYAL . **12 W. R., 215**

37. ——————— *Deposit as security for rent.—Huq-i-zemindari.*—The fact that a sum of money was deposited by the lessee with the lessor as security for the payment of the rent did not remove a suit for rent from the jurisdiction of the Revenue Courts. A claim for huq-i-zemindari was not cognisable under Act X of 1859. JOWAHUR LALL *v.* SULTAN ALI . . . . **12 W. R., 214**

38. ——————— *Suit for zemindari dâk charges.*—A suit by a zemindar against a putnidar for zemindari dâk charges, under Bengal Act VIII of 1862, for which the latter is liable under his kabuliat, was not cognisable under Act X of 1859. RUTTUNMONEE DOSSEE *v.* JOTENDROMOHUN TAGORE . . . . **6 W. R., Act X, 31**

39. ——————— *Act XIV of 1863, s. 1, cl. 4.—Suit for sum in nature of rent-charge.—Nuzzerana.*—A certain sum was paid to Government as nuzzerana during the existence of the maafee grant through a lumbardar. After the maafee was resumed and a Government jumma assessed upon it, the nuzzerana continued to be paid until the interest of the holder of the resumed maafee was confiscated for rebellion and sold at auction. After the confiscation the Government allowed the amount to the lumbardar by deducting it from the amount of Government revenue paid by him. *Held* that, under the circumstances, the payment of nuzzerana being a present in acknowledgment of proprietary title in the nature of a rent-charge, the suit was cognisable under clause 4, section 1, Act XIV of 1863. ZAHOOR HOSSEIN *v.* ASSUD ALI . **2 Agra, Pt. II, 178**

RENT, SUIT FOR.—Suits cognisable under Rent Act—*continued.*

40. ——————— *Suit to recover cesses in excess of rent.—Jurisdiction.*—Act X of 1859 gives no jurisdiction in suits to recover cesses over and above the rent. ORJOON SAHOO *v.* ANUND SINGH . . . . . **10 W. R., 257**

41. ——————— *Suit for arrears of cess.*—A suit for arrears of a cess, which is not in the nature of rent, could not be brought under Act X of 1859. KASIM ALI *v.* SHADEE . **3 N. W., 21**

42. ——————— *Suit to recover lumbardari right.—Act XIV of 1863.—Held* that a suit to recover lumbardari right, or 10 per cent. allowance provided for in the administration paper, being other than a commission on actual collection, was not cognisable under Act XIV of 1863. KHOOBI *v.* AKBAR . . . . . **2 Agra, 322**

43. ——————— *Suit for price of trees.—Act X of 1859, s. 23, cl. 4.*—A suit for half the price of trees cut down by the tenant, and claimed by the landlord by right of usage, was not cognisable under clause 4, section 23, Act X of 1859. TOHUL ROY *v.* MAHADEO DUTT **[W. R., 1864, 327**

44. ——————— *Suit for rent of zerait lands.*—A suit for rent from a party holding lands as zerait in his own possession was one for rent as between landlord and tenant, and cognisable under Act X of 1859. CROWDY *v.* SREE MISSER **[12 W. R., 4**

45. ——————— *Suit for rent of land covered by buildings.—L.* having claimed certain lands as lessee from the zemindar, and *A.* having pleaded that he held them under a mirasi tenure from the same zemindar, the Court held that the two leases could co-exist, and that *L.* was entitled to recover actual possession and to pay to *A.*, as an intermediate holder, the rent due to the zemindar. In execution of the decree, *L.* was put in possession of all the land except a portion covered by factory buildings in the possession of *A.*, which buildings the Court held did not go with the land. Unable to get possession, *L.* brought a suit to recover rent for the land covered by the building. *Held* that no suit for rent could lie, *A.'s* representative being a trespasser, and his mere statement of willingness to pay rent being insufficient to constitute the relation of landlord and tenant. LYONS *v.* BETTS . **13 W. R., 94**

46. ——————— *Payment by one co-sharer to others.—Beng. Act VIII of 1869.*—A co-sharer in an estate who cultivates a portion belonging to himself and the other shareholders should *pro tanto* be considered their tenant, and payment by such co-sharer for land so cultivated, by whatever name it be called, is substantially rent, and a suit for such rent comes properly under the provisions of Bengal Act VIII of 1869. ALLADINEE DOSSEE *v.* SREENATH CHUNDER BOSE . . **20 W. R., 258**

47. ——————— *Suits for rent by goundaks against under-tenants.*—Suits for rent

RENT, SUIT FOR.—Suits cognisable under Rent Act—*continued.*

between "goandahs" and those cultivating under them were cognisable under the Rent Act. LIKHUN PATHUK *v.* ROOP LAL . . **3 N. W., 48**

48. ——————— *Suit against co-sharer for share of rent.—Act X of 1859, s. 23.*—Section 23, Act X of 1859, was not applicable to a suit in which the plaintiff claimed as entitled to a moiety of the rent of certain land in the possession of his co-sharer. MITTUNLAL SAHOO *v.* NADUR **[1 W. R., 53**

KALEE PERSHAD *v.* LUTAFUT HOSSEIN **[12 W. R., 418**

49. ——————— *Suit for share of rent against tenant and co-lessors.*—A suit for a share of rent against a tenant and co-lessors was not cognisable as a suit for rent within the meaning of clause 4, section 23, Act X of 1859. LALLA ISREE PERSHAD *v.* STUART . **W. R., 1864, Act X, 28**

50. ——————— *Suit for rent and damages against co-sharers for sub-lease.*—Suit against co-sharers and dur-ijaradar for rent and damages in respect of a mehal of which a sub-lease was granted by the defendant co-sharers. As plaintiff did not get possession of his share until after the expiry of the sub-lease, and then only by the aid of the Civil Court, and as his title during the subsistence of the lease was merely nominal, and as he exercised no rights of a landlord during this period, and could not have sustained against the dur-ijaradar an action for rent under Act X of 1859,—*Held* that his suit was properly brought in the Civil Court. RADHAJEEBUN MUSTAFEE *v.* DENONATH BANERJEE **[W. R., 1864, Act X, 49**

51. ——————— *Suit by putnidar for his share of rent.*—A suit by one of a body of putnidars against his co-putnidars for his share of the rents collected by them was cognisable under the Rent Act. SOOBHUL SINGH *v.* MEETO SINGH **[W. R., 1864, Act X, 12**

HYDER ALI *v.* OMBIT CHOWDHRY **[W. R., 1864, Act X, 42**

52. ——————— *Shikmi talookdars.—Permanent settlement.*—Where shikmi talooks at the time of the permanent settlement were comprised within the zemindar's estate, the talookdars were subordinate to the zemindar, and the zemindar could therefore sue them for their rents in the Revenue Courts. CHUNDER KANT CHUCKERBUTTY *v.* DUKHEEANEA ODEA **[1 Ind. Jur., N. S., 6: 4 W. R., Act X, 41**

CHUNDER KANT CHUCKERBUTTY *v.* MAHOMED HOSSEIN . . . **6 W. R., Act X, 1**

53. ——————— *Suit for money advanced to naib for works on salaries.*—Money advanced to a naib for the construction of a bund, or for the payment of the salaries of tehsildars and peadahs, comes within the terms of section 23, Act X of 1859, with regard to the management of land, and a suit by a manager of an estate to recover such advance was cognisable by the Revenue Courts. RAM DYAL BANERJEE *v.* COURT OF WARDS **[12 W. R., 269**

54. ——————— *Suit for profits of misappropriated property.*—A suit for profits of property alleged to have been appropriated by a wrong-doer was cognisable by the Civil Court, and not by the Collector. ROOP MUNGUL SINGH *v.* ANUND ROY . . . . . **3 W. R., 111**

55. ——————— *Suit on bonds secured by assignment of rent.—A.* lent money to *B.* on bonds, payment of which was secured by assignment of the rents of *B.'s* estate. *A.*, instead of liquidating the bonds from the collections of the estate assigned, brought a suit on the bonds, and obtained a decree. *B.* then sued for a refund of the collections made and not appropriated to the payment of the bonds. *Held* that such a suit was not one for rent, and was not cognisable under the Rent Act. ALI MAHOMED *v.* KENARAM GHOSE **[8 W. R., 128**

56. ——————— *Purchase of crops on condition that they were subject to claim for rent.—Suit against purchaser to recover amount of rent.*—Where a party purchases crops belonging to a ryot at auction sale with notice, and assenting to the condition of sale that the crops were subject to the landlord's claim for rent, and the landlord also being aware of the terms of sale allows the purchaser to remove the grain on the understanding that the purchaser assented to, and became liable to pay, the rent, a suit to recover the amount from the purchaser is a suit as an implied contract between the landlord and the purchaser, and was not cognisable under the Rent Act. ACHUL *v.* GUNGA PERSHAD . **2 Agra, 73**

57. ——————— *Default of sezawul.—Suit against sezawul to recover loss.*—A lease empowered the landlord, on default of payment of any of the kists by the tenants, to appoint a kuruk sezawul, the tenants being responsible for any loss accruing. A default having occurred, and a kuruk sezawul having been appointed, the landlord sued to recover the loss sustained by him. *Held* that such a suit would not lie under the Rent Act. ANUND MOYEE DEBIA *v.* KHIRODHUR HALDAR **[2 W. R., Act X, 46**

58. ——————— *Suit to settle future rate of rent.*—A suit to settle the rent of future years between owner and occupier of land will not lie. MUDHOO SOODUN ROY *v.* SREEPUTTY BHUTTACHARJEE . . . **25 W. R., 488**

59. ——————— *Suit to determine future rates of rent.—Beng. Act VIII of 1869, ss. 28, 29, 35.*—A suit to determine, not merely current but prospective rates of rent, will lie under the rent law. A pottah is not necessarily mokurrari because it confers a contingent holding on the lessee and his posterity. ASGUR ALI *v.* WOOMA KANT MOOKERJEE **[25 W. R., 318**

RENT, SUIT FOR.—Suits cognisable under Rent Act—*continued.*

60. ——————— *Suit to collect rents as a sharer or representative of sharer.*—The Civil Court had jurisdiction in a suit which involved the right to collect rents as a sharer or representative, or as deriving from a sharer, and the decision of which depended on proof of a certain alleged partition. HURROCHUNDER ROY *v.* OBHOY CHURN SIRCAR . . . . . **2 W. R., Act X, 72**

61. ——————— *Suit raising question of extent of share as kutkeenadar.*—Where the kutkeenadar of an alleged share sued the kutkeenadar of the remaining portion for a proportion of rent, and defendant, while admitting himself to be plaintiff's tenant, disputed the extent of the alleged share,—*Held* that the question of the extent of the shares of the parties as co-kutkeenadars could only be decided by a Civil Court, which could give complete relief on the whole case with reference both to shares and rent. VERASUT HOSSEIN *v.* JUGHDHAREE SING **[13 W. R., 59**

62. ——————— *Intervenor.—Disputed title to rent.*—In a suit for rent paid in kind, in which defendant did not deny plaintiff's right as landlord, but in which intervenors appeared and objected that the Civil Court had no jurisdiction, and pleaded, also, that defendant was their tenant and paid rents to them,—*Held* (by LOCH, *J.*) that neither defendant's appropriation of the rent, nor the fact of his disputing plaintiff's share, nor the act of the intervenors in raising a question of right, altered the nature of the suit, or took it out of the cognisance of a Revenue Court. *Held*, also (by PHEAR, *J.*), that whatever might have been the case before the intervention, as soon as the intervenor was made a defendant, and issues of right and title were raised by the Court between him and the plaintiff, there was matter which the Court had jurisdiction to decide. GOLAM MAHOMED AKBUR *v.* RADHA KISHEN MOHUNT **[9 W. R., 287**

63. ——————— *Suit by assignee of right to recover rent.*—A claim to rent made by a person to whom the zemindar has assigned the right to recover the rent was cognisable under the Rent Act. SHAMASOONDEREE DOSSEE *v.* BINDABUN CHUNDER MOZOOMDAR **[Marsh., 199 : 1 Hay, 574**

64. ——————— *Suit for rent after assignment of rent in consideration of loan.*—In a suit for rent, where the original landlord had, in consideration of a loan from his tenant, made to him an assignment of the rents to some extent, plaintiff alleged that that arrangement had been put an end to, and the assignment had dropped by reason of the defendants having recovered the money in another way. *Held* that the Deputy Collector had full jurisdiction to inquire into the allegation, because plaintiff's cause of action was the original cause of action of the landlord, and the only effect of subsequent events was to deprive defendants of an answer to the claim. ISHAN CHUNDER SEIN *v.* KENARAM GHOSE **[12 W. R., 381**

RENT, SUIT FOR.—Suits cognisable under Rent Act—*continued.*

65. ——————— *Suit for rent against benami and actual cultivator.—Act X of 1859, s. 23, cl. 4.*—A suit for rent against two persons, one as the benami and the other as the actual farmer, was cognisable under clause 4, section 23, Act X of 1859. In such a suit the plaintiff could only obtain a decree against one or other, not both of the defendants. HEERALALL BUKSHEE *v.* RAJKISHORE MOZOOMDAR **[W. R., F. B., 58 : 1 Ind. Jur., O. S., 81 1 Hay, 449**

S. C. RAJKISHORE MOZOOMDAR *v.* HEERALOLL BUKSHEE . . . . . **Marsh., 188**

66. ——————— *Suit to recover rent wrongfully collected by unauthorised person.*—A suit would not lie, under Act X of 1859, to recover rent wrongfully collected by a person not the agent of the landholder, and without his authority. SEETAL KISTO ROY *v.* GOSSEENATH SHAH **[Marsh., 465**

67. ——————— *Suit raising questions of payment by burrat.*—In a suit for rent, where payment by a burrat is pleaded by the tenant and execution of it is proved by the landlord, the Revenue Court had jurisdiction to try the question of burrat. POORNO CHUNDER ROY *v.* NUND LALL GHOSE **[7 W. R., 25**

and of payment. DARIMDA DEBIA *v.* NILMONEE SINGH DEO . . . . . **13 W. R., 266**

68. ——————— *Claim to deduction of rent.—Bond.*—In an action for rent before the Collector, the tenant set up that, by a tamasook entered into between himself and his landlord after his lease, it was stipulated that in consideration of an advance of money by him to the landlord a part only of the rent should be paid and the residue applied in satisfaction of the debt, and he claimed to be entitled to the benefit of that stipulation. *Held* that the Collector had jurisdiction to inquire into the validity of the alleged tamasook, and to allow the deduction, if satisfied that it was genuine. EDUN *v.* BEECHUN . . . . . **Marsh., 409**

69. ——————— *Mode of payment of rent.—Revenue.*—In a suit by the Court of Wards, on the part of the Durbhunga Rajah, for unpaid instalments of rent, where the agreement under which the defendant held his zemindari was that he should pay his Government revenue into the Collectorate through the Rajah,—*Held* that the rule which prevailed in that part of the country amongst ordinary tenants of paying rent month by month was not applicable to defendant, and that the instalments of rent and interest thereon were to be calculated according to the Government rules for the payment of revenue. GRIDHAREE SINGH *v.* COURT OF WARDS **[10 W. R., 368**

70. ——————— *Apportionment of rent.*—Where a tenant held lands in six villages under a putnidar at an admitted rent, and the putnidar subsequently granted dur-putnis to two different par-

RENT, SUIT FOR.—Suits cognisable under Rent Act—*continued.*

ties of two and four of the said villages respectively, the tenant having admitted a certain sum to be the rent payable in respect of the lands situated in the two villages, the rent payable to the dar-patnidar of the four villages was properly estimated as the difference between the admitted rent of the land in all six villages and the admitted rent of the land situated in the two villages. BRAJA LAL ROY *v.* SAYAMA CHARAN BHUTT . **6 B. L. R., 523 : 15 W. R., 20**

71. ——————— *Suit for arrears of rent.—Suit for arrears of rent instituted before but decided after the abolishing of Revenue Courts.*—A suit for arrears of rent which had been instituted in the Civil Court before Bengal Act VIII of 1869 came into operation, was decided by that Court after the jurisdiction of the Revenue Courts had ceased to exist. *Held* that the Civil Court had no jurisdiction in the case. KULLYANESSUREE DOSSEE *v.* NARAIN KYBURTO . . **15 W. R., 241**

See DHIRAJ MAHATAB CHAND BAHADOOR *v.* MAKUND BULLABH BOSE **[9 B. L. R., Ap., 13 : 14 W. R., 246**

72. ——————— *Suit for arrears of rent.—Suit for arrears of phulkur.—Jurisdiction of Civil Court.*—A suit for arrears of rent of the description known as phulkur, being of a nature cognisable by a revenue officer when Act X of 1859 was in force, can now be brought before a Munsif: a Small Cause Court has no jurisdiction to try it. GOBIND SOOKOOL *v.* GOKOOL BHUKUT **[23 W. R., 304**

73. ——————— *Suit for arrears of rent.—Suit for rent of a hât.—Act X of 1859, s. 23, cl. 4.*—A suit for arrears of rent of a hât was cognisable under clause 4, section 23, Act X of 1859. GAETREE DABEA *v.* THAKOOR DOSS **[W. R., 1864, Act X, 78**

74. ——————— *Suit for arrears of rent.—Suit for arrears of rent of indigo factory.—Act X of 1859, s. 23, cl. 4.*—A suit for arrears of rent due on account of an indigo factory was not a suit for arrears of rent due on account of land within clause 4, section 23, Act X of 1859. ODDIT CHUNDER PAUL *v.* COMOLO KANTO PAUL **[Marsh., 401 : 2 Hay, 529**

75. ——————— *Suit for arrears of rent.—Suit for rent of land with indigo factories on it.*—A suit by a lessor for arrears of rent was triable under Act X of 1859, if the principal matter demised under the lease was land, and if indigo factories on such land were merely the adjuncts or appurtenances. SHABODA PERSHAD MOOKERJEE *v.* SEEENATH MOOKERJEE . . **15 W. R., 520**

76. ——————— *Suit for arrears of rent.—Suit on covenant in lease to recover arrears of rent of mine.—A.* leased to *B.* for 25 years, commencing from October 1855, certain aurungs, or pieces of ground, at a certain rent payable monthly, *B.* entering into a covenant to pay the rent. The property leased was a *loha* mehal or iron mine, and the lessee used it as such and erected smelting furnaces. *Held* that a suit by *A.* against *B.* on the covenant in the lease to recover arrears of rent was properly not brought under the Rent Act; that "land," as understood in reference to Act X of 1859, had a limited signification, and referred to such as is made use of for the purposes of vegetable or animal reproduction. KHALUT CHUNDER GHOSE *v.* MINTO **[1 Ind. Jur., N. S., 426**

77. ——————— *Suit for arrears of rent.—Suit for arrears of rent under assignment.*—A suit for arrears due under an assignment of rent was a suit to recover arrears of rent, and as such was only cognisable under clause 4, section 23, Act X of 1859. KISHEN KOOMAR MITTER *v.* MOHESH CHUNDER BANERJEE . **W. R., 1864, Act X, 3**

78. ——————— *Suit for arrears of rent.—Mortgagee executing lease to mortgagor.*—A mortgagee who executes a lease in favour of a mortgagor, stipulating to pay him a certain amount annually as rent, is, as far as the payment of that sum is concerned, a tenant of the mortgagor, and must be sued under the Rent Act for any arrears of such rent. BISSOROOP DUTT *v.* BINODE RAM SEIN . . . **W. R., 1864, Act X, 93**

79. ——————— *Suit for arrears of rent.—Suit to recover money due for jumma between dates of resumption and settlement.*—A suit by Government to recover what the defendants have by a writing agreed to pay in respect of Government jumma between the date of resumption and settlement, was not a suit for arrears of rent cognisable under Act X of 1859. GOVERNMENT *v.* HUSHUMTOONISSA BIBEE . **2 W. R., Act X, 106**

80. ——————— *Suit for arrears of rent.—Suit for damages.*—Plaintiff having paid arrears of rent to defendant as his landlord's authorised agent, was afterwards sued for those arrears by the landlord, who obtained a decree, the Courts holding that the payment to the mooktear was one which did not bind the landlord. Plaintiff then sued the mooktear who had received the money. *Held* that the suit was an action for damages, and not one cognisable under the Rent Act. BYKUNT NATH SANDYAL *v.* KALEE CHURN PAUL **[13 W. R., 359**

81. ——————— *Suit for arrears of rent.—Suit for arrears of rent after kabuliat had been given up, and after default in payment under agreement.*—The defendant gave up a lease of certain property which he had taken from the plaintiff. On doing so he agreed in writing that whatever rent was due to the plaintiff should be paid in a certain time. Having failed to carry out the agreement, the plaintiff sued him on the kabuliat for arrears of rent. *Held* that the suit was not cognisable under the Rent Act. JAIRAM GEER *v.* SHEO SUMPUT DOOBEY . . . . **5 N. W., 84**

82. ——————— *Suit against taloukdar for arrears of rent.*—A suit against a

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talookdar for arrears of rent at an enhanced rate would lie under Act X of 1859 even though it were not brought for determination of the rate at which defendant should be required to give a kabuliat. ROWSHUN BIBEE *v.* CHUNDERMADHUB KUR [16 W. R., 177

83. ——————— *Suit for arrears of rent.—Enhanced rent.—A.* took a farming lease from *B.*, by which he agreed to pay *B.* a certain yearly rent, and stipulated further to pay to *B.* half of any enhanced rent which he might succeed in realising from the ryots. *Held* that a suit by *B.* to recover arrears of this moiety of enhanced rent would lie under the Rent Act. BHADATARINI DASI *v.* GREY . . . . 2 B. L. R., A. C., 152

S. C. NUBO TARINEE DOSSEE *v.* GRAY [11 W. R., 7

84. ——————— *Suit for arrears of rent.*—A Collector could give a decree for arrears of rent against the real lessees in possession, although no previous realisation of rent directly from them was established, and no written agreement was shown to have been executed by them in their own names, another party being the ostensible holder of the lease, and not denying liability. JUDOONATH PAUL *v.* PROSUNNONATH DUTT . 9 W. R., 71

85. ——————— *Suit for arrears of rent.—Act X of 1859, s. 23, cl. 4.—Suit against lessee and surety for rent.*—A suit for arrears of rent under clause 4, section 23, Act X of 1859, could be entertained both against the lessee who was made originally liable, and against the surety who would be liable on the default of the lessee. BHOOBUN MOHUN *alias* PROLAD SANDYAL *v.* BHUBO SOON DEBEE DEBIA CHOWDHRAIN . . 8 W. R., 452

86. ——————— *Suit for arrears of rent.—Suit against lessees and their sureties.—Decree against lessees.*—There was no provision in Act X of 1859 which conferred on the Collector jurisdiction to take cognisance of a suit against the sureties of a lessee. Although, in a suit under Act X of 1859 against lessees and their sureties for arrears of rent, the decree passed against the sureties could not be maintained, still the decree passed against the lessees themselves was good. DOORGA PERSHAD *v.* SHEORAJ SINGH . . . . . 5 N. W., 222

GUNESH KOOER *v.* OOMDUTOONNISSA BEGUM [6 N. W., 77

87. ——————— *Suit for arrears of rent.—Act X of 1859, s. 23.—Surety for payment of rent.—Decree, Form of.*—In a suit for arrears of rent in a Revenue Court under Act X of 1859, the lessors joined as defendants the lessee, and another person whom they alleged to be a surety for the payment of the rent. An *ex parte* decree was made in favour of the plaintiffs, but it did not expressly make the alleged surety liable for the money awarded. In execution of the decree certain of the alleged surety's land was sold, and the decree-holders were the purchasers at the sale. An application under Bengal

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Act VII of 1876 for the registration of their names as proprietors of the land purchased having been rejected, the decree-holders brought the present suit to establish their title to, and to recover possession of, the land. *Held* that the plaintiff's title was bad, on the ground that the decree did not purport to bind the surety for the payment of the money awarded, and on the ground that a Revenue Court is not competent to entertain a suit against a person who has become surety for payment of rent. BHUGWAN CHUNDER ROY CHOWDHRI *v.* MANICK BIBEE [I. L. R., 9 Calc., 383: 11 C. L. R., 577

88. ——————— *Suit for arrears of rent.—Benami lease.—Landlord and tenant.—Act X of 1859.—A.* brought a suit in the Collector's Court against *B.*, *C.*, *D.*, and *E.*, for arrears of rent in respect of land demised under a pottah to *F.* He joined *G.* and *H.* as defendants. According to the terms of the pottah they were sureties for *F.* It was admitted that *F.'s* name was used benami in the pottah, and that he took no interest. *A.* sued *B.*, *C.*, *D.*, and *E.* as the parties interested and in possession. *C.* objected that a new settlement had been made and a new pottah granted; that he held a moiety only of the lands, and was not liable for more; and that *D.* was his ryot, and ought not, therefore, to have been made a defendant. *D.* and *E.* contended that they were liable in respect of the lot comprised under the pottah, and had already paid rent for it to *A.* under a decree, but objected that they ought to have been sued separately from *B.*, and *B.* did not appear. The lower Court held that *C.* had failed to make out his case, and that *D.* and *E.* were liable in this suit, and passed a decree ordering them to pay the amount admitted by them to be due from them, and the other defendants to pay the remainder of the claim. *C.* appealed. On the appeal, PEACOCK, *C. J.* (MITTER, *J.*, *contra*), held that the plaintiff's suit must be dismissed, the lease being to *H.*, and not to the defendants; that the Court below had founded its decision on matters extraneous to the lease, which it had no jurisdiction to inquire into. *Held* per MITTER, *J.*, that the suit was properly brought against the actual tenants and not against the benamidar, and that the Collector had jurisdiction. *Held* by both Judges that the suit should be dismissed as against the sureties, who could not, as such, be sued under Act X of 1859. ROY PRIYANATH CHOWDHRY *v.* BEPINBEHARI CHUCKERBUTTY [2 B. L. R., A. C., 237

S. C. PREONATH CHOWDHRY *v.* BEEPIN BEHAREE CHUCKERBUTTY . 11 W. R., 120

C. appealed under section 15 of the Letters Patent. *Held* by KEMP and JACKSON, *JJ.*, that the Collector had full jurisdiction to entertain the suit, which was properly brought against those who were in the actual possession of the land, and that these persons were really the tenants; that the form of the decree passed by the Collector was correct, the plaintiff having consented to the decree being given in that form; that the sureties had really made themselves responsible for those who were really interested under the lease, and not for *F.* *Prosunno Coomar*

RENT, SUIT FOR.—Suits cognisable under Rent Act—*continued.*

Pal Chowdry v. *Koylash Chunder Pal Chowdry*, *B. L. R., Sup. Vol.*, *759*, distinguished. *Held* by NORMAN, *J.* (dissenting), that the terms of the lease under which *F.* was alone interested could not be contradicted by oral evidence; that *F.* alone was bound to the lessor under the lease; that the defendant could not be sued as tenant, unless subsequent to the pottah and kabuliat something had occurred creating the relation of landlord and tenant between them and the lessor; that no such relation or any contract creating such relation between the parties could be implied from the circumstances of the case, and the suit should be dismissed. The Revenue Court had therefore no jurisdiction. But whether in the Revenue or Civil Court, *D.* and *E.* could not be sued jointly with *B.* and *C.*, nor could *G.* and *H.* BIPINBEHARI CHOWDRY v. RAM CHANDRA ROY **[5 R. L. R., 234 : 14 W. R., 12**

89. ——————— *Suit for arrears of rent.—Question relating to rent.*—In execution of a decree of the Revenue Court in a suit brought by *K.* for arrears of rent of a certain putni, the putni was put up for sale and purchased in the name of *G.* The rent having again fallen into arrear, *K.* took proceedings against *G.*, under Regulation VIII of 1819, for the sale of the putni; but the arrears having been paid, the putni was not sold. In a suit for arrears of rent of the same putni subsequently brought by *K.* against *G.*, *P.*, and *B.* (the wife of *P.*) jointly, on the allegation that the putni had been purchased by *G.* benami for *P.* and *B.*,—*Held* that the Collector had no jurisdiction to try questions relating to rent depending upon equitable rights and liabilities arising from circumstances other than those of the relationship of landlord and tenant. PROSONNO COOMAR PAL CHOWDRY v. KOYLASH CHUNDER PAL CHOWDHRY . . . **B. L. R., Sup. Vol., 758**
[2 Ind. Jur., N. S., 327 : 8 W. R., 429

PROSONNO COOMAR PAL CHOWDHRY v. MUDDUN MOHAN PAL CHOWDHRY
[11 B. L. R., Ap., 31, note : 13 W. R., 390

HURISH CHUNDER ROY v. POORNA SOONDUREE DEBEE . . . **18 W. R., 35, 125**

90. ——————— *Benami lease.—Beneficiary interest.*—In a suit for arrears of rent on a lease granted to one of two defendants in the name of the other, where the former admitted benami execution of the agreement, but the latter denied that any relation of landlord and tenant existed between himself and the landlord,—*Held* that the question whether the latter defendant was the party beneficially interested in the lease was not one which was intended by the Legislature to be tried by the Revenue Court. KISHEN BUTTEE MISRAIN v. HICKEY . . . . **11 W. R., 406**

91. ——————— *Suit for arrears of rent.—Title.*—*A.* died, leaving four sons, *B.*, *C.*, *D.*, and *E.*, by a wife deceased, and a widow, *K.*, and three other sons, *F.*, *G.*, and *H.*, by her. *K.* brought a suit against *B.*, *C.*, *D.* and *E.*, and against her three sons, *F.*, *G.*, and *H.*, to establish her title to a certain

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talook which she alleged had been conveyed to her by *A.* under a deed of gift. *B.*, *C.*, *D.*, and *E.* set up a prior deed of partition, whereby the property of the deceased, including this talook, was divided between all his sons in the proportion of ten annas to *B.*, *C.*, *D.* and *E.*, and six annas to *F.*, *G.*, and *H.* The High Court, on appeal, held that the deed of partition was genuine, and rendered the subsequent deed of gift inoperative. Afterwards *B.*, *C.*, *D.*, and *E.* instituted a suit in the Collector's Court for arrears of rent in respect of another talook, also included in the deed of partition, against the ryots and *F.*, *G.*, and *H.* The ryots admitted that they held at the rent claimed, but stated that they had not paid their rent on account of a dispute between the brothers as to the shares in which they were entitled to the same. *F.*, *G.*, and *H.* raised the defence that this suit could not be maintained in the Collector's Court: a suit in the Civil Court should be brought for the determination of their shares, and the decision in their prior suit was no evidence against them. *Held* that the question was really one of title between the brothers, and such suit could not be maintained in the Revenue Courts. GIRISH CHANDRA ROY CHOWDHRY v. RAJ CHANDRA ROY CHOWDHRY
[2 B. L. R., A. C., 1

92. ——————— *Suit for arrears of rent.—Question of joint title.*—In a suit for arrears of rent under Act X of 1859, where defendant, admitting plaintiff's interests in the land, alleged that it was the ijmali property of himself and the plaintiff, the Revenue Court dismissed the suit on the ground that it had no jurisdiction. The Judge on appeal reversed the decision and gave plaintiff a decree. *Held* that even if the Judge had gone simply into the question of title and decided whether the estate was joint or separate, and on that decision based a decree, he would not have been wrong. MOHESH DUTT v. BEG NARAIN SINGH
[16 W. R., 82

93. ——————— *Suit for arrears of rent and for possession.*—Where a claim for arrears of rent was joined to a claim for recovery of possession, the suit could not be brought under the Rent Act. In such cases a plaintiff was not to be forced into two Courts for the purpose of obtaining the full relief he required. BISHOON DYAL SINGH v. SARUB NARAIN SINGH . . **4 N. W., 32**

RENUNCIATION OF EXECUTORSHIP.

See EXECUTOR . **14 B. L. R., 276**

RENUNCIATION OF RIGHTS.

See CASES UNDER WAIVER.

REPEAL OF ACT, EFFECT OF—

See ABATEMENT OF SUIT—APPEALS.
[I. L. R., 7 Mad., 195

See CASES UNDER APPEAL—RIGHT OF APPEAL, EFFECT OF REPEAL ON—

See BENGAL REGULATION VII OF 1799.
[B. L. R., Sup. Vol., 626

REPEAL OF ACT, EFFECT OF—*continued.*

See CIVIL PROCEDURE CODE, 1882, s. 3 (1877 s. 3) . I. L. R., 3 Calc., 662
[I. L. R., 4 Calc., 825
3 C. L. R., 208, 437
I. L. R., 3 Bom., 161
I. L. R., 4 Bom., 163
I. L. R., 8 Bom., 287

See CASES UNDER EXECUTION OF DECREE —EFFECT OF REPEAL OF ACT PENDING SUIT.

See LIMITATION—STATUTES OF LIMITATION—ACT XXV OF 1857.
[13 B. L. R., 445

See LIMITATION—STATUTES OF LIMITATION—ACT IX OF 1871.
[I. L. R., 1 Bom., 286, 295
I. L. R., 4 Bom., 230
I. L. R., 3 Calc., 331
7 Mad., 283, 288, 298

See LIMITATION ACT, 1877, ART. 146 (1871, ART. 149) . I. L. R., 4 Calc., 283

See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—MADRAS ACT III OF 1865.
[I. L. R., 1 Mad., 223

See OFFENCE COMMITTED BEFORE PENAL CODE CAME INTO OPERATION.
[I. L. R., 2 Calc., 225
I. L. R., 1 All., 599

See STATUTES, CONSTRUCTION OF—
[3 Bom., O. C., 45, 49
6 N. W., 373
1 Hay, 369
I. L. R., 8 Bom., 340

1. ——— **Effect of change of law on pending suit.**—*Civil Procedure Code, 1859, s. 387.*—A suit was held to be pending under section 387, Act VIII of 1859, if anything remained to be done which might have been done under the old law; and a party in such a case was entitled to ask the Court to proceed under the old law, inasmuch as the application of the new Code would deprive him of a right, in reference to the procedure of the case, which but for the passing of the Code would have belonged to him. PARROTT *v.* RAM SUHAY SINGH
[W. R., 1864, 35

2. ——— *Suit before Act VIII of 1859.—Re-hearing.*—A defendant in a suit instituted before the passing of Act VIII of 1859 was entitled, under section 387, to any advantage of right which he might have possessed under the old procedure; but this did not bar him from availing himself of any advantages which he might obtain from the new procedure,—*e.g.*, a re-hearing, under section 119, in the case of an *ex parte* decree. RUSSOOLUN *v.* FUZEELUT-OONNISSA . W. R., 1864, Mis., 36

REPORT FROM RECORD OFFICE.

See EVIDENCE—CRIMINAL CASES — PREVIOUS CONVICTIONS.
[6 B. L. R., Ap., 15

REPORT OF AMEEN.

See CASES UNDER EVIDENCE—CIVIL CASES —REPORTS OF AMEENS AND OTHER OFFICERS.

REPORT OF MAGISTRATE ON INQUIRY INTO CAUSE OF DEATH.

See CRIMINAL PROCEDURE CODE, 1882, s. 176 (1872, s. 135).
[I. L. R., 3 Calc., 742

REPORT OF POLICE.

See COMPLAINT—INSTITUTION OF COMPLAINT AND NECESSARY PRELIMINARIES
[5 B. L. R., 274

See EVIDENCE—CRIMINAL CASES—POLICE EVIDENCE, DIARIES, PAPERS, AND REPORTS . . 6 W. R., Cr., 52
[7 W. R., Cr., 31
3 B. L. R., A. Cr., 4
6 B. L. R., Ap., 148
7 B. L. R., 329
9 B. L. R., Ap., 45

See RECOGNISANCE TO KEEP THE PEACE —CREDIBLE INFORMATION.
[4 B. L. R., F. B., 46
10 W. R., Cr., 41
21 W. R., Cr., 28

See RECOGNISANCE TO KEEP THE PEACE—LIKELIHOOD OF BREACH OF PEACE AND EVIDENCE . 6 B. L. R., Ap., 148
[4 B. L. R., F. B., 46
16 W. R., Cr., 45
10 W. R., Cr., 55

REPRESENTATIVE OF ASSIGNEE OF DEBT.

See CERTIFICATE OF ADMINISTRATION—RIGHT TO SUE OR EXECUTE DECREE WITHOUT CERTIFICATE.
[I. L. R., 4 Calc., 645

REPRESENTATIVE OF DECEASED PERSON.

——— **Appeal by—**

See APPEAL—EXECUTION OF DECREE—PARTIES TO SUITS.
[3 B. L. R., A. C., 40

——— **Execution of decree against—**

See CASES UNDER EXECUTION OF DECREE —EXECUTION BY AND AGAINST REPRESENTATIVES.

——— **Suit against—**

See CASES UNDER HINDU LAW—DEBTS.

See CASES UNDER MAHOMEDAN LAW—DEBTS.

See LIMITATION ACT, 1877, s. 17 (1871, s. 18) . . 3 B. L. R., A. C., 233
[I. L. R., 7 Calc., 627

REPRESENTATIVE OF DECEASED PERSON—*continued.*

See SALE IN EXECUTION OF DECREE—DECREES AGAINST REPRESENTATIVES.

——— **Suit by**—

See CASES UNDER CERTIFICATE OF ADMINISTRATION—RIGHT TO SUE OR EXECUTE DECREE WITHOUT CERTIFICATE.

1. ——— **"Representative," Meaning of.**—*Civil Procedure Code, 1859, s. 203.*—A person may be a representative within the meaning of section 203 of Act VIII of 1859 (corresponding with section 252 of Act X of 1877) so as to make the decree effectual for the purpose therein stated, although that person is not the heir. ASSAMATHEM NESSA BIBEE *v.* LUTCHMEEPUT SINGH
[I. L. R., 4 Calc., 142 : 2 C. L. R.. 223

2. ——— **Liability of representative for papers of deceased.**—The heirs of a deceased person are liable for papers in their custody for which a claim is established against the estate of the deceased, as well as for debts due therefrom to the extent of assets taken by them. LUCHMEEPUT SINGH *v.* NUND COOMAR GOOPTO . 22 W. R., 388

3. ——— **Hindu estate, Person taking possession of.**—*Liability for debt.—Executor de son tort.*—Where a Hindu died leaving a widow and brother, and the brother took possession of the deceased's estate during the widow's lifetime,—*Held* that the brother was liable to pay a debt of the deceased out of the estate come into his hands. *Held*, also, that he was liable as legal representative of deceased, the widow having relinquished her rights as heiress. *Quære*,—Is any stranger who takes a deceased's estate liable, under Hindu law, to pay his debts as executor *de son tort?* JOGENDER NARAIN DEB ROYKUT *v.* TEMPLE
[2 Ind. Jur., N. S., 234

4. ——— *Subsequent proof of will by executor.—Liability of estate in hands of executor.—Creditor's right to execute decree or bring suit against executor.*—The person taking possession of the estate of a deceased Hindu (who has left a will, of which, however no probate has been granted) must, in the present state of the law, be treated for some purposes as his representative, until some other claimant comes forward. A judgment obtained against such a person, even if it cannot be executed against the estate in the hands of an executor when he has taken out probate, is at any rate sufficient to enable a plaintiff to bring a suit against the executor in order to have the decree satisfied. PROSUNNO CHUNDER BHUTTACHARJEE *v.* KRISTO CHYTUNNO PAL . I. L. R., 4 Calc., 342 : 3 C. L. R., 154

5. ——— *Heir of deceased Hindu allowing stranger to enter into possession of deceased's property.—Effect of decree against party in possession.*—If the heir of a deceased Hindu stands by and allows a stranger to enter into possession of the deceased's property, every person claiming under him will be bound by the decree in a suit of which he had notice, instituted *bonâ fide* against the party in possession for the recovery of a debt due by the deceased to the plaintiff. UMA SUNDARI *v.* NITTYANUND SHAHA RAI . . 3 C. L. R., 157

REPRESENTATIVE OF DECEASED PERSON.—Hindu estate, Person taking possession of—*continued.*

6. ——— **Liability of representatives.**—*Money-debts.—Damages for breach of contract.*—The heirs and representatives of a deceased person are liable, according to equity and good conscience, to pay not merely the actual debts of the deceased, but also the damages which arise from his breaches of contract. DELANNEY *v.* BIBEEJAN . 22 W. R., 494

7. ——— **Widow of deceased Hindu.**—*Creditor's right on decree against widow as representative.*—Where a Hindu died leaving a childless widow and a separated brother, it was held that, until a legal representative was appointed to the deceased's estate, his widow was the only person who could defend a suit as his representative; and that while a decree obtained against the widow would enable a creditor to attach and sell, not only the widow's life-estate in the immoveable property, but also the reversionary estate of the remainder-man, yet a decree obtained against the remainder-man would not enable the creditor to touch the estate in the hands of the widow. NATHA HARI *v.* JAMNI
[8 Bom., A. C., 37

8. ——— *Sale in execution of decree against estate of deceased.—Suit against representatives of deceased husband's estate.*—In 1862 a suit for mesne profits was brought against certain persons as being the heirs of one *R. L.*, deceased, among whom were his widow and two infant sons. During the pendency of this suit the two infant sons died, and the widow was made a defendant as representing the estate of her deceased sons. The suit was decreed in favour of the plaintiffs in 1875; and on the plaintiffs applying for execution, the widow objected that 5 16ths of the properties, against which execution was sought, was the property of her adopted son, whom she alleged to have adopted in 1874. The adopted son was not made a party to the suit. This objection was overruled, but the same objection was taken by the adopted son through his natural father as his guardian and next friend, and the Court released the 5-16th share from attachment, and allowed the objection. Against this order some of the plaintiffs appealed, but pending the appeal another of the plaintiffs applied to the High Court under section 622 of the Code of Civil Procedure to have the order set aside. The Court, whilst refusing to interfere with the order, inasmuch as there appeared to be no material irregularity therein, pointed out to the lower Court that the decree of 1875 having been obtained on account of a debt of *R. L.'s*, and being against the widow as representing her husband's (*R. L.'s*) estate, the estate would be answerable for the debt, whether the widow or the adopted son represented the estate, supposing the decree to have been properly obtained. The principle in *Ishan Chunder Mitter* v. *Buksh Ali Soudagur, Marsh., 614*, followed. SOTISH CHUNDER LAHIRY *v.* NILCOMUL LAHIRY
[I. L. R., 11 Calc., 45

REPRESENTATIVE OF DECEASED PERSON—*continued.*

9. ——— **Son as representative of father.**—*Suit against son.—Assets.*—Where a suit is brought against a Hindu son, personally and as representative of his father, to recover a debt due by the father, a decree ought to be given against his son, whether he has inherited any property or not, the result of such a decree in the case of non-inheritance being that it cannot be executed against the non-inheriting son. BAPUJI AUDITRAM *v.* UMEDBHAI HATHE SING . . . **8 Bom., A. C., 245**

10. ——— **Suit against legal representative.**—*Assets.*—*Decree.—Execution.—Civil Procedure Code (Act XIV of 1882), s. 252.*—A plaintiff is entitled to sue the legal representative of his deceased debtor, and to obtain a decree against him, without proving that assets have come into his hands. It is sufficient if there are assets of which he may become possessed. The decree should mention that it is against the defendant in that character, and should be executed as directed by section 252 of the Civil Procedure Code, Act XIV of 1882. *Rayappa Chetti* v. *Ali Sahib, 2 Mad., 336,* followed. GIRDHARLAL *v.* BAI SHIV . **I. L. R., 8 Bom., 309**

11. ——— **Suit against heir for debts of ancestor.**—*Onus probandi.*—In a suit against an heir for debts of his ancestor, in the absence of special circumstances, it lies upon the plaintiff in the first instance to give such evidence as would *primâ facie* afford reasonable ground for an inference that assets had or ought to have come to the hands of the defendant. Plaintiff having laid his foundation for his case, it then lies upon the defendant to show that the amount of such assets is not sufficient to satisfy the plaintiff's claim, or that he was entitled to be satisfied out of them, or that there were no assets, or that they had been disposed of in satisfaction of other claims. KOTTALA UPPI *v.* SHANGARA VARMA **[3 Mad., 161**

12. ——— **Liability of representative with assets to account.**—*Mesne profits.*—When a party is proceeded against as the representative of a deceased judgment-debtor, and it is proved that property which belonged to the deceased judgment-debtor has come into his hands, it lies upon him to account for such property and to include in his accounts mesne profits, whether accruing in the shape of rents or of interest. ASEEMOONNISSA *v.* AMEEROONNISSA . . . . . **15 W. R., 285**

13. ——— **Denial of assets.**—*Decree against estate.—Costs.*—In a suit brought against the representatives of a deceased Mahomedan, alleged to be in possession of his estate for recovery of the amounts of a bond-debt due by the deceased, the plaintiff should first be allowed to establish his right of suit against the estate, although the defendants plead that they possess no property belonging to the deceased to satisfy the claim. Such a plea, if established, is one to be regarded in framing the decree. The decree in such a case should be for payment out of the property of the deceased. And ordinarily the Court should not direct payment of the costs by the defendants personally, but out of the estate. MADHO RAM *v.* DILBUR MAHUL . . **2 N. W., 449**

REPRESENTATIVE OF DECEASED PERSON.—Denial of assets—*continued.*

14. ——— *Person in possession of estate without assets.—Act VIII of 1859, s. 203.*—The plaintiff sued the defendants on the ground that they were in possession of his deceased debtor's property. It being found that the defendants received no assets from the deceased,—*Held,* the suit was rightly dismissed. If the suit had simply been against the defendants as heirs or personal representatives of the deceased, and if they had alleged that no assets had come to their hands, the plaintiff would have been entitled to a decree against them as representatives of the deceased (if he had prayed for such a decree), without going to a trial on the question whether or not the defendants had assets; and in that case he might have proceeded, in enforcement of his decree, under the provisions of section 203, Act VIII of 1859. IN THE MATTER OF THE PETITION OF HIRALAL MOOKERJEE **[6 B. L. R., Ap., 100**

S. C. HEERA LAL MOOKERJEE *v.* DIGUMBURRE KULOONEE . . . **14 W. R., 431**

15. ——— **Representatives of debtor.**—*Right to decree to extent of assets against heirs.*—A decree was obtained against *A.*, and on his death execution was taken out against his widows. *B.* came in, and, alleging that *A.* was merely a benami holder for *B.*, applied to be substituted for the widows as defendant. *Held* that the Court was not right in exempting from liability *A.'s* heirs to the extent of any assets which might have come into their hands. DOORGA SOONDURRE DEBIA *v.* SOORJOMONEE DEBIA . . . . . **8 W. R., 101**

16. ——— *Civil Procedure Code, 1859, s. 203.—Right to have decree executed out of property coming to hands of representative.*—Plaintiff sought to recover the amount of a bond executed by the father of the defendant, and prayed for a judgment against certain land which belonged to the defendant's father and the right to which passed by succession to the defendants. *Held* that the plaintiff was entitled to a decree for payment by the defendants of the amount of the bond out of any property which passed to them as the representatives of their father; the plaintiff, in execution of the decree, being at liberty to proceed in respect of the immoveable property, if there should be no moveable property left, or if it should prove insufficient when sold to satisfy the decree. RAYAPPA CHETTI *v.* ALI SAHIB **[2 Mad., 336**

17. ——— *Execution of decree against son.—Civil Procedure Code, 1859, s. 203.—Issues.*—Where the defendant in a suit for the payment of money died before decree, his sons were made parties and a decree for the debt due by the deceased was given against them. In execution of this decree the decree-holder attached certain property in the hands of one of the sons, who objected on the ground that it was his self-acquired

REPRESENTATIVE OF DECEASED PERSON.—Representatives of debtor— *continued.*

property. *Held* that the proper issues to be determined were: (1) whether the property attached by the decree-holder had formed a part of the estate of the deceased debtor; and if not, (2) whether if it was separate property of the son, that son had misapplied any property received by him from his father, and if so to what extent. MOORAREE SINGH *v.* PURYAG SINGH . . . . . 2 C. L. R., 189

18. ——————— *Responsibility of representative.—Rights of creditors.*—When a defendant against whom a decree was passed in his representative capacity has made payments in satisfaction of the decree to the full value of the property of the deceased which has come, or but for the default of the defendant might have come to his hands, the decree can no longer be executed even although the decree-holder may be able to prove that the defendant still has in his possession property which originally belonged to the deceased. If the heir of a deceased Hindu or Mahomedan has sold to a *bonâ fide* purchaser property which he has inherited, he is responsible for the assets received, but the property cannot be followed in the hands of the purchaser. RAM GOLAM DOBEY *v.* AYMA BEGUM [12 W. R., 177

19. ——————— *Liability of representatives. Onus probandi.—Mode of accounting.*—Before judgment-debtors can claim exemption from a decree-holder's claim, on the ground that they only received a small sum from their ancestor's estate, or that what they have received has been paid in satisfaction of their ancestor's debts, they should prove and file an inventory of the whole estate descended to them, and prove how it has been applied. In a claim of this kind, the onus of proof is on the judgment-debtors, and, on their failure to sustain it, a presumption arises in favour of the decree-holder. JOOGUL KISHORE SINGH *v.* KALEE CHURN SINGH [25 W. R., 224

20. ——————— *Payment of debt to representative.—Refusal to pay uncertificated representative.*—The defendant gave a bond on unstamped paper to the plaintiff's eldest brother. On the obligee's death the succession was disputed, and the obligor refused to pay the subsequent interest to the plaintiff. *Held* that, as the plaintiff had failed to take out a certificate of succession to the obligee, the obligor was justified in such refusal. *Held*, also, that the plaintiff could not recover the stamp penalty from the obligor. GARUDA REDDI *v.* GUDI JANAKAYYA REDDI. GUDI JANAKAYYA GARU *v.* GARUDA REDDI . . . . . 1 Mad., 124

21. ——————— *Payment of debts to heir of deceased without certificate.—Certificate subsequently granted.—Liability of debtor.—Bom. Reg. VIII of 1827.*—A defendant who is sued by the holder of a certificate of heirship to a deceased Hindu for a debt due from the defendant to the deceased is at liberty to show, notwithstanding the certificate of heirship, that he has paid the debt he

REPRESENTATIVE OF DECEASED PERSON.—Representatives of debtor— *continued.*

owed the deceased to the actual heir of the latter before the grant of the certificate of heirship It will not, however, be sufficient for such defendant to show that he has paid his debt to a person whom he *bonâ fide* believed to be such heir. PURSHOTAM MANSUKH *v.* RAMCHHOD PURSHOTAM [8 Bom., A. C., 152

RE-SALE.

See CASES UNDER SALE IN EXECUTION OF DECREE—RE-SALES. [I. L. R., 2 Bom., 562

RE-SALE OF GOODS, NOTICE OF—

See CONTRACT ACT, s. 73. [15 B. L. R., 276

RESCUE.

See ESCAPE FROM CUSTODY. [21 W. R., Cr., 22
13 W. R., Cr., 75

RESERVOIR.

See PENAL CODE, s. 277. [I. L. R., 2 Calc., 383

RESIDENCE.

See CASES UNDER INSOLVENT ACT, s. 5.

See CASES UNDER JURISDICTION—CAUSES OF JURISDICTION—DWELLING OR RESIDENCE.

See SECURITY FOR COSTS—SUITS. [I. L. R., 3 Bom., 227

See CASES UNDER SMALL CAUSE COURT, MOFUSSIL—JURISDICTION — DWELLING OR CARRYING ON BUSINESS.

——————— **Condition for—**

See WILL—CONSTRUCTION. [12 B. L. R., 1
14 B. L .R., 60

——————— **Proximity of—**

See CERTIFICATE OF ADMINISTRATION—ISSUE OF AND RIGHT TO CERTICATE. [I. L. R., 4 Calc., 411

——————— **Right of—**

See CASES UNDER HINDU LAW—FAMILY DWELLING-HOUSE.

See HINDU LAW—MAINTENANCE—RIGHT TO MAINTENANCE—WIDOW. [12 B. L. R., 238

RESISTANCE OF PROCESS OF CIVIL COURT.

See CONTEMPT OF COURT — CONTEMPTS GENERALLY . 2 B. L. R., F. B., 21

RESISTANCE OR OBSTRUCTION TO EXECUTION OF DECREE.

See LIMITATION ACT, 1877, ART. 11.
[I. L. R., 5 Bom., 440

See ONUS PROBANDI — POSSESSION AND PROOF OF TITLE.
[I. L. R., 10 Calc., 50

See SALE IN EXECUTION OF DECREE—OBJECTION TO SALE.
[I. L. R., 3 Calc., 729

1. ——— **Application by decree-holder on obstruction being made.**—*Month.—English calendar.—Civil Procedure Code, 1859, s. 226.*—The word "month" in section 226 of the Code of Civil Procedure means a month according to the English calendar. An applicant under that section had a clear calendar month, exclusive of the day of dispossession, within which to prefer his application. DADU VALAD ANSAR *v.* BALGOUDA BIN SHANKARAPPPA . . . . . 5 Bom., A. C., 39

2. ——— *Civil Procedure Code, 1859, s. 226.—Procedure.*—The Court could not be put in motion under section 226 of the Code of Civil Procedure without an application from the decree-holder under that section. IN THE MATTER OF MAHTAB KOOMAREE . . 19 W. R., 62

3. ——— **Remedies of decree-holder.**—*Obstruction in execution of decree.—Decree-holder, Option of, to proceed under s. 328 or by a separate suit.*—Section 328 of the Civil Procedure Code (Act XIV of 1882) does not make it obligatory on a decree-holder, who is obstructed in execution of the decree, to pursue his remedies under that section. Consequently his failure to do so does not prevent him from proceeding against the defendant by a regular suit. BALVANT SANTARAM *v.* BABAJI
[I. L. R., 8 Bom., 602

This was the case under section. 226 of Act VIII of 1859. JUGMOHUN TEWAREE *v.* BULDEO NAIK
[3 Agra, 162

4. ——— **Proof of obstruction.**—*Civil Procedure Code, 1859, ss. 226, 227.*—In order to bring a case under sections 226 and 227 of the Civil Procedure Code, 1859, it was necessary to show that obstruction had been offered arising from the circumstance that lands had been taken which were not included in the decree. PRANNATH ROY CHOWDHRY *v.* PREONATH ROY CHOWDHRY . 8 W. R., 398

5. ——— **Procedure.**—*Civil Procedure Code, 1859, ss. 226, 227.—Obstruction in execution of decree for immoveable property.*—Procedure to observed where, while execution of a decree was going on against immoveable property, the decree-holder alleged that he was obstructed in getting possession of certain lands included in the decree. BROJO MOHUN SUTPUTTY *v.* SHOODA MONEE DABEE
[8 W. R., 79

6. ——— *Objection to investigation by Ameen under order of remand.—Civil Procedure Code, 1859, ss. 226, 227.*—Where the order of remand directed the lower Court to ascertain from the settlement chittahs the situation of the lands in dispute, and the chittahs were found not to give the expected information,—*Held* that the Judge should, when the Ameen's investigation was objected to, have proceeded under sections 226 and 227 of Act VIII of 1859, and allowed both parties to adduce proofs of their claims. SHADHOO SURAN *v.* BHUGGOO LALL . . . . . 12 W. R., 98

RESISTANCE OR OBSTRUCTION TO EXECUTION OF DECREE.—Procedure —*continued.*

7. ——— **Power of Courts.**—*Civil Procedure Code, 1877, s. 529.*—The power given by section 329 of the Civil Procedure Code to make such order as the Court shall see fit must be construed with regard to the circumstances in respect of which the power is to be exercised. An order under section 329 should be the result of the fact that the defendant in the suit, who is precluded by the decree from disputing plaintiff's right, unjustly instigates a third party, who has no real interest in the property, to prevent the plaintiff from getting the benefit of his execution. A Court has no power under this section to determine, as between the judgment-creditor and a third party obstructing the execution of the decree, important questions on the merits which are wholly unconnected with, and cannot be affected by, the fact that the obstruction is made at the instigation of the defendant. GOVINDA NAIR *v.* KESAVA
[I. L. R., 3 Mad., 81

8. ——— *Civil Procedure Code, 1882, ss. 331 and 647.—Civil Courts Act, Madras, 1873, s. 12.—Jurisdiction.—Claim below ordinary pecuniary limit.*—A Court executing a decree obtains, by virtue of section 331 of the Code of Civil Procedure, a special jurisdiction which enables it to try a claim of which the value of the subject-matter falls below the pecuniary limit of its ordinary jurisdiction. By virtue of section 647 of the Code of Civil Procedure, a superior Court may, for sufficient cause, transfer a claim, registered under section 331, to a subordinate Court for trial. SITHALAKSHMI *v.* VYTHILINGA . . I. L. R., 8 Mad., 548

9. ——— **Person put into formal possession.**—*Civil Procedure Code, 1859, s. 229 and s. 224.—Execution of decree for possession.*—The provisions of section 229 of the Code of Civil Procedure, 1859, are not applicable to the case of a person put in possession of land under a decree in the manner prescribed by section 224 of the same Code. GUNESH PERSHAD *v.* JYKISHUN
[1 N. W., 134 : Ed. 1873, 218

10. ——— **Bona fide claimant other than debtor.**—*Civil Procedure Code, 1859, s. 229.*—Under section 229 a *bonâ fide* claimant other than the defendant, obstructing the execution of the decree, instead of being looked upon as an intervenor, must be regarded as one of the substantial parties to the suit. DHIRAJ MAHTABCHAND *v.* NADUROONNISSA BEBEE . . . . . 4 W. R., 82

RESISTANCE OR OBSTRUCTION TO EXECUTION OF DECREE—*continued.*

11. ——— Obstruction otherwise than to officer of Court.—*Civil Procedure Code, 1859, s. 229.—Resisting execution of decree.—Jurisdiction.*—*A.* and *B.* obtained a decree for possession of land against *C.* On their proceeding to execute their decree, *D.*, who was in possession, presented a petition to the Munsif, complaining that they were thereby attempting unlawfully to interfere with his possession. The case was tried, on remand from the Judge, as a suit under the provisions of section 229 of Act VIII of 1859. *Held per* JACKSON, *J.*, that as the decree-holder had not complained that the officer of the Court had been obstructed or resisted by the claimant, the case did not fall within section 229 of Act VIII of 1859; and, therefore, the Court had not jurisdiction to take summary cognisance of the case. BUHAL SING CHOWDHRY *v.* BEHARILAL **[1 B. L. R., A. C., 206: 10 W. R., 318**

12. ——— Right to question legality of decree.—*"Claimants" under Civil Procedure Code, 1859, s. 229.*—In claims arising under section 229 of Act VIII of 1859, there was nothing to prevent the "claimants" from questioning the legality of the decree obtained by the decree-holder against the judgment-debtor. MAHOMED ALI KHAN *v.* KALUNDER ALI KHAN . . . . . **4 N. W., 81**

13. ——— Question for trial.—*Title.—Possession.—Civil Procedure Code, 1859, ss. 229, 230.—Procedure.*—In suits framed under the provisions of sections 229 and 230 of Act VIII of 1859, the question of title is to be tried, and not the mere question of *bonâ fide* possession. The matter in dispute is to be investigated in the same manner and with the like powers, as if a suit for the property had been instituted by the appellant against the decree-holder. RUCHA RAE *v.* PERMESHUR DYAL . . . . . **2 N. W., 252**

14. ——— *Civil Procedure Code, 1859, ss. 229, 230.—Question of title.*—*Held* that the principle of the Full Bench ruling, in *Radha Pyari Debi* v. *Nabin Chandra Chowdhry, 5 B. L. R., 708: 13 W. R., F. B., 80,*—that a suit under section 230 of the Code of Civil Procedure must be treated as an ordinary suit for the recovery of property, and that the whole question of title between the parties ought to be gone into,—is equally applicable to a case under section 229. ABDOOS SOBHAN *v.* BRAHMA DEO NARAIN **[14 W. R., 140**

Contra, TALEB HOSSEIN KHAN *v.* GOOROO PERSHAD ROY . . . **20 W. R., 57**

15. ——— *Purchaser of under-tenure.—Plea of limitation.*—Where a decree-holder sought to execute his decree against an under-tenure which had been sold for arrears of rent, and the purchaser objected on the plea of limitation,—*Held* that the purchaser, being no party to the suit, was not entitled to contend that execution was barred: he could only be heard under section 229 or section 230, Act VIII of 1859; and if under the former, a very wide discretion could be exercised by the Court. MOHESH CHUNDER BANERJEE *v.* CHUNDRA MONEE DEBIA . . **9 W. R., 486**

RESISTANCE OR OBSTRUCTION TO EXECUTION OF DECREE.—Question for trial—*continued.*

16. ——— Order on application made after time limited.—*Civil Procedure Code, 1859, ss. 229, 231.—Right to bring fresh suit.*—The holder of a decree for land, having been resisted in obtaining possession thereof by a person other than the defendant claiming to be in possession of such land on his own account, complained under Act VIII of 1859 of such resistance to the Court executing the decree. The Court rejected such application on the ground that it had been made after the time limited by law. *Held* that the order rejecting such application could not be regarded as one under section 229 of Act VIII of 1859, which would under section 231 preclude such decree-holder from instituting a suit against such person for such land. BENI PRASAD *v* LACHMAN PRASAD **[I. L. R., 4 All., 131**

17. ——— Nature of investigation.—*Civil Procedure Code, 1859, s. 229.—Subject-matter of suit. — Execution. — Appeal. — District Judge, Jurisdiction of.* — The plaintiff obtained a decree against *T.*, *A.*, and *J.* in a suit the subject-matter of which exceeded R5,000, and in part execution thereof attached property worth less than that amount. *D.* having resisted the execution of the decree, the plaintiff's claim was numbered and registered as a suit under section 229 of Act VIII of 1859. Upon investigation the first class Subordinate Judge made an order staying execution of the decree. The plaintiff appealed to the District Judge, who held that no appeal lay to him, as the subject-matter of the original suit, out of which the execution suit arose, exceeded R5,000. The plaintiff appealed against this decision to the High Court. *Held* that the investigation of a claim under section 229 of Act VIII of 1859 was not to be regarded as a fresh suit, but was merely a continuation of the original suit, and that there was, therefore, no appeal against the order in question to the District Judge. RAVLOJI TAMAJI *v.* DHOLPA RAGHU . . **I. L. R., 4 Bom., 123**

Contra, MUTTAMMAL *v.* CHINNANA GOUNDEN **[I. L. R., 4 Mad., 220**

in which it was held that such a claim was a fresh suit, and not a continuation of the suit in which the claim had been made.

18. ——— Decree in possessory suit.—*Civil Procedure Code, 1859, s. 230.—Decree in suit under Act XIV of 1859, s. 15.*—*A.* had been dispossessed of certain land in execution of a decree which *B.* had obtained in a suit against *C.* under section 15, Act XIV of 1859. *A.* applied, under section 230, Act VIII of 1859, to recover the land. *Held*, the decree obtained by *B.* was a decree within the meaning of section 230 of Act VIII of 1859, and therefore *A.* had rightly applied under that section. BRAHMA MAYI DEBI *v.* BARKAT SIRDAR . . . . **4 B. L. R., F. B., 94**

RESISTANCE OR OBSTRUCTION TO EXECUTION OF DECREE.—Decree in possessory suit—*continued.*

S. C. BROHMO MOYEE DABEE *v.* BURKUT SIRDAR [12 W. R., F. B., 25

Contra, GOBIND CHUNDER BAGDEE *v.* GOBIND GHOSE MUNDUL . . . 7 W. R., 171

19. ——— Defendants dispossessed in execution, Objection by.—*Civil Procedure Code, 1859, s. 230.*—Section 230, Act VIII of 1859, does not authorise the registry as a suit of objections by defendants or purchasers from defendants dispossessed of immoveable property in execution of a decree, and disputing the right of the decree-holder to be put into possession of such property. HURO PERSHAD ROY *v.* RAM LOCHUN MUNDUL [6 W. R., 148

20. ——— Claimant to right of way over land taken in execution.—*Civil Procedure Code, 1859, s. 230.*—A plaintiff claiming a right of way over land taken possession of in execution of a decree could not intervene under section 230, Act VIII of 1859, but had to bring a regular suit to establish his right. NOBIN CHUNDER MOZOOMDAR *v.* JUTADHAREE HOLDAR . . 2 W. R., 289

21. ——— Person other than defendant as to particular portion of land in dispute.—*Civil Procedure Code, 1859, s. 230.—Suit on dispossession by Ameen.—Cause of action, period from which it accrues.*—Section 230, Act VIII of 1859, was applicable to the case of a person who, though personally the defendant in the original suit, was legally other than the defendant as regards the particular portion of land in dispute in execution. Where an Ameen was appointed to measure and give possession of land in execution of a decree, the one month allowed for preferring a claim under that section must be calculated from the date when the Ameen gave over possession, and not from the date of his final report. KASHEENATH DOSS *v.* BHOWANEE DOSSEE . W. R., 1864, Mis., 18

22. ——— Intervenor.—*Party to suit.—Right to apply under Civil Procedure Code, 1859, s. 230.—D.* having sued to recover possession of certain lands, *P.* intervened, and *D.'s* claim was decreed without prejudice to *P.'s* rights. In execution of that decree *D.* took possession, and thereupon *P.* applied to be heard under the provisions of section 230, Act VIII of 1859. *Held* that, having been a party to the decree, *P.* had no remedy under that law. RAMGOPAL CHUCKERBUTTY *v.* POORNOCHUNDER BANERJEE . . 12 W. R., 475

23. ——— Possession by receipt of rent. — *Personal occupation.* — *Civil Procedure Code, 1859, s. 230.*—Possession by receipt and enjoyment of rent is as good in law as actual occupation, and section 230, Act VIII of 1859, was not restricted to cases of personal occupation. BHYRUB SIRCAR *v.* SHAM MANJEE . . 15 W. R., 70

24. ——— Objector with bona fide title.—*Right to apply under Civil Procedure Code, 1859, s. 230.*—An objector who did not claim to be in possession "on his own account, or on account of some person other than the defendant," but whose sole ground of intervention was that he held a *bonâ fide* title derived from the defendant, was not entitled to be heard under section 230. EUSUF ALI KHAN *v.* SHIB SHUNKUR SHUHAYE. KURIM BUSKH *v.* SHIB SHUNKUR SHUHAYE [W. R., 1864, 384

25. ——— Claimant to possession through mortgagee.—*Right to apply under Civil Procedure Code, 1859, s. 230.*—Possession through a mortgagee is sufficient to bring a claim under this section. ASGUR ALI *v.* ASGUR ALI [20 W. R., 373

26. ——— Party not in actual occupation of land.—*Right to benefit of s. 230, Civil Procedure Code, 1859.*—A party who has parted with the actual occupation of land to another, was not thereby, as an absolute rule without restriction, barred from taking advantage of Act VIII of 1859, section 230. BANEE MADHUB DUTT *v.* NUND LALL MOJOOMDAR . . . . 22 W. R., 123

27. ——— Mortgagee in possession.—*Civil Procedure Code, 1877, s. 332.—Execution of decree.—Act VIII of 1859, s. 230.—Repeal.*—A mortgagee who is in possession of the mortgaged property under the mortgage is in possession "on his own account" within the meaning of section 230, Act VIII of 1859, and section 332 of Act X of 1877. Where, in pursuance of an order made in the execution of a decree while Act VIII of 1859 was in force, certain persons were dispossessed of certain property after that Act was repealed and Act X of 1877 came into force, and such persons applied under section 332 of Act X of 1877 to be restored to the possession of such property on certain of the grounds specified in that section,—*Held* that such persons were entitled to the benefit of that section. A person claiming under section 332 of Act X of 1877 need not prove his title, but only the fact of possession. SHAFI-UDDIN *v.* LOCHAN SINGH [I. L. R., 2 All., 94

28. ——— Nature of evidence requisite.—*Possession and dispossession, Proof of.—Civil Procedure Code, 1859, s. 230.*—To entitle a party to come in under section 230, Act VIII of 1859, by petition, and have his case tried in like manner as if he had paid full stamp duty on a regular plaint, he must prove that he was in possession of the land in suit, and was dispossessed by another party, alleging the land to form part of land decreed to him. NEEL MADHUB DUTT *v.* RADHA MOHUN [3 W. R., 205

29. ——— Failure to show dispossession.—*Civil Procedure Code, 1859, s. 230.—Suit to confirm possession.*—Where, in an application professedly under the provisions of section 230, Act VIII of 1859, plaintiff affirmed that he was in pos-

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session and sued to have his rights affirmed,—*Held* that as plaintiff was not dispossessed he had no cause of action, and that he was not entitled to be heard; nor had the Court jurisdiction to hear and determine his cause under the extraordinary provisions of that section. KALEE NARAIN SINGH *v.* PROTAPCHUNDER BUROOAH . . **12 W. R., 231**

30. ——— Dispossession, Evidence of.— *Sufficiency of proof.—Planting bamboo and making proclamation.—Civil Procedure Code, 1859, s. 230.*—Planting a bamboo and making proclamation to the occupants of an estate that it has been adjudged to some other, is sufficient dispossession of a landlord to warrant him in applying to the Court under section 230. COLLECTOR OF BOGRA *v.* KRISHNA INDRA ROY . . . . **2 B. L. R., A. C., 601 [11 W. R., 191**

31. ——— Procedure on application. —*Civil Procedure Code, 1859, s. 230.—Examination of applicant.*—When an application is made by a party on the ground that he was in possession and that he has been dispossessed in execution of a decree in a suit in which he was not a party, the proper order to be made under section 230, Act VIII of 1859, is in the first instance to examine the applicant. OBHOY CHURN DEY *v.* RAJENDRO COOMAR GHOSE . . . . . **16 W. R., 288**

32. ——— *Dispossession under decree of person not a party to it.—Civil Procedure Code, 1859, s. 230.*—A party dispossessed of land under colour of a decree to which he was not a party, applying to a Judge under the provisions of section 230, Act VIII of 1859, is entitled to an investigation, and, if his title is established, to a decree. HASSUN ALY *v.* NAIB AHMED **[11 W. R., 146**

33. ——— *Trial as regular suit.—Civil Procedure Code, 1859, s. 230.*—Where a party complains, under section 230, Civil Procedure Code, of having been dispossessed in execution of a decree to which he was not a party, and there are reasonable grounds for thinking that his claim is *bonâ fide*, it is the duty of the Court to treat the case as a regular suit between the claimant as plaintiff, and the decree-holder and judgment-debtor as defendants. LULEET NARAIN GOSSAMEE *v.* KESHUB DEB GOSSAMEE . . . **15 W. R., 209**

BANEE MADHUB DUTT *v.* NUND LALL MOZOOMDAR . . . . . **22 W. R., 123**

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S. C. ESHAN KHATOON *v.* RAMNATH SEIN LUSHKUR **[15 W. R., 327**

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The express provisions of the later Acts of 1877 and 1882, section 332 are in accordance with these cases.

34. ——— Question of title.— *Question of possession.—Civil Procedure Code, 1859, s. 230.* —Where an objection takes the form of a suit under section 230 of the Code of Civil Procedure, the real question to be tried is, whether the objector has a better right to the property in dispute than the decree-holder. SHEERO COOMAREE DABEE *v.* KESHUB CHUNDER BOSE **[1 Ind. Jur., N. S., 188: 5 W. R., 224**

Under Act VIII of 1859, section 230, it was held that the title might be gone into, as well as the question of possession. YUSAN KHATUN *v.* RAMNATH SEN . . . . . **7 B. L. R., Ap., 26**

S. C. ESHAN KHATOON *v.* RAMNATH SEIN LUSHKUR . . . . . **15 W. R., 327**

RADHA PYARI DEBI *v.* NABIN CHANDRA CHOWDHRY **[5 B. L. R., 708: 13 W. R., F. B., 80**

NUGENDER CHUNDER GHOSE *v.* RAM COMUL MUNDUL . . . . . **3 W. R., 213**

JADUNATH SING *v.* KALIPRASAD **[6 B. L. R., Ap., 55: 14 W. R., 358**

AJOO KHAN *v.* KISTO PERSHAD LAHOORY **[8 W. R., 477**

35. ——— *Civil Procedure Code, 1859, s. 230.—Claim.—Possession.*—When a person making a claim to certain property under section 230 of Act VIII of 1859 had been allowed to bring a suit under that section to try his right to the property, it was held to be sufficient, in the first instance, for him to prove his possession, without proof of title; but if he took this course, it was open to the defendant to show that although possession might be in the plaintiff, yet he had no good title to the property, and that he (the defendant) had a better title. DILBASSEE KOONWAREE MOTHER *v.* GUNGA PERSHAD . . **I. L. R., 5 Calc., 278**

36. ——— *Possession.—Limitation.—Civil Procedure Code, 1859, s. 230.*—The defendant purchased in 1856 from the Official Assignee certain property belonging to one *D.* In 1867 he brought a suit against the heirs of *D.* for possession of the property purchased; he obtained a decree in May 1869, under which he obtained possession in May 1870. In June 1870 the plaintiff filed a petition under section 230, Act VIII of 1859, alleging that he had purchased the property claimed from the heirs of *D.* in 1864, and had been in possession until he was ousted by the defendant, and that he was not a party to the suit brought by the defendant in 1867. *Held* that the title of the defendant was barred, more than twelve years having elapsed from the date of his purchase; and that the plaintiff was entitled, on mere proof of *bonâ fide* possession, and that he was not a party to the suit by the

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defendant in 1867, to put the defendant to proof of his own title, and, on the defendant's failing to prove his title, to be restored to possession. BRINDABUN CHUNDER ROY *v.* TARACHAND BANDOPADHAY [11 B. L. R., 237 : 20 W. R., 114

37. ——— Separate adverse claims.—*Dispossession.—Procedure.—Civil Procedure Code, 1859, s. 230.*—Four persons made separate applications to the Court, under section 230, Act VIII of 1859, alleging that the defendant, having obtained a decree against Government for possession of fisheries in a suit to which they were no parties, had in execution dispossessed them of fisheries of which they were severally in possession. On inquiry it appeared that each and several of the four applicants claimed possession of the same portions of the fisheries. The lower Court, holding that it was impossible for each of several parties setting up adverse claims to the same property to show that it had been *bonâ fide* in his possession, and that he had been dispossessed from it, referred all parties to a regular suit. *Held* that the Judge should have tried each case by itself as between the applicant and the decree-holder. SARADAMAYI CHOWDHRAIN *v.* NABIN CHANDRA ROY CHOWDHRY . 2 B. L. R., A.C., 333 : 11 W. R., 255

38. ——— Dispute between mokurraridar and dur-putnidar.—*Civil Procedure Code, 1859, s. 230.*—In a dispute between a mokurraridar and dur-putnidar, it was held that the khas possession of the dur-putnidar, having been established by a decree under section 230, Act VIII of 1859, could not be disturbed, except by a regular suit by the mokurraridar for confirmation of his title as mokurraridar and for direct possession. SHERO COOMAREE DEBEE *v.* KESHUB CHUNDER BOSE . . 8 W. R., 131

39. ——— Transfer of land in dispute from one jurisdiction to another.—*Intervenor.—Civil Procedure Code, 1859, s. 230.*—In a suit brought by an intervenor under section 230, Code of Civil Procedure, if during the pendency of the execution case the land in dispute is passed by transfer from one district to another, and thereby the Court is deprived of jurisdiction, it is the duty of the Court to transfer the record to the Court of the district to which the land has been transferred. KALEE DOSS NEOGY *v.* HURONATH ROY CHOWDHRY [3 W. R., 4

40. ——— Purchaser at execution sale.—*Civil Procedure Code, 1859, ss. 269, 268.*—A person coming in, under section 269, Act VIII of 1869, more than a month after dispossession, had no *locus standi* under that section. Section 268 of Act VIII of 1859 was solely for the benefit of purchasers at a sale in execution, and no person had any ground to come in under the application of a purchaser except the party who was complained of as resisting or obstructing the purchaser in obtaining possession. HEERA LALL BANERJEE *v.* BURODA KANT ROY. ONOOKOOL CHUNDER MOOKERJEE *v.* BURODA KANT ROY . . . . . 13 W. R., 467

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41. ——— *Civil Procedure Code, 1859, s. 269.—Objection to khas possession made before attempt to deliver possession in execution of decree.—Construction of decree for possession.*—*M.* obtained a decree against *J.*, and in execution attached and sold his lands, which were bought by the decree-holder. The sale was confirmed and a writ of possession directed. After the decree, but prior to attachment, the original judgment-debtor had executed and registered a putni pottah for a three annas share of one of the zemindaris in dispute, and granted it to *D.*, who having objected under section 246, Civil Procedure Code, 1859, to the above sale, an order was made at the time of the auction sale that it should be proclaimed that *D.* claimed a putni right, and this was accordingly done. Before *M.* was put into actual possession she was required to find security. Delaying to do this, the lands were attached and sold under a judgment obtained by others who purchased and entered into possession. *M.* having furnished security, petitioned to be put into possession, but her petition was rejected. She then brought a suit to cancel the order refusing her possession. In her plaint she claimed khas possession, but did not refer to the putni claimed by *D.* Her plaint was decreed, the decree was appealed, and it was finally upheld by the Privy Council; but throughout the litigation no issue was raised as to the putni. In the proceeding to execute the decree *M.* claimed actual possession. Before process had been issued, *D.* objected to khas possession being given of his putni mouzah. The Judge ruled that the objection fell within the spirit of section 269, Act VIII of 1859, and that he had therefore jurisdiction to entertain it. *Held* that section 269 did not apply, inasmuch as no attempt had been made to deliver possession. *Held*, also, that the only intention of the decree was to confirm the plaintiff in the position which she occupied when the property was sold in execution of her original decree, after proclamation of *D.'s* claim, and that she was not entitled to khas possession. SHARODA PERSHAD MULLICK *v.* DHUNPUT SINGH [19 W. R., 219

42. ——— *Civil Procedure Code, 1859, ss. 269 and 264 (1882, s. 334).—Delivery of possession.—Resistance or obstruction to giving possession.*—Delivery of possession under section 264, Code of Civil Procedure, was complete as soon as the steps prescribed by that section had been taken; and any subsequent act of resistance on the part of the claimant to the land was not the resistance or obstruction referred to in section 236, and could in no way give the Court a right to interfere in the summary way provided by that section. WAJED HOSSEIN *v.* ABDOOL KADIR . . 13 W. R., 418

43. ——— *Civil Procedure Code, 1859, s. 269.—Suit by auction-purchaser for possession.*—An auction-purchaser of the right, title, and interest of his judgment-debtor, plaintiff, got an award under section 269, Code of Civil Procedure, but in attempting to get actual possession was successfully resisted by defendant, who claimed to have

RESISTANCE OR OBSTRUCTION TO EXECUTION OF DECREE.—Purchaser at execution sale—*continued.*

purchased the property previous to plaintiff's purchase. Upon this the plaintiff sued to obtain possession. *Held* that, as there was no dispossession, the terms of section 269 would not apply. SUDARAM MAJEE *v.* MIRTUNJOY DEY . . **12 W. R., 509**

44. ——————— *Civil Procedure Code, 1859, s. 269.—Dispossession in execution of decree against another party.*—A person dispossessed of property in execution of a decree against another person, and claiming to be entitled to possession, was not bound to proceed under section 269 of Act VIII of 1859. PROTAB CHUNDER CHOWDHRY *v.* BROJOLAL SHAHA

[B. L. R., Sup. Vol., 638 : 7 W. R., 253

JADOONATH CHOWDHRY *v.* RADHAMONEE DOSSEE

[B. L. R., Sup. Vol., 643 : 7 W. R., 256

45. ——————— *Civil Procedure Code, 1859, s. 269.—Suit by auction-purchaser to recover possession.*—It was not compulsory upon an auction-purchaser under a decree, when resistance was offered to his taking possession of the property purchased, to proceed under section 269 of the Civil Procedure Code. It was open to him to proceed at once by regular suit against the person in possession of the property purchased by him. MADAREE *v.* BULLOO KOOEREE . . . **2 N. W., 450**

46. ——————— *Inquiry as to right to possession.—Civil Procedure Code, 1859, s. 269.*—Where a Subordinate Judge, proceeding under Act VIII of 1859, section 269, looked into the circumstances of a case with reference to the relative rights of the parties, and came to the conclusion that he could not refuse possession to the execution-purchaser, he was held to have made the kind of inquiry contemplated by the section. HURO PERSHAD ROY CHOWDHRY *v.* RAMESSUR MISSRY MALIA . . . . . **24 W. R., 461**

47. ——————— *Civil Procedure Code, 1859, s. 269.—Proof of title.—Onus probandi of.*—When the defendant was in possession by virtue of an order under section 269 of Act VIII of 1859, the plaintiff could only succeed on the strength of his own title. KALLAPA *v.* VENKATESH VINAYAK

[I. L. R., 2 Bom., 676

48. ——————— *Civil Procedure Code, 1859, ss. 269 and 246.—Order as to right to possession.*—An application under section 246, Act VIII of 1859, having been disallowed on the ground of unnecessary and improper delay, the attached property was sold; but on the attempt to take possession the purchaser was obstructed by the applicant, who alleged himself to be in possession. The Court made an investigation under section 269, and determined that as applicant's claim had been disallowed under section 246, he had no right to remain in possession. *Held* that this order was judicious and proper. IN THE MATTER OF THE PETITION OF BANEEMADHUB ROY . . . **13 W. R., 431**

RESISTANCE OR OBSTRUCTION TO EXECUTION OF DECREE.—Purchaser at execution sale—*continued.*

49. ——————— *Civil Procedure Code, 1859, s. 269.—Limitation.—"Suit to establish his right."—Right contradictory to summary order or consistent with it.*—The words "suit to establish his right" in section 269 of the Civil Procedure Code meant a suit to establish his right to present possession; but where there was a subsisting right which was contradicted by the summary order under that section, and which was to be properly asserted by such a suit, the suit, by the person dispossessed or refused possession to establish his right, had to be brought within one year from the date of the order, failing which he could not sue afterwards on any portion of such right. It was otherwise where his right was consistent with the order and the possession given under it. RANGO VITHAL *v.* RIKHIVADAS BIN RAYACHAND . . . . . **11 Bom., 174**

50. ——————— *Order not made against parties to proceedings.—Civil Procedure Code, 1859, ss. 268, 269.*—A purchaser of immoveable property at a Court sale having been obstructed by the defendant, made an application to the Court under section 268 of Act VIII of 1859 for the removal of the obstruction, but subsequently withdrew his application. The Court thereupon made an endorsement on the application to the effect that as the applicant did not wish to proceed further no investigation was made. *Held* that no such order had been made as was contemplated by section 269, that section contemplating at least an order against one party or the other. BHIKA *v.* SAKARLAL

[I. L. R., 5 Bom., 440

In HARASATOOLLAH *v.* BROJONATH GHOSE

[I. L. R., 3 Calc., 729 : 1 C. L. R., 517

a case governed by the Civil Procedure Code, 1877, it was held that there being no provision in that Code similar to that contained in section 269 of Act VIII of 1859, enabling the Court to do so, the Court could not enquire into a complaint made by a person other than the defendant on the ground of dispossession in the delivery of possession to the purchaser of immoveable property sold in execution of a decree; and therefore the only remedy of a person so dispossessed was by regular suit. This omission in the Code of 1877 was rectified by the amending Act XII of 1879, and under the present Code, Act XIV of 1882, a person other than the defendant may make an application for an inquiry.

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1. GENERAL CASES.

1. ——— **Requisites for plea of res judicata.**—*Civil Procedure Code, 1859, s. 2.—Parties.—Subject-matter of suit and cause of action identical.*—To plead *res judicata* under section 2, Act VIII of 1859, it is necessary that the parties should be the same or their representatives, that the subject-matter of the suit should be the same, and the cause of action the same. MAHARAJ SINGH *v.* BEELA KOOER . . . . W. R., 1864, 320

RES JUDICATA—*continued.*

1. GENERAL CASES—*continued.*

Requisites for plea of res judicata—*continued.*

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[21 W. R., 109

2. ——— *Final decision granting or withholding relief.*—To conclude a plaintiff by a plea of *res judicata*, it is not sufficient to show that there was a former suit between the same parties for the same matter upon the same cause of action: it is necessary also to show that there was a decision finally granting or withholding the relief sought. SAIKAPPA CHETTI *v.* KULANDA PUBI NACHIYAR *alias* KATTAMA NACHIYAR
[3 Mad., 84

3. ——— *Final decision in former suit.*—To give effect to the plea of *res judicata*, the Court must be satisfied that the ground of legal right on which the plaintiff sues was a point raised and opened for decision in the former suit, and that it was finally dealt with by the judgment and decree therein. UDAIYA TEVAR *v.* KATAMA NACHIYAR . . . . . 2 Mad., 131

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2. ESTOPPEL BY JUDGMENTS.

4. ——— **Rule as to estoppel by judgment.**—*Civil Procedure Code, 1859, s. 2.*—The doctrine laid down in the *Duchess of Kingston's case, 2 Smith's, L. C., 6th Ed., 679*, as to estoppel by judgment is applicable to cases tried under Act VIII of 1859, the second section of which is consistent with that rule. But the Judicial Committee, reversing the decision of the Court below, considered that the doctrine had no application in the present case, the judgment relied on not being the judgment of a Court of concurrent jurisdiction directly upon the point upon the same matter; and, after an examination of the whole evidence, restored the judgment of the first Court. KHUGOWLEE SING *v.* HOSSEIN BUX KHAN
[7 B. L. R., 673: 15 W. R., P. C., 30

5. ——— **Judgment not inter partes.**—*Evidence Act (I of 1872), ss. 13, 40, 41, 43.—Admissibility in evidence of judgments not "inter parties."*—*Per* GARTH, *C. J.*, JACKSON, PONTIFEX, and MORRIS, *JJ.* (MITTER, *J.*, dissenting).—A former judgment, which is not a judgment *in rem*, nor one relating to matters of a public nature, is not admissible

RES JUDICATA—*continued.*

2. ESTOPPEL BY JUDGMENTS—*continued.*

Judgment not inter partes—*continued.*

in evidence in a subsequent suit, either as a *res judicata*, or as proof of the particular point which it decides, unless between the same parties or those claiming under them. In a suit between *A.* and *B.* the question was, whether *C.* or *D.* was the heir of *H.* If *C.* was the heir of *H.*, then *A* was entitled to succeed; otherwise not. The same question had been raised in a former suit brought by *X.* against *A.* and decided against *A*; and this former judgment was admitted in evidence in the suit between *A.* and *B.*, and dealt with by the Courts below as conclusive evidence against *A.* upon the point so decided. *Held* (MITTER, *J.*, dissenting) that the former judgment was not admissible as evidence in the suit between *A.* and *B.* either as "a transaction" under section 13, or as "a fact" under section 11, or under any other section of the Evidence Act. GUJJU LALL *v.* FATTEH LALL . **I. L. R., 6 Calc., 171: 6 C. L. R., 439**

6. ——— *Evidence Act (I of 1872), ss. 13, 40, 41, 42, and 43.—Onus probandi.*—Judgments and decrees recognising rights between parties to a suit or between persons whom they represent, although they are not conclusive under the Evidence Act (I of 1872), as they were before that Act came into operation, are yet admissible in evidence under section 13 of the Act, even if the parties in the former suit be entire strangers. Where the parties are the same, or representatives of those in the former suit, such judgments and decrees may be evidence so nearly conclusive as, when produced by the party in whose favour they are, to shift the burden of proof from him to his opponent. *Semble*,—Under section 13 of the Civil Procedure Code (Act X of 1877), the law is now the same as it was under Act VIII of 1859 prior to the passing of the Evidence Act. NARANJI BHIKABHAI *v.* DIPA UMED . . . . **I. L. R., 3 Bom., 3**

7. ——— **Ex parte decree.**—*Finality of, with regard to its subject-matter.—Civil Procedure Code (Act X of 1877), s. 13, expl. 4.*—A decree obtained *ex parte* is not final within the meaning of explanation 4, section 13 of Act X of 1877. NILMONEY SINGH *v.* HEERA LALL DASS **[I. L. R., 7 Calc., 23 : 8 C. L. R., 257**

8. ——— *Suit for arrears of rent.—Onus probandi.*—In a suit for arrears of rent of a half-share of land, the plaintiffs relied upon an *ex parte* decree for rent at a certain rate, which they had obtained in 1869 against the tenants of this share. The defendants relied upon a subsequent decree in a contested suit by the plaintiffs against the tenants of the other half-share, in which a lower rate of rent had been given. No other evidence than the decrees was produced on either side. It did not appear whether the *ex parte* decree had ever been executed. *Held* that it was open to the defendants to dispute the rate of rent claimed, and that the plaintiffs were bound to prove that they were entitled to recover it. *Nilmoney Singh* v. *Heera Lall Dass*, *I. L. R., 7 Calc., 23*, followed. BHUGIRATH PATONI *v.* RAM LOCHUN DEB **[I. L. R., 8 Calc., 275 : 10 C. L. R., 159**

See BIRCHUNDER MANICKYA *v.* HURRISH CHUNDER DOSS **[I. L. R., 3 Calc., 383 : 1 C. L. R., 585**

9. ——— *Suit for rent.*—A decree obtained *ex parte* is, in the absence of fraud or irregularity, as binding for all purposes as a decree in a contested suit. BIRCHUNDER MANICKYA *v.* HURRISH CHUNDER DOSS **[I. L. R., 3 Calc., 383 : 1 C. L. R., 585**

10. ——— **Decrees in rent suits.**—*Suit for arrears of rent.—Subsequent suit for enhancement.*—The plaintiff sued the defendant in the year 1873 for arrears of rent at a certain rate per bigha. The defendant pleaded that the land had been held by him at an uniform rent for more than twenty years, and this contention was supported by the Court. The plaintiff then gave the defendant notice of enhancement, and sued to recover rent for two years at the rate stated by the defendant, and for one year at an increased rate. To this suit the defendant raised substantially the same defence. *Held* that the decision in the previous suit was not a bar to the present suit, there being two questions for consideration,—one, whether there had been an uniform payment of rent for twenty years; and if so, whether the presumptions which the law directs to be drawn from an uniform payment of rent for twenty years had been rebutted by the plaintiff; neither of which questions were concluded by the previous decision. GOPEE MOHUN MOZOOMDAR *v.* HILLS **[I. L. R., 3 Calc., 789**

11. ——— *Decision as to amount of land held as tenant.*—In an action for rent defendant pleaded, by way of estoppel to part of the plaintiff's claim, that, in a prior action for rent previously due, brought by the plaintiff against the defendant, it had been found that the defendant was tenant to the plaintiff of a less quantity of land only than that in respect of which the plaintiff claimed rent in his suit. *Held* that there was no estoppel, and that the plaintiff might show, notwithstanding such previous judgment, that the defendant was in occupation of the larger quantity. OJOODHYA PERSAD *v.* BHUGWANTAJAH . . **Marsh., 12**

S. C. BHUGWANTAJAH *v.* OJOODHYA PERSAD. **[1 Hay, 31**

12. ——— *Decision as to amount of land held as tenant.—Suit for arrears of rent.*—*A* brought a suit against *B.* for arrears of rent. *B.* admitted the sum claimed, but contended that the rent was due for a larger area of land than that specified in the plaint. An issue was framed on such contention, and decided against *B.* In a subsequent suit by *B.* to have it declared that a sum of money, equal in amount to the sum paid on admission in the former suit, comprised the rent due on all the lands

RES JUDICATA—*continued.*

2. ESTOPPEL BY JUDGMENTS—*continued.*

Decrees in rent suits—*continued.*

held by him under *A*. *Held* (on appeal under the Letters Patent, reversing the decision of the Court below) that such suit was barred as being *res judicata*. BUSSUN LALL SHOOKUL *v.* CHUNDER DASS [I. L. R., 4 Calc., 686 : 4 C. L. R., 1

13. ——————— *Decision as to measurement of land held*—In a previous suit the present plaintiff had sued the defendant for the amount of rent originally fixed in the lease, and the defendant claimed in that suit to have the rent reduced in accordance with the terms of the lease, and a measurement was thereupon made, which showed that the quantity of land held by the defendant was in excess of that named in the lease: that suit was decided in favour of the plaintiff for the rent claimed. *Held* that the measurement adopted by the Court in the former suit was not, as regards the amount of the excess, binding upon the defendant. EKRAM MUNDUL *v.* HOLODHUR PAL [I. L. R., 3 Calc., 271

LUCHMUN PERSHAD GORGO *v.* LUKHUN CHURN KUR . . . . . 3 C. L. R., 74

14. ——————— *Suit for refund of excess of rent after suit for arrears of rent.*—The defendant (a zemindar) refused to receive rent from the plaintiffs, talookdars, at the rate asserted by the latter, who therefore deposited the amounts from time to time in the Zillah Court. The zemindar having drawn out these amounts, sued for arrears of rent, alleging that the money paid into Court covered only the principal and interest for a certain period, and obtained an *ex parte* decree. In a suit brought for a refund of the money paid into Court, which had without the plaintiffs' consent been irregularly carried to the account of interest,—*Held* that the claim was barred as *res judicata*. GOBINDNAUTH SUNDYAL *v.* ROMANAUTH THAKOOR . 1 Hay, 501

15. ——————— *Decision as to right to rent.—Dismissal of former suit for rent.*—*Held* that the plaintiff having failed in a regular suit in 1853 to establish his right to rent, a subsequent suit for rent was not admissible, unless since that date rent was paid or his title recognised in some way. SOOKHNUND *v.* NUNDOO SINGH . 2 Agra, 221

16. ——————— *Decision as to amount of rent.—Subsequent suit for abatement of rent.*—The plaintiff obtained a putni lease of certain villages from the defendant in 1861 at an annual rent, and in 1865 was evicted from a portion of the property. She took no steps to obtain an abatement; but inasmuch as she did not pay any rent for the year 1871, the defendant brought a suit against her for the rent of that year. The plaintiff set up the defence that she was entitled to an abatement of R155 from her rent, the R155 representing the annual value of the property which she had lost in consequence of the eviction. In that suit it was decided that the amount of abatement she was entitled to was R42. No appeal was made against that decision. In a suit brought by the plaintiff for the purpose of obtaining a permanent abatement of her rent she claimed the precise measure of abatement, *viz*, R155, which she had claimed in the suit brought against her by the defendant. *Held* that the question was *res judicata*, it having been raised and decided in the former suit. NOBO DOORGA DOSSEE *v.* FOYZDUX CHOWDHRY [I. L. R., 1 Calc., 200 : 24 W. R., 40

RES JUDICATA—*continued.*

2. ESTOPPEL BY JUDGMENTS—*continued.*

Decrees in rent suits—*continued.*

17. ——————— *Decision as to amount of rent.*—Where the plaintiff sued the defendant for a year's rent at the same rate which had been decreed to him for the previous year in a suit which he had brought against the same defendant for rent of the same property, and relied upon the former decree, which had been obtained *ex parte*, as evidence of the rent due to him from the defendant.—*Held* (following *Nobo Doorga Dossee* v. *Foyz Buksh Chowdhry, I. L. R., 1 Calc., 200*, that the decree in the first suit determined the amount of rent due from the defendant to the plaintiff. *Held*, further, that the decree was properly admissible as evidence, though the plaintiff had not taken out execution upon that decree and his right to take out execution was barred by limitation. BIRCHUNDER MANICKYA *v.* HURRISH CHUNDER DASS [I. L. R., 3 Calc., 383 : 1 C. L. R., 585

18. ——————— *Decree as to amount of rent payable in former years.—Decree on admission.*—The plaintiff in a suit for rent having failed to prove the amount of rent claimed by him, the Court in trying the issue "What is the proper amount of rent payable to the plaintiff?" gave the plaintiff a decree for the amount admitted by the defendant, that amount being less than that claimed by the plaintiff. In a later suit the plaintiff sued the defendant in respect of the same holding for the rent of a subsequent year, and he claimed at the same rate as he had claimed in the previous suit. *Held* (MITTER, *J.*, dissenting) that the decree in the former suit was *res judicata* as to the proper rent payable by the defendant. *Punnoo Singh* v. *Nirghan Singh, I. L. R., 7 Calc., 298 : 8 C. L. R., 310*, explained and distinguished. JEO LAL SINGH *v.* SURFUN . [11 C. L. R., 483

19. ——————— *Decision as to possession as tenants.—Admissibility in evidence of decree in former suit.*—The plaintiffs, as purchasers of a share of an estate, sued to recover their share of the rent of certain tenures held in that estate by the defendants. The defendants denied being in possession as alleged. Another co-sharer in the same estate had previously brought a suit against the same defendants for the rent of the same tenures, and in that suit the present plaintiffs and other co-sharers of the estate were made co-defendants, and the decision in that suit was that the present defendants were in possession and were liable to pay to the then plaintiff his share of the rent. *Held* (MITTER, *J.*, dissenting) that the decree in the former suit was not a *res judi-*

RES JUDICATA—*continued.*

2. ESTOPPEL BY JUDGMENTS—*continued.*

Decrees in rent suits—*continued.*

cata or even admissible as evidence in the present suit. SURENDER NATH PAL CHOWDHRY *v.* BROJO NATH PAL CHOWDHRY . **I. L. R., 13 Calc., 352**

20. ——— Decision in former suit.—*Decision as to right to property.—Subsequent suit for rent.*—It having been decided in a former suit, wherein the present plaintiff and appellant was defendant and the present defendant was plaintiff, that the latter could not claim from the former a share of certain property set apart for the maintenance of a samsthan,—*Held* that, after that decision, it was not competent to the present defendant to collect the rents of the property. He was accordingly ordered to make them over to the present plaintiff. DADO RAVJI *v.* DINANATH RAVJI **[2 Bom., 77 : 2nd Ed., 72**

21. ——— *Decision as to title to drain.—Suit for trespass.—Proceedings between same parties in another suit.*—*B.* had instituted a suit in the Court of the Munsif of the 24-Pergunnahs against *A.* on account of an alleged trespass to a certain drain, which *B.* then alleged to be his property: that suit was dismissed on the ground that *B.* had not proved his title to the drain in question. In a suit arising out of an alleged trespass to the same drain brought by *A.* against *B.*, in which *A.* stated it was his property, the judgment of the Munsif in the former suit was tendered in evidence on behalf of the plaintiff, and it was contended it was an estoppel. The Court admitted it in evidence, but doubted whether it would be an estoppel. MAHOMED SHAHABOODEEN *v.* WEDGEBERRY **[10 B. L. R., Ap., 31**

22. ——— Judgment of foreign Court.—*Civil Procedure Code, 1877, s. 14.—International law.*—An *ex parte* judgment of a French Court against a native of British India not residing in French territory upon a cause of action which arose in British India, imposes no duty on the defendant to pay the amount decreed so as to bar a suit in British India. HINDE & Co. *v.* PONNATH BRAYAN . . . **I. L. R., 4 Mad., 359**

23. ——— Judgment on award.—*Finality of arbitrator's award when judgment is passed thereon.—Question dealt with by such award raised in a subsequent suit.*—Where a case was referred to arbitration, and the award was subsequently filed and judgment passed in accordance therewith, and subsequently, in another suit between the same parties, a question dealt with in the award was raised, —*Held* that such question was *res judicata* between the parties, the judgment on the award having the same effect as an ordinary judgment of a Court, and being conclusive on the point. WAZEER MAHTON *v.* CHUNI SINGH **[I. L. R., 7 Calc., 727 : 9 C. L. R., 377**

24. ——— Decision as to status of endowment.—*Suit for possession.*—In 1801 *A.*, the shebait and proprietor of the guddee of a debsheba

RES JUDICATA—*continued.*

2. ESTOPPEL BY JUDGMENTS—*continued.*

Decision as to status of endowment—*continued.*

at K., alienated part of the land by deed of gift to *B.*, for the purpose of founding a sheba at C., which was accordingly done. In 1823 the then shebait of the debsheba of K. instituted a suit for the recovery of the alienated lands against the then shebait of the sheba at C., and in that suit it was declared that the sheba was independent of the debsheba, and thus the plaintiff was referred to a regular suit. In 1861 the then shebait of the debsheba brought a suit for recovery of the lands against the then shebait of the sheba. *Held* that the decree in the former suit operated as an estoppel against the plaintiff. KISSNONUND ASHROM DUNDY *v.* NURSING DOSS BYRAGEE . . . . . **Marsh., 485**

25. ——— Order dismissing claim for maintenance.—*Subsequent suit for maintenance.—Agreement as to amount of maintenance.—Decree limited to agreed amount.*—An allowance for the maintenance of a younger member of a family was charged upon the inheritance to which the eldest male member alone succeeded. In a suit for such an allowance brought by a younger brother against the elder, who had succeeded their deceased father in the possession of the estate,—*Held* that an order made dismissing a claim for maintenance preferred by such younger brother against their father in his lifetime, founded on an ikrarnama, did not afford a defence under section 13 of the Code of Civil Procedure. *Held*, also, that the brothers having made an agreement, fixing the allowance for maintenance at a certain sum, the younger brother agreeing to receive a less sum for a defined period, he could only obtain a decree for the allowance so reduced. AHMAD HOSSEIN KHAN *v.* NIHAL-UD-DIN KHAN **[I. L. R., 9 Calc., 945**
L. R., 10 I. A., 45

S. C. MAHOMED HOSSAIN KHAN *v.* MAHOMED NEHALUDDIN KHAN . **13 C. L. R., 330**

26. ——— Order as to payment of maintenance.—*Subsequent suit for maintenance charged on estate of Sovereign Prince.—Former suit making maintenance charge on estate in British territory.*—In a suit against the Maharajah of Hill Tipperah, which is an independent Sovereign State, for maintenance, it appeared that, in a former suit tried in British India in respect of the same claim, the Court had ordered the amount of the maintenance for which he gave a decree to be paid by the defendant Maharajah from his estate in R., which was in British India. *Held* that the decree in the former suit was not *res judicata* to show that the maintenance claimed in the present suit was a charge on the zemindari of R80 as to give the Court jurisdiction. BIR CHUNDER MANIKHYA *v.* ISHAN CHUNDER TAGORE . . . . **12 C. L. R., 473**

27. ——— Decree awarding fixed money allowance in lieu of maintenance.—*Subsequent suit for partition.*—A former decree decided that the plaintiff (a widow) always received

RES JUDICATA—*continued.*

2. ESTOPPEL BY JUDGMENTS—*continued.*

Decree awarding fixed money allowance in lieu of maintenance—*continued.*

a certain fixed amount, and was not entitled to recover more in the shape of profits in respect of the share claimed. *Held* that it was not a decision that such fixed payment represented a mere claim to maintenance, and not a substantial right or interest in the property itself, so that on partition she must be regarded as having no claim to share in the land. It should be inquired into (the decree being so construed) whether the acceptance of a fixed payment was on forfeiture of all rights to the property, and whether it extended only so far as the widow's right is concerned, or whether it affected the son's right likewise. MAN KOONWER *v.* DILAWUR HOSSEIN KHAN . . . . . **1 Agra, Rev., 36**

28. ——— **Decision on question of fact.** —*Subsequent suit between other parties.*—On a question of fact the decision of one Court cannot bind another in a suit between other parties. ASSANOOLLAH *v.* KALEE MOHUN MOOKERJEE **[18 W. R., 469**

3. ADJUDICATIONS.

29. ——— **Mention of cess in survey proceeding.**—*Judicial determination.*—*Held* that the mention of a cess in the wajib-ul-urz and settlement proceeding was not equivalent to a judgment on a question raised so as to preclude adjudication on the merits. RAM CHUND *v.* ZAHOOR ALI KHAN **[1 Agra, 135**

See RAM CHUND *v.* ZAHOOR ALI KHAN **[1 Agra, 134**

30. ——— **Entry in wajib-ul-urz.**—*Limitation.*—*Held* that an entry in the wajib-ul-urz is only good for what it may be worth as evidence, and cannot be held to be like a judgment or to require to be set aside by a regular suit subject to a limitation calculated from the date of the instrument. BHOLA SINGH *v.* BULRAJ SINGH . **1 Agra, 233**

31. ——— **Application under Administrator General's Act (XXIV of 1867), Order on.**—*Civil Procedure Code (Act X of 1877), s. 13.—Act II of 1874, s. 63.—"Suit."*—An application by petition under section 63 of Act II of 1874 was a "suit" within the meaning of section 13 of Act X of 1877, and therefore such an application was barred by the disposal of a former application in the same matter under the same section, or under section 60 of Act XXIV of 1867, which the Act of 1874 repealed: this was so whether the order was one for payment of money or one dismissing the petition. Section 63, Act II of 1874, contemplates that the money, which is the subject of the petition, may be claimed by parties other than the applicant, and that those parties may appear and be represented at the hearing; and the words "binding on all parties" were intended to make the order binding upon such parties as well as on the petitioner. SMITH *v.* SECRETARY OF STATE. IN THE MATTER OF ACT II OF 1874 **[I. L. R., 3 Calc., 340**

RES JUDICATA—*continued.*

3. ADJUDICATIONS—*continued.*

32. ——— **Adjudication in accordance with Oaths Act.**—*Oaths Act (X of 1873), ss. 9 and 11.—Question of title.*—The decision of a question of title in issue between the parties to a suit in accordance with the provisions of the Oaths Act is not an adjudication which will operate as an estoppel when the same question of title is again raised in another suit between the same parties. KESHAVA THARAGAN *v.* RUDRAN NAMBUDRI . **I. L. R., 5 Mad., 259**

33. ——— **Order apportioning compensation-money.**—*Question of title.—Land Acquisition Act, s. 39.*—Under section 39 of the Land Acquisition Act, it is the duty of the Judge, in apportioning the compensation-money which he is directed to apportion, to decide the question of title between all persons claiming a share of the money. *Semble,*—No decision under the Land Acquisition Act should be treated as *res judicata* with respect to the title to other parts of the property belonging to persons who may come before the Judge under section 39. NOBODEEP CHUNDER CHOWDHRY *v.* BROJENDRO LALL ROY **[I. L. R., 7 Calc., 406: 9 C. L. R., 117**

34. ——— **Investigation under s. 331, Civil Procedure Code, 1877.**—*Title, Question, of.—Possession.*—An investigation under section 331 of the Civil Procedure Code (prior to the Amendment Act of 1879) was limited to the fact of possession, and was no bar to a subsequent suit brought to try the title to the land in dispute. CHINNASAMI PILLAI *v.* KRISHNA PILLAI . . **I. L. R., 3 Mad., 104**

35. ——— **Order for abatement of suit.**—*Difference of procedure under Civil Procedure Codes, 1859, and 1877, s. 371.*—Certain property having been mortgaged was sold in execution of a decree against the mortgagor, and the decree-holder became the purchaser. The mortgagee subsequently sued upon his mortgage, making the purchaser a defendant, but pending the suit the latter died, and the suit was not revived against his representatives. A decree was, in 1876, obtained, and in execution of that decree the property in question was purchased by the plaintiff, who now sued to recover possession of the same from the representatives of the purchaser at the former execution sale. *Held* that the matter was not *res judicata* by reason of the mortgage suit, inasmuch as that suit having been under Act VIII of 1859, the abatement had not the effect which such an abatement under Act X of 1877 would have had,—*viz*, being a bar to a fresh suit in the same cause of action. NISTARINI DEBI *v.* BROJO NATH MOOKHOPADHYA . **10 C. L. R., 229**

36. ——— **Withdrawal from suit with permission to bring a fresh suit.**—*Civil Procedure Code, 1859, s. 97.*—A suit is not barred as *res judicata* because, in a former case between the same parties, and in the same cause of action, the plaintiff, after the evidence had been recorded, but before final judgment was passed, obtained the Court's permission to withdraw the suit with reservation of leave to bring another. MONA BIBEE *v.* OOMED ALI **[16 W. R., 276**

RES JUDICATA—*continued.*

3. ADJUDICATIONS—*continued.*

37. ——— Dismissal of plea of set-off.—*Subsequent suit for same claim.*—The plea of set-off is one form of bringing a suit, the defendant becoming in regard thereto a plaintiff, and he cannot therefore be allowed to set up a claim for which a suit had been previously brought by him and dismissed. ABDOOLLAH KHAN *v.* SEEEKANTO PERSHAD HAJRAH . . . . . **15 W. R., 252**

38. ——— *Landlord and tenant.—Sale for arrears of rent.—Deposit to protect under-tenure.—Set-off.—Voluntary payment.*—*L.* and *R.*, the holders of a putni estate, granted in 1856 a dur-putni lease to *S.* at an annual rent, the lease stipulating that *S.* should have full power of sale and gift, but should not sub-let without the putnidar's consent. The lease contained no stipulation for the registration of any vendee or donee. In 1860 *S.* sold the dur-putni lease to *K.*, the deed of sale, which was duly registered, providing for mutation of names in the putnidar's books. No such mutation was ever effected by *K.*, who was never recognised as their tenant by *L.* and *R.*, the rent of the dur-putni being paid in the name of *S.* In 1864, the rent due from the putnidars being in arrear, the zemindar proceeded to sell the putni under Regulation VIII of 1819. Thereupon *K.*, in order to protect his under-tenure, deposited in the Collectorate, on 17th November 1864, a sum of money, on which the sale was stayed. *K.*, being then in arrear in the payment of his dur-putni rent, claimed to set off the amount deposited in the Collectorate against the rent due to *L.* and *R.* This *L.* and *R.* refused to allow, and they brought a suit in the Collector's Court against *S.* and his sureties to recover the arrears of rent. In that suit *K.* intervened, claiming the benefit of the set-off, to which, however, the High Court, on 26th June 1866, on appeal, held that he was not entitled, the deposit being merely a voluntary payment by *K.* On 30th October 1867 *K.* brought a regular suit against *S.* and *L.* and *R.* to recover the amount of the deposit and obtained a decree, but the decision was reversed on appeal and the suit dismissed for want of jurisdiction. On 6th June 1869 *K.* filed his plaint in the proper Court. *Held* that he was entitled to recover the amount deposited by him in the Collectorate, and that the suit was not barred as being *res judicata* by the decision of 26th June 1866. LUCKINARAIN MITTER *v.* KHETTRO PAL SINGH ROY **[13 B. L. R., P. C., 146 : 20 W. R., 380**

39. ——— Set-off, Plea of, in respect of claim dismissed in former suit.—*Civil Procedure Code, 1882, s. 13.*—In a suit to recover a sum of money due as wages, the plaintiff alleging that the defendant had engaged him to sell cloth on his account at a monthly salary, the defendant claimed a set-off as the price of cloth which he alleged the plaintiff had sold on his account on commission. It appeared that the defendant had previously sued the plaintiff to recover the same amount as was now claimed by way of set-off, as being due for the price of cloth sold and delivered by the defendant to him; and the plaintiff (then defendant) pleaded that there had

RES JUDICATA—*continued.*

3. ADJUDICATIONS—*continued.*

Set-off, Plea of, in respect of claim dismissed in former suit—*continued.*

been no sale to him, but the cloth had been delivered to him on commission sale. The suit was dismissed on the ground that there was no proof of a sale of cloth, and the question whether any sum was due for cloth sold on commission sale was not gone into. The cloth now alleged to have been delivered on commission sale was the same as that alleged in the former suit to have been actually sold to the plaintiff. *Held* that the claim for such set-off was not barred under the provisions of section 13 of the Civil Procedure Code. AMIR ZAMA *v.* NATHU MAL **[I. L. R., 8 All., 396**

40. ——— Order of former Magistrate for maintenance.—*Criminal Procedure Code (Act X of 1872), s. 536.—Maintenance of wife.—Adultery of wife subsequent to order for maintenance.*—A husband upon whom an order to make an allowance for the maintenance of his wife had been made, under section 536 of Act X of 1872, objected to the payment of the allowance on the ground that his wife was living in adultery. The Magistrate entertaining this objection disallowed it, on the ground that the charge of adultery against the wife was not established. The husband subsequently again objected to the payment of the allowance on the same ground. The Magistrate entertaining the second objection allowed it, and directed the husband to discontinue paying the allowance. His order was based on proof of adultery by the wife before the date of the order of the former Magistrate. *Held*, on the general principle of the rule of *res judicata*, that the second Magistrate was wrong in law in reopening matters already adjudicated upon, and his order directing the discontinuance of the allowance on the ground of facts antecedent to the former Magistrate's order must be held to be illegal. LARAITI *v.* RAM DIAL **[I. L. R., 5 All., 224**

41. ——— Application to set aside decree after refusal by Court to set it aside.—*Attachment under ex parte decree.*—A suit was brought against *T.* and an *ex parte* decree obtained against him. An application by *T.* to have the decree set aside was dismissed. The defendant afterwards applied to have the attachment and all the proceedings set aside and declared null and void. *Quære,*—Whether the former refusal to set it aside would be a bar to prevent the setting aside by the Court. LADKUVARBHAI *v.* SARSANGJI PARTABSANGJI . . . . . **7 Bom., O. C., 150**

4. JUDGMENTS ON TECHNICAL POINTS.

42. ——— Dismissal without trial on the merits.—*Hearing and determination of cause of action.*—A suit on the same cause of action, and between the same parties, as a former suit which was summarily dismissed without being tried on its merits, is not one on a cause of action which has been heard and determined by a Court of competent jurisdiction in a former suit. SHOKHEE BEWA *v.* MEHDEE MUNDUL . . . **9 W. R., 327**

RES JUDICATA—*continued.*

4. JUDGMENTS ON TECHNICAL POINTS —*continued.*

43. ——— Decision without trial on merits.—*Former judgment on technical defect or irregularity.*—A former judgment, which proceeded wholly upon a technical defect or irregularity in the proceedings, and not upon the merits of the case, is not a bar to a subsequent suit for the same cause of action. RAM NATH ROY CHOWDHRY *v.* BHAGBUT MOHAPUTTUR . . . **3 W. R., Act X, 140**

44. ——— *Case decided on technical ground.*—The cause of action between two parties cannot be said to be a *res adjudicata* if the first case was disposed of on appeal on a purely technical point, even though the suit was decided on its merits in the Court of first instance. MOKOOND NARAIN DEO *v.* JONARDUN DEY BURNICK **[15 W. R., 208**

45. ——— Suit dismissed as being premature.—*Suit for same subject subsequently brought.*—A suit dismissed as being prematurely brought is not a *res judicata* in a subsequent suit brought at the proper time. ELAHEE BUKSH *v.* SHEO NARAIN SINGH . . **17 W. R., 360**

46. ——— Suit dismissed as not being proper remedy.—*Subsequent suit on same cause of action.*—*Civil Procedure Code, 1859, ss. 2 and 7.*—The first defendant mortgaged certain lands to plaintiff by way of zur-i-peshgi lease, under which the latter entered into possession. The first defendant afterwards gave a ticca of the lands to the second defendant, who turned the plaintiff out of possession before the term of the zur-i-peshgi lease had expired. Plaintiff then sued the first and second defendants, basing his cause of action on the dispossession by the second defendant, and praying for the recovery of the mortgage-money by sale of the mortgaged property. The suit was dismissed, the Judge observing that plaintiff's proper remedy was to bring a suit for possession. Plaintiff then brought a subsequent suit for possession against the same parties, and on the same cause of action. The defendants objected that the suit was barred under sections 2 and 7, Act VIII of 1859, but the contention was overruled. DEODHARI SINGH *v.* LALLA SEWSARUN LAL . . . **3 C. L. R., 395**

47. ——— Suit struck off for default.—*Beng. Reg. XXVI of 1814.*—*Decision of suit.*—*Civil Procedure Code, 1859, s. 148.*—Where a suit had been struck off the file on default under the old law, Regulation XXVI of 1814 ("kharij" being the word used), it was held that there was no "decision" such as is contemplated by section 148 of the Civil Procedure Code, 1859. GUNGA RAM *v.* KHEM NARAIN POOREE . . . . **11 W. R., 250**

48. ——— Dismissal of suit for default in appearance of parties.—*Remanded case.*—When a suit has been remanded by the Appellate Court and then dismissed by the Court of first instance for non-appearance of the parties, the plaintiff is not debarred thereby from bringing another suit

RES JUDICATA—*continued.*

4. JUDGMENTS ON TECHNICAL POINTS —*continued.*

Dismissal of suit for default in appearance of parties—*continued.*

upon the same cause of action against the same defendant. RAGHUNATH SINGH *v.* RAM KUMAR MANDAL . **5 B. L. R., Ap., 64: 14 W. R., 81**

49. ——— Dismissal of suit for default in appearance.—*Suit for rent.*—*Subsequent suit for possession.*—*Civil Procedure Code (Act X of 1877), s. 13.*—In 1870 two plots of land, numbered 155 and 147, belonging to the same owner, were sold in execution of a decree. The purchaser of plot 155 sold it to *A.*, who in 1873 sued the tenant of a portion of the land for rent. In this suit *A.* prayed that it might be declared that he was the owner. The tenant alleged that *B.*, the purchaser of plot 147, was the owner of the land in respect of which rent was sought to be recovered, and *B.* was made a party to the suit. At the hearing *A.* did not appear, and the suit was dismissed for default. Subsequently *A.* sold plot 155 to the present plaintiff, who now sued for possession. *Held* that the suit was not barred as *res judicata.* GOBIND CHUNDER ADDYA *v.* AYZUL RABBANI **[I. L. R., 9 Calc., 426: 12 C. L. R., 29**

50. ——— *Suit for share of joint family property.*—*A.*, one of three members of an undivided Hindu family, mortgaged his share in the immoveable family property to *B.* The mortgage recited that the money was raised in order to enable *A.* to sue his coparceners for partition of the family property and possession of his share therein. *A.* subsequently did bring a suit with that object against his coparceners, but allowed it to be dismissed against him for default. *B.* now brought a suit against *A.* and his coparceners for possession of *A.'s* share in such family property. *Held* that as it was not made out that *A.* in bringing his suit had acted as the agent of *B.* and at *B.'s* request, *B.'s* suit was not barred by the dismissal of *A.'s* suit. KRISHNAJI LAKSHMAN RAJVADE *v.* SITARAM MURARRAV JAKHI . . . . **I. L. R., 5 Bom., 496**

51. ——— *Civil Procedure Code, 1859, ss. 2 and 170.*—*Hindu widow.*—*Reversioner.*—*A.*, a Hindu widow, brought a suit to recover possession of her husband's share of certain joint property. After partially examining some of her witnesses, she cited the defendant as a witness, and on his failure to attend her suit was dismissed. After the death of the widow, her daughter sued the same defendant on behalf of her two minor sons, as being entitled in reversion to their grandfather's share, to recover the share which was the subject of the former suit: the defendant was summoned as a witness, but failed to attend. *Held* that the suit was not barred under section 2, Act VIII of 1859, as being *res judicata*, until it was shown that the former decree had been obtained after a fair trial of the right, so as to bind not only the widow but the reversioners. The defendant having failed to attend and give evidence on this point, the Court was

RES JUDICATA—*continued.*

4. JUDGMENTS ON TECHNICAL POINTS —*continued.*

Dismissal of suit for default in appearance—*continued.*

justified in giving the plaintiff a decree under section 170, Act VIII of 1859. BRAMMOYE DASSEE, ON BEHALF OF BROJO NATH SINGH, *v.* KRISTO MOHUN MOOKERJEE . . . I. L. R., 2 Calc., 222

52. ——— **Rejection of plaint for non-appearance of plaintiff.**—*Possessory suit in Mamlatdar's Court and in Civil Court.—Bom. Act III of 1876, s. 13.—Specific Relief Act, I of 1877, s. 9.—Civil Procedure Code (Act X of 1877), s. 13.*—A plaintiff, whose plaint has been rejected for default of appearance in the Mamlatdar's Court under Bombay Act III of 1876, section 13, cannot bring another possessory suit on the same cause of action in the Civil Court under section 9 of the Specific Relief Act, I of 1877; for the rejection of a plaint under section 13 of Bombay Act III of 1876, by reason of the failure of the plaintiff to attend with his proofs on the day appointed, is a hearing and final decision of the suit within the meaning of section 13 of the Code of Civil Procedure (Act X of 1877), and upon the rejection of the plaint the question in the suit becomes *res judicata.* RAMCHANDRA *v.* BHIKIBAI . I. L. R., 6 Bom., 477

53. ——— **Suit struck off for absence of defendant in jail on criminal charge.**—*Civil Procedure Code, 1859, s. 97.*—A suit struck off by reason of the defendant being then in jail on a criminal charge cannot be set up as *res judicata* in a subsequent suit, there having been no determination in favour of one party or the other, nor can it be treated as a case of withdrawal under section 97, Act VIII of 1859. LUCKHEE RAM DOSS *v.* JOY SUNKUR GOOHO . . . . 7 W. R., 236

54. ——— **Dismissal for undervaluation.**—A suit was brought in the Civil Court of a Munsif, who gave judgment for the plaintiffs, but his decree was reversed by the District Judge, on the ground that the claim was improperly valued. A second suit, on the same cause of action, was then brought in the Court of the Munsif, who again decided for the plaintiffs; but his decree was reversed by the District Judge, on the ground that the suit was prohibited by Bombay Regulation II of 1827, section 21. The High Court, on special appeal, reversed that decision, and remanded the suit; and the District Judge then threw out the claim, under section 2 of Act VIII of 1859, on the ground that the cause of action had already been heard and determined. In a second special appeal against this decision,—*Held* that the plaintiffs were not precluded from presenting a fresh plaint in respect of the same cause of action, and that the case came within the spirit of section 36 of Act VIII of 1859, as there being no express power given by the Code to reject a plaint after it had been registered by reason of the claim being improperly valued, the doing so ought to have only the same effect as if the plaint had been originally rejected. DULLABH JOGI *v.* NARAYAN LAKHU [4 Bom., A. C., 110

RES JUDICATA—*continued.*

4. JUDGMENTS ON TECHNICAL POINTS —*continued.*

55. ——— **Dismissal of suit for want of jurisdiction.**—*Suit for ejectment.—Subsequent suit for damages.*—The dismissal, on the ground of want of jurisdiction, by the Civil Court of a suit to eject the defendants from the fishing ground of the plaintiffs, situate below low-water mark, does not operate as a bar to a subsequent suit by the plaintiffs to recover damages from the defendants for fixing their fishing stakes and nets too near to those of the plaintiffs. BABAN MYACHA *v.* NAGU SHRAVUCHA [I. L. R., 2 Bom., 19

56. ——— *Omission to get Collector's certificate.—Civil Procedure Code (Act X of 1877), s. 13.*—The plaintiff brought in 1876 a suit against the defendant in respect of the same subject-matter and founded on the same cause of action as the present suit. Issues of fact arising on the merits were inquired into; but a certificate of the Collector under section 6 of the Pensions Act (XXIII of 1871), which was necessary to give jurisdiction to the Court, not having been obtained, the claim was rejected on that ground. *Held* that the Court not having legally pronounced on the merits of the former case, the opinions expressed on the issues were not *res judicata* so as to bar the maintenance of the present suit. PUTALI MEHETI *v.* TULJA [I. L. R., 3 Bom., 223

57. ——— **Rejection of claim to attached property as too late.**—*Subsequent claim.*—The rejection of a claim to attached property, simply on the ground that it had been presented too late, was held to be no legal bar to the adjudication of the claim when it was again advanced after attachment made under decree. A claim of this kind may be admitted even after proclamation of sale, provided it has not been designedly and unnecessarily delayed to obstruct the ends of justice. MAHOMED MUBSON *v.* SUMPUTTEE SAHOON CHOWDHRAIN [10 W. R., 305

58. ——— **Dismissal of suit as barred by limitation.**—*Suit against Municipal Commissioners for possession of land.*—Previous to the institution of the present suit, one of the shareholders of a piece of land brought a suit against the Chairman of the Municipality for recovery of possession of his share. The other shareholders were made *pro formâ* defendants in the suit. This suit was dismissed as barred by the law of limitation. After the dismissal of the suit, the plaintiff brought the present suit for recovery of his share of the land, on the allegation that his tenant had relinquished the land within three months, in consequence of his having been dispossessed by the Municipal Commissioners. *Held* that the suit was not barred by section 2, Act VIII of 1859. PRICE *v.* KHILAT CHANDRA GHOSE [5 B. L. R., Ap., 50 : 13 W. R., 461

59. ——— *Civil Procedure Code (Act VIII of 1859), s. 2.—Civil Procedure Code (Act X of 1877), s. 13.*—The plaintiff sued for

RES JUDICATA—*continued.*

4. JUDGMENTS ON TECHNICAL POINTS —*continued.*

Dismissal of suit as barred by limitation —*continued.*

a declaration of mirasi mokurrari rights to certain lands and for mesne profits, alleging that he had been wrongfully ejected by the predecessors in title of the defendants. A previous suit on the same cause of action had been heard and dismissed on the ground of limitation. *Held* that the present suit was not barred (as *res judicata*) under section 2 of Act VIII of 1859 (corresponding with Act X of 1877, section 13), inasmuch as the first suit having been brought after the period allowed by law, the Court in which it was instituted was not competent to hear and determine it. BRINDABUN CHUNDER SIRKAR *v.* DHUNUNJOY NUSHKUR

[I. L. R., 5 Calc., 246: 4 C. L. R., 443

60. ——— Dismissal of suit for multifariousness.—*Criminal Procedure Code, 1859, s. 2.*—The dismissal of a suit for multifariousness is not a hearing and determination of the suit within the meaning of section 2, Act VIII of 1859. FATTEH SINGH *v.* LACHMI KOOER

[13 B. L. R., Ap., 37: 21 W. R., 105

TRILOCHUN CHUTTOPADHYA *v.* NOBO KISHORE GHUTTUCK . . . . **2 C. L. R., 10**

61. ——— Dismissal of suit for non-joinder of parties.—The dismissal of a suit because it is considered that all the proper parties have not been joined in it, though a decision of the suit, is not a decision on the merits within the meaning of Act VIII of 1859, section 2. PURSUN GOPAL PAUL CHOWDHRY *v.* POORNANUND MULLICK

[21 W. R., 272

62. ——— Dismissal of suit on failure of plaintiff to pay summons costs.—*Suit subsequently brought for same property.*—In June 1878 the plaintiffs brought a suit to establish their title to the property attached, and for confirmation of possession. Pending this suit the principal defendant died, and the plaintiffs applied for an order to substitute certain persons as defendants. The Court thereupon directed the issue of a summons on the defendants proposed by the plaintiffs to appear and defend the suit, but the plaintiffs failing to pay the costs of the service of this summons, the suit was dismissed on the 14th March 1879. On the 4th March 1880 the plaintiffs again brought a suit to establish their title to the same property, and for confirmation of possession. *Held* that as the first suit had not been dismissed upon the merits, the plaintiffs were entitled to maintain the second suit. BESSESSUR BHUGUT *v.* MURLI SAHU

[I. L. R., 9 Calc., 163: 11 C. L. R., 409

63. ——— Dismissal of suit on default of plaintiff to give security for costs. —*Defendant precluded from pleading matter which is res judicata.—Civil Procedure Code, 1877, ss. 13, 381.*—The plaintiff sued the defendants on a promissory note. The defendants filed a written statement, alleging that the note had been obtained by the plaintiff by fraud and false representation. Previously to the filing of the present suit by the plaintiff, the defendants had brought a suit against the plaintiff in which they prayed that the said promissory note might be delivered up to be cancelled. Their plaint in that suit contained allegations of fraud and want of consideration identical with those contained in their written statement in the present suit. The plaintiffs in the former suit (the present defendants) having failed to give security for costs, the suit was dismissed under section 381 of the Civil Procedure Code (Act X of 1877). It was now contended that the defendants were estopped from pleading, as a defence to the present suit, the fraud and want of consideration which had been alleged by them as plaintiffs in the former suit which had been dismissed. *Held* that the defence might be pleaded, and that the question of fraud and want of consideration was not *res judicata* within the meaning of section 13 of the Civil Procedure Code. The previous suit had been dismissed by reason of the plaintiffs' (the present defendants') failure to give security for costs; and a Court cannot be said to "hear and decide" a matter which it is relieved from hearing and deciding by the plaintiff's default. Under section 13 of the Civil Procedure Code (Act X of 1877) a defendant may be precluded from pleading as a defence matter which is *res judicata. Quære,*—Whether a plaintiff, whose suit has been dismissed under section 381, can again litigate the subject-matter of the dismissed suit. RUNGRAV RAVJI *v.* SIDHI MAHOMED EBRAHIM . **I. L. R., 6 Bom., 482**

64. ——— Dismissal of suit "in present form."—*Civil Procedure Code, 1877, s. 13, expl. III*—*K.*, the purchaser of certain immoveable property in execution of a decree, sued for possession of the same. The suit was dismissed "in the form in which it was brought" because the plaintiff had not filed with the plaint the sale-certificate. *K.* subsequently brought a fresh suit. *Held* that the dismissal of the former suit "in the form it was brought" did not amount to permission to sue again contemplated by section 373 of the Civil Procedure Code, and such dismissal must be regarded as a "decision" thereof in the sense of section 13, explanation III, and therefore as a bar to the fresh suit. GANESH RAI *v.* KALKA PRASAD

[I. L. R., 5 All., 595

65. ——— *Civil Procedure Code, s. 13.—Dismissal of suit.—Court Fees Act, s. 10, cl. ii.—Dismissal of suit for misjoinder.*—The purchaser of certain immoveable property in execution of a decree sued for possession of the same. The suit was dismissed "in its present form" (*bahaisiyat maujuda*), upon two grounds,—first, with reference to section 10 of the Court Fees Act (VII of 1870), that the suit was undervalued and the plaintiff had failed to pay, within the time fixed, additional court

RES JUDICATA—*continued.*

4. JUDGMENTS ON TECHNICAL POINTS —*continued.*

Dismissal of suit "in present form"— *continued.*

fees required by the Court; and, secondly, for misjoinder. The purchaser subsequently brought a second suit. *Held* that the dismissal of the former suit was not, under the circumstances, a decision within the meaning of section 13 of the Civil Procedure Code such as could bar the second suit by way of *res judicata. Per* MAHMOOD, *J.*—The object of section 10, and indeed of the whole of the Court Fees Act, is to lay down rules for the collection of one form of taxation, and the rule that statutes which impose pecuniary burdens or encroach upon, or qualify the rights of, the subject, must be strictly construed, applies with special force to such provisions of the Act as provide a penalty, whatever its nature may be. Section 10 is simply a penal clause to enforce the collection of the court fees, and dismissal of a suit under its provisions cannot operate as *res judicata.* Also *per* MAHMOOD, *J.*—The condition in section 13 of the Civil Procedure Code, that the former suit must have been "heard and finally decided," means that a former judgment proceeding wholly on a technical defect or irregularity, and not upon the merits, is not a bar to a subsequent suit for the same cause of action. It is not every decree or judgment which will operate as *res judicata,* and every dismissal of a suit does not necessarily bar a fresh action. It is necessary also to show that there was a decision finally granting or withholding the relief sought. *Ramnath Roy Chowdhry* v. *Bhagbut Mohaputter, 3 W. R, Act X, 140; Shokhee Bewah* v. *Mehdee Mundul, 9 W. R., 327; Dullabh Jgoi* v. *Narayan Lakhu, 4 Bom., A. C., 110; Rungrav Ravji* v. *Sidhi Mahomed Ebrahim, I. L. R., 6 Bom., 482; Fatteh Sing* v. *Lachmi Koer, 13 B. L. R., Ap., 37; Roghoonath Mundul* v. *Juggut Bundhoo Bose, I. L. R., 7 Calc., 214;* and *Saikappa Chetti* v. *Kulandapuri Nachiyar, 3 Mad., 84,* referred to. Also *per* MAHMOOD, *J.*—The words *bahausiyat maujuda* must be taken as amounting to a permission to the plaintiff to bring a fresh suit, within the meaning of section 373 of the Civil Procedure Code, and could only mean that the Judge using them in his decree had no intention to decide the case finally, so as to bar the adjudication upon the merits of the rights of the parties in a future litigation between them. The procedure provided by Chapter XXII of the Code is not the only manner in which a plaintiff can come into Court for the second time to ask for adjudication upon the merits of his rights, which were not adjudicated upon on the former occasion owing to some technical defect which proved fatal to the former suit. *Ganesh Rai* v. *Kalka Prasad, I. L. R., 5 All., 595,* dissented from. *Watson* v. *Collector of Rajshahye, 13 Moore's I. A., 160;* and *Salig Ram* v. *Tirbhawan, Weekly Notes, All., 1885, p. 171,* referred to. MUHAMMAD SALIM *v.* NABIAN BIBI

[I. L. R., 8 All., 282

66. ——— Striking off case for discrepancy in statement.—*Variation in plaint and deposition of plaintiff.*—A case struck off on the ground of discrepancy between the plaint and the plaintiff's deposition cannot operate as a *res judicata.* GUNGA NARAIN DASS *v.* PUNCHANUNEE DASSEE

[W. R., 1864, 163

67. ——— Dismissal of joint claim on ground that liability is several.—*Civil Procedure Code, 1859, s. 2.*—Where a suit against several defendants for a joint jumma is dismissed on the ground that the jumma is several and not joint, the plaintiff is not precluded by Act VIII of 1859, section 2, from afterwards suing each of them severally for the separate jumma. TELOKDHAREE SAHOO *v.* BISSENDRO NARAIN SAHEE

[Marsh., 418: 2 Hay, 528

68. ——— Dismissal of suit for balance of account, no balance being proved.—*A.* and his brothers made consignments of indigo to *B.,* who sued *A.* for the balance of an account due to him in respect of advances made by him to *A.* and his brothers, and that suit was dismissed on the ground that no balance was proved to be due. *Held* that the dismissal of the former suit was not a bar to a subsequent suit by *A.* to recover the proceeds of the indigo or his share of such proceeds. PUNCHANUN ROY *v.* MODOOSOODUN ROY

[W. R., 1864, 245

69. ——— Dismissal of suit on deed of sale when found to be a mortgage only.—*Refusal of leave to bring fresh suit.*—The dismissal of a suit on the ground that a deed put in by the plaintiff was a mortgage and not a deed of sale, does not preclude him from treating it as a mortgage in a subsequent suit, notwithstanding the former suit was dismissed after refusing plaintiff permission to withdraw it and bring a fresh suit. RAMKISTO SHAHA *v.* NEMY CHURN CHOLHAI

[W. R., 1864, 110

70. ——— Dismissal of suit on failure to produce evidence.—Dismissal of a claim for failure on the part of the plaintiff to produce evidence to substantiate it, is of the same effect as a dismissal founded upon evidence, for the purpose of barring a subsequent suit as *res judicata.* RAMA RAO *v.* SURIYA RAO . . . . I. L. R., 1 Mad., 84

Reversed by Privy Council in ZEMINDAR OF PITTAPURAM *v.* PROPRIETORS OF KOLANKA

[I. L. R., 2 Mad., 23: L. R., 5 I. A., 200

71. ——— *Non-production of witnesses and insufficiency of proof.*—In a suit for removal of an alleged nuisance, which was dismissed because plaintiff did not produce his witnesses, and failed to prove his case, it was held that there had been an adjudication, and that another suit would not lie on the same cause of action. SAHADEO PANDEY *v.* NOKHID PANDEY . . . . 15 W. R., 573

MOFIZOODDEEN *v.* AMOODDEEN . 23 W. R., 58

RES JUDICATA—*continued.*

4. JUDGMENTS ON TECHNICAL POINTS —*continued.*

72. ——— Dismissal of suit on failure to prove same title to different property.—*Civil Procedure Code, 1859, s. 2.*—A plaintiff's failure in a former suit to establish his claim with reference to a different property from which he was dispossessed on a different date, cannot render a subsequent suit inadmissible under the provisions of section 2, Act VIII of 1859, even though the title set forth in both the suits is identical. BOOA RUSSOOLEE *v.* NAWAB NAZIM OF BENGAL . . . . **11 W. R., 382**

73. ——— Dismissal of suit for dissolution for want of proof of partnership.—*Suit for money due for losses in partnership business.*—In 1878 plaintiff sued the defendants for moneys due on 10th April 1878 on account of an alleged partnership entered into on 3rd July 1876 for the purchase and sale of salt. This suit was dismissed on the ground that no partnership was proved. In 1880 plaintiff sued defendants for money due on account of a partnership entered into on 12th July 1876, for the sale of salt, and continued down to the end of 1878. *Held* that the plaintiff, having failed to prove in the former suit that any partnership existed between him and the defendants, was barred from bringing the present suit. SAMARAPURI CHETTI *v.* SHANMUGA CHETTI . **I. L. R., 5 Mad., 47**

5. ORDERS IN EXECUTION OF DECREE.

74. ——— Summary order in execution.—*Subsequent suit.*—A summary order rejecting plaintiff's claim in an execution case to the property in dispute, when it had been attached by a decree-holder, which order was not followed by the sale of the property attached, cannot in any manner affect a subsequent suit against parties other than the decree-holder brought for a different purpose and on a different cause of action. BOOA RUSSOOLEE *v.* NAWAB NAZIM OF BENGAL . . . **11 W. R., 382**

75. ——— Order rejecting application for execution of decree on the ground of limitation.—*Civil Procedure Code, 1859, s. 2.*—An order passed by a Court rejecting a *bonâ fide* application by a judgment-creditor for the execution of his decree, on the ground that the period allowed by law for execution had expired, held not to be an adjudication within the rule of *res judicata,* or within section 2, Act VIII of 1859. DELHI AND LONDON BANK *v.* ORCHARD
[I. L. R., 3 Calc., 47: L. R., 4 I. A., 127

76. ——— Order refusing to execute decree.—*Adjudication.*—An order refusing an application to execute a decree is not an adjudication within the rule of *res judicata.* HURROSOONDARY DASSEE *v.* JUGOBUNDHOO DUTT
[I. L. R., 6 Calc., 203: 7 C. L. R., 61

JEETOSHUR DHURN DEB *v.* FOOSEE SINGH
[1 Hay, 515

RES JUDICATA—*continued.*

5. ORDERS IN EXECUTION OF DECREE —*continued.*

77. ——— Order refusing to award mesne profits under decree.—*Proceedings in execution.*—*Held* by the Full Bench that the law of *res judicata* does not apply in proceedings in execution of decree. *Held,* therefore, by the referring Bench, where on an application for the execution of a decree the question was raised whether the decree awarded mesne profits or not, and the Court executing it determined that it did not award mesne profits, that such determination was not final, but such question was open to re-adjudication on a subsequent application for execution of the decree. RUP KUARI *v.* RAM KIRPAL SHUKUL
[I. L. R., 3 All., 141

78. ——— Refusal to execute decree.—*Reopening questions by successor to Judge who decided them.*—On an application being made for the execution of a decree, the judgment-debtor made three objections to its execution. The first of these objections the Court executing the decree, the Subordinate Judge, allowed, and refused to execute the decree. On appeal by the decree-holder, the District Judge disallowed all three such objections, holding that the decree should be executed, and remanded the case for that purpose. When the case came back to the Subordinate Judge, the judgment-debtor again raised the second and third of such objections, but the Subordinate Judge refused to entertain them, on the ground that they had already been determined by such District Judge. On appeal by the judgment-debtor, the successor of such District Judge ordered the Subordinate Judge to determine all three such objections. *Held* that such succeeding Judge could not reopen such questions, his predecessor having already finally determined them, and his predecessor's order, so far as such application for execution of the decree was concerned, was final. BALLABH SHANKAR *v.* NARAIN SINGH . **I. L. R., 3 All., 173**

79. ——— Refusal to execute decree as being barred.—*Application for execution of decree subsequently made.*—When a Court, upon an application for execution, has decided that the execution is barred by limitation, and that order has become final in consequence of no appeal having been preferred therefrom, such order will, upon a subsequent application for execution of the same decree, operate as a bar to execution. BANDEY KARIM *v.* ROMESH CHUNDER BUNDOPADHYA
[I. L. R., 9 Calc., 65: 11 C. L. R., 145

See MUNGUL PERSHAD DICHIT *v.* GRIJA KANT LAHIRI . . . **I. L. R., 8 Calc., 51**
[S. C. L. R., 8 I. A., 123: 11 C. L. R., 113

80. ——— *Civil Procedure Code (Act X of 1877), s. 13 (Act VIII of 1859), s. 2.*—The decision, by a competent Court, that an application for the execution of a decree is barred by limitation, has the effect of *res judicata;* and although such decision may be erroneous, yet so long as it remains unreversed in appeal it is valid and binding, and the question cannot be reopened. A

RES JUDICATA—*continued.*

5. ORDERS IN EXECUTION OF DECREE —*continued.*

Refusal to execute decree as being barred—*continued.*

decision that an application for execution is not time-barred has a similar effect. On the 15th April 1868 the plaintiff applied for the execution of a decree held by him against the defendant, and certain houses were thereupon attached. In April 1869 the attachment was raised on the intervention of a third person. The plaintiff then brought a suit to establish his right to attach the houses, and obtained a decree on the 28th February 1871. An appeal was made, and the suit was finally decided in the plaintiff's favour in April 1873. After the plaintiff had obtained his original decree, and while the appeal was pending, he applied for the sale of the houses in execution on the 30th November 1871, and subsequently made three other applications within three years of each other, the last of which was dated the 30th October 1876. The Court rejected this last application on the 28th November 1876, on the ground that the execution of the decree was barred, as more than three years had elapsed between the first and second applications (*i.e.*, the applications of the 15th April 1868 and 30th November 1871). The plaintiff appealed against the order, but his appeal was rejected because he had failed to produce with it a copy of the order appealed against. The plaintiff took no further steps in that proceeding, but made a fresh application for execution on the 10th August 1878. The Subordinate Judge rejected it, on the ground that the execution was barred, the matter being *res judicata*. On appeal the District Judge reversed that order and allowed execution. On appeal to the High Court,—*Held*, on the authority of *Mungul Pershad Dichit* v. *Grija Kant Lahiri Chowdhry*, *I. L. R.*, *8 Calc.*, *51*, that the rule of *res judicata* applied, and that the application of the 30th November 1871 was time-barred, and, *a fortiori*, every subsequent application was barred. *Semble*,—A proceeding in execution is a proceeding which terminates in a decree as defined by section 244 of the Civil Procedure Code (Act X of 1877), and is, therefore, a suit within the meaning of the Code. MANJUNATH BADRABHAT *v.* VENKATESH GOVIND SHANBHOG . . . **I. L. R., 6 Bom., 54**

81. ———— **Order construing decree.**—*Order as to possession and mesne profits.—Subsequent suit for possession.*—Certain lands having been divided under a butwara between *A.* and *B.*, who together took one portion, and *C.* who took the remainder, *A.* in 1847 mortgaged his share to *B.* under a usufructuary mortgage. In 1851 a dispute arose as to the boundaries under the butwara, and ended in *C.* surrendering 51½ bighas, which *B.* was allowed to take possession of under an ikrarnamah executed by *A.* to secure the costs incurred by *B.* in the dispute. In 1874 *A.* sued to recover possession of a moiety of the lands held jointly by him with *B.*, and in 1875 obtained a decree for possession and wasilat, no specific mention of the 51½ bighas being made in the decree. In execution of the decree, wasilat in respect of a moiety of the 51½ bighas was allowed,

RES JUDICATA—*continued.*

5. ORDERS IN EXECUTION OF DECREE —*continued.*

Order construing decree—*continued.*

an objection by the defendant to such wasilat being charged having been overruled. In 1878 *B.* sued to recover possession of the moiety of the 51½ bighas, which had been taken by *A.* under his decree. *Held* that, in rejecting the objection raised by *B.*, and allowing wasilat in respect of the 51½ bighas, the Court had interpreted the decree passed, and declared that under it possession of a moiety of the 51½ bighas had been decreed and given to *A.*, and that the suit instituted in 1878 was therefore barred. *Held*, also, that this matter having been decided under section 11, Act XXIII of 1861, between the parties in execution of a decree, could not be made the subject of a suit. KALI MUNDUL *v.* KADER NATH CHUCKERBUTTY **[6 C. L. R., 215**

82. ———— *Civil Procedure Code (Act XIV of 1882), s. 230.—Limitation.—Vatandars (Bom.) Act, III of 1874, s. 10.—Collector's certificate.*—A decree of a District Court, dated 5th October 1863, declared the plaintiff to be a hereditary deputy vatandar of a certain deshpande vatan vested in the ancestors of the defendant as hereditary vatandars, and that the plaintiff, as such deputy, was entitled to receive a certain sum annually out of the income of the vatan. The decree did not explicitly deal with the claim to future payments then set up by the plaintiff as hereditary deputy vatandar. The plaintiff received moneys from time to time under the decree until 1875, but he neglected to have himself registered as a representative vatandar under Bombay Act III of 1874, section 56. In 1875 he made a claim for certain arrears of the allowance which he alleged to be due under the decree, and he attached certain moneys out of the income of the defendant's vatan. The Collector issued a certificate under section 10 of the Vatandars Act (III of 1874) for the removal of the attachment, and the attachment was accordingly removed by the Subordinate Judge. The plaintiff appealed from the order of removal, but the Appellate Court confirmed that order. On second appeal to the High Court, it was held on 23rd June 1879 that the lower Courts were right in raising the attachment; that the Civil Courts had no jurisdiction to register the plaintiff as a representative vatandar, and that the Collector was the proper authority to be referred to. Thereupon the plaintiff applied to the Collector to cancel the certificate which had removed the attachment, and to register him as a representative vatandar. The Collector rejected the plaintiff's application on 31st March 1881. In 1881 the plaintiff presented a fresh darkhast to attach the same vatan property in virtue of the said decree of 1863, but the application was rejected as *res judicata* by both the lower Courts. They held that the certificate of the Collector, which remained uncancelled, operated as a bar. On second appeal to the High Court,—*Held*, reversing the order of the lower Courts, that the decree was one capable of execution. *Held*, as regards the Collector's certificate, that under section 10 of the Vatandars Act (Bombay), III of 1874, the certificate was exhausted

RES JUDICATA—*continued.*

5. ORDERS IN EXECUTION OF DECREE —*continued.*

Order construing decree—*continued.*

in operating on the execution which it stopped, and that the lower Court ought to have dealt with the case apart from that certificate. GOPAL HANMANT DESHKA *v.* KONDO KASHINATH [I. L. R., 9 Bom., 328

6. CAUSES OF ACTION.

83. ——— Nature of cause of action.—*Obligation to disclose title.*—A plaintiff's cause of action is a very different thing from his title; the one being something done contrary to his interest, which obliges him to seek the aid of a Court of Justice, the other being the proof that that something affords him a valid ground for relief. DUDSAR BIBEE *v.* SHAKIR BURKUNDAZ . . 15 W. R., 168

84. ——— Identity of bases of claim.—*Dismissal of claim on failure to produce evidence.*—Where the relief sought for in respect of certain property in a suit is different from the relief sought for in respect of the same property in a prior suit (between the same parties or their privies), but the title on which the relief sought for is based is the same in both suits, the dismissal of the former suit for failure to establish such title is a bar to the second suit. RAM RAO *v.* SURIYA RAO [I. L. R., 1 Mad., 84

S. C. on appeal to Privy Council, ZEMINDAR OF PATTAPURAM *v.* PROPRIETORS OF KOLANKA [I. L. R., 2 Mad., 23: L. R., 5 I. A., 200

85. ——— Difference in rights on which claim is made.—*Omission to assert every title.*—Act VIII of 1859, section 2, does not require a plaintiff at once to assert all his titles to property, or to be thereafter estopped from advancing them. The maxim, *Nemo bis vexari debet in eâdem causâ*, cannot apply where the right on which the second suit is brought is not the same as that asserted in the former suit. SADAYA PILLAI *v.* CHINNI [I. L. R., 2 Mad., 352

86. ——— Omission to decide part of case.—*Suit as to part of case raised in former suit.*—A plaintiff is bound to raise every title on which he can succeed and to obtain a decision upon every part of his case, and if it is found that any part of the case which he made has been neglected by the Court which tried the suit, he is not at liberty to bring a fresh suit in respect of such part. SREEKRISTO BISWAS *v.* JOY KRISTO BISWAS [24 W. R., 304

87. ——— Obligation to assert every title.—*Reservation of right.*—A litigant is bound to disclose all his titles at once. He cannot be allowed to keep back one, and then, years after, to bring a fresh suit on the ground that he had still a right in reserve. BROJO LALL ROY *v.* KHETTUR NATH MITTER . . . . . 12 W. R., 55

DUDSAR BIBEE *v.* SHAKIR BURKUNDAZ [15 W. R., 168

88. ——— *Civil Procedure Code, s. 13, expl. II.—Idem corpus, alia causâ* petendi.—In 1876 *A.* sued *K.* and others to recover certain lands, alleging that he was the karnavan of their tarwad, and that the lands were granted to them for maintenance under an oral agreement, which had been broken by *K.* having mortgaged some of the lands. This suit was dismissed. In 1881 *A.* sued the same defendants to recover the same lands, on the ground that as karnavan of the tarwad he was entitled to resume possession of the lands. *Held*, reversing the decrees of the lower Courts, that the suit brought by *A.* in 1881 was not barred by section 13 of the Code of Civil Procedure, 1877. *Per* MUTTUSAMI AYYAR, *J.*—Explanation II to section 13 of the Code of Civil Procedure, 1877, refers to the title litigated in the former suit as distinguished from the relief claimed. Where several independent grounds of action are available, a party is not bound to unite them all in one suit, though he is bound to bring before the Court all grounds of attack available to him with reference to the title which is made the ground of action. ALLUNNI *v.* KUNJUSHA [I. L. R., 7 Mad., 264

89. ——— Dismissal of suit for proprietary right to land.—*Subsequent suit for possession of portion of same land as planter of the trees on it.*—The dismissal of a suit in which the plaintiff had claimed a proprietary title in certain land, held not to bar a subsequent suit in which he prayed for a declaration that, as planter of the trees and constructor of a tank in a garden forming a portion of the land, he was entitled to retain possession of the garden and tank. GOSHAIEN JUGOOPOOREE *v.* BISHEN DYAL CHUND . . . 2 Agra, 32

90. ——— Dismissal of suit on demise as continuation of prior demise.—*Subsequent suit on prior demise.*—In 1883 plaintiff sued to recover certain land from the defendant on a demise of 1856 which he alleged was a renewal of a prior demise of 1835. The suit was dismissed on the ground that the demise of 1856 was not proved. Plaintiff then sued to recover the same land on the demise of 1835 and on title. *Held* that the decree in the former suit was no bar to this suit. KANDUNNI *v.* KATIAMMA . I. L. R., 9 Mad., 251

91. ——— Suit for same property on different cause of action.—*Civil Procedure Code, 1859, s. 2.*—The plaintiff sued to recover certain land, on the ground that he had been forcibly dispossessed of it by the defendant. As the plaintiff did not prove the alleged dispossession his claim was rejected, but the Court suggested that he might recover in a fresh suit, treating the defendant as a trustee, and offering to make certain payments to him. The plaintiff then filed a fresh suit, framing it in the manner indicated by the Court. *Held* that the latter suit, being based on a different cause of action from the former, was not barred, and that the question at issue between the parties was not *res judicata*. BHISTO SHANKAR PATIL *v.* RAMCHANDRARAV RAGHUNATH JAHAGIRDAR [8 Bom., A. C., 89

RES JUDICATA—*continued.*

6. CAUSES OF ACTION—*continued.*

Suit for same property on different cause of action—*continued.*

92. ——————— *Civil Procedure Code, 1859, s. 2.—Decision as to nature of document.*—In 1864 the original plaintiff, *L.*, as heir of *F.*, brought a suit against *J.* (the guardian of *F.*), *A.*, *B.*, and *C.*, to recover a piece of land. The suit was rejected, as it was proved that (though the plaintiff was the heir of *F.*) *F.'s* guardian had mortgaged the land for necessary purposes to *C.*, the two defendants *A.* and *B.* being merely tenants of *C.* The plaintiff then sued *C.* for redemption of the mortgaged premises. *Held* that the second suit was not barred under section 2 of the Code of Civil Procedure. *Held*, also, that the fact of the document under which *C.* held the land being described in the Court's judgment in the earlier suit as an instrument of sale, was not conclusive in the second suit as to the real nature of the instrument. VALLABH BHULA v. RAMA . . . . . **9 Bom., 65**

93. ——— **Suit by sons to set aside alienation by widow as guardian.**—*Former suit by widow against purchaser.*—Where the mother and guardian of minor sons had once sued a certain party in order to set aside certain kobalas by which she had conveyed away to him the property of her late husband, on the ground that her action may have been injurious to the interests of her sons, and the said suit had been thrown out by the Judges, and the sons subsequently brought another suit with substantially the same object in view, but making the mother a co-defendant with the original defendant,—*Held* that the validity of the kobalas having once been decided, the only ground on which the subsequent suit could lie would be that the mother had, in giving the kobalas, acted collusively with the defendant, of which, however, there was no evidence whatever. GUNGA RAM SADHOOKHAN v. PANCH COWREE PORAMANICK . . . . . **25 W. R., 366**

94. ——— **Decision as to genuineness of document.**—*Civil Procedure Code, 1859, s. 2.—Co-defendants.*—A former judgment, in which a certain document has been held to be genuine between a third person as plaintiff and the present plaintiff and present principal defendant as defendants, was held to be conclusive in this suit on the point of authenticity of the document, though not a *res judicata* under section 2, Act VIII of 1859, in other respects. KALLY PERSAD SEIN CHOWDHRY v. MOHESH CHUNDER BHUTTACHARJEE . . . . . **1 Hay, 430**

95. ——————— *Sanction for forgery in respect of document in another suit.*—A former decision in a civil suit in which the issue was the genuineness or otherwise of a kabuliat, and the Court held that it was not genuine, but added (as an *obiter dictum*) that the pottah produced by the other side was authentic, does not bar the jurisdiction of a Civil Court in sanctioning a commitment for forgery in respect of the pottah. JUGGUT MISSER v. BABOO LAL . . . . . **5 W. R., Cr., 50**

RES JUDICATA—*continued.*

6. CAUSES OF ACTION—*continued.*

Decision as to genuineness of document—*continued.*

OOMANATH ROY CHOWDHRY v. RAGHOONATH MITTER . . **Marsh., 43: W. R., F. B., 10 [1 Hay, 75**

96. ——————— *Subsequent suit in which same question arose.*—Where a Court in a former suit against the present plaintiffs to set aside a mortgage decided that the mortgage as to a certain share of the property was invalid, although it was not a matter for adjudication then before the Court,—*Held* that that decision was no bar to a subsequent suit for recovery of the mortgage debt as to that share, and that the question of the genuineness or otherwise of the mortgage by defendants to plaintiffs was open to be decided on the merits. BUSTEE RAM v. NEWAZ SINGH . . . . . **2 Agra, 62**

97. ——— **Decision as to validity of document.**—*Matter in issue.—Defence not relied on.*—A suit was brought by *A.* to recover property, in which, on appeal to the Privy Council, two questions arose,—*viz.*, whether the property was to pass as divided or undivided property, and whether such property was conveyed away to *A.'s* father by a deed of testamentary disposition. The lower Court had decided only the latter point, and the Privy Council remanded the case for determination of the former point. On a second appeal to the Privy Council, that Committee were about to enter upon the question as to the validity of the testamentary paper, when *A.* gave up the point that the paper was in any sense testamentary in its character, and disclaimed having any title under it as a testamentary devise, and the Privy Council therefore did not decide that question. *Held* that a subsequent suit by *A.*, in which he sought to recover the property by setting up the paper as a valid will and testament, was a suit instituted without *bona fides*, and could not be allowed to proceed, because the nature of the paper was in issue in the former suit, and what was in issue must be taken to have been decided by the judgment. RAGHOONADHA PERYA OODYA TAVER v. KATTAMA NAUCHEAR . . . **10 W. R., P. C., 1**

S. C. VIJAYA RAGHANADHA BODHA GOOROO SAWMY PERIYA OODYA TAVER v. KATAMA NATCHIAR (RAJAH OF SHIVAGUNGA) **[11 Moore's I. A., 50**

Affirming S. C. in High Court, UDAIYA TEVAR v. KATAMA NACHIYAR . . **2 Mad., 131**

98. ——————— *Deed of sale or mortgage.—Parties.—Question decided in former suit.*—*R.* obtained, on the 7th January 1862, a decree declaring a deed of sale in his favour, dated the 7th January 1854, to be a genuine, authentic, and valid instrument. The question whether the sale was changed into a conditional sale or mortgage by an agreement entered into by him with the vendors on the same day that the deed of sale was executed, could not be raised by any of the parties to that suit or their representatives in a suit brought by *R.* to obtain proprietary possession of the subject of the

RES JUDICATA—*continued.*

6. CAUSES OF ACTION—*continued.*

Decision as to validity of document—*continued.*

sale, in virtue of the deed and the decree. DHUNDI *v.* RAM LAL . . . . **7 N. W., 149**

99. ——————— *Suit for possession under deed of gift.—Subsequent suit by heir of donor to set aside deed of gift as invalid.*—*G.* executed a deed of gift of his whole property in favour of *J. J.* sued for possession and obtained a decree. On the death of *G.*, his heir sued to set aside the deed of gift, alleging that, notwithstanding the decree, *J.* did not obtain possession till after the death of *G.*, and that the deed of gift was, under the Imames law, invalid. *Held* that this might have been a good defence on the part of *G.* to the suit brought against him by *J.*, but that after the decision of that suit, it was not open to *G.* to dispute the title of *J.*, nor was it now open for his heir to do so. FUREZUND ALI *v.* JAFFREE BEBEE . . . **5 N. W., 118**

100. ——————— *Deed of gift.—Civil Procedure Code, 1859, s. 2.—Matter not determined in former suit.—Suit on different cause of action.*—*M.* brought a suit to obtain her share of the entire property of *A.*, her deceased father. It was pleaded, with respect to a certain portion of the property, that *A.* had made it over by parol gift to his minor son. The case came before the High Court on special appeal, when it was contended on behalf of *M.*, the appellant, that the gift was not proved, and that some portion of the property was "mush'a" (undivided), and the gift in regard to it invalid. The High Court refused to allow the last plea, which had not been taken in the Court of first instance, to be taken in appeal, the point raised being one of fact; and as the gift had been established by evidence, dismissed the appeal. *F.*, the purchaser of the rights and interests in *A.'s* estate of *W.*, a defendant in the suit, brought a suit against his vendor, *M.*, and the guardian of the minor, to obtain possession of the property conveyed by the sale in which property affected by the gift was included, and claimed the setting aside of the gift because a portion of the property conveyed by it was undivided. *Held* that his suit was not barred by section 2 of Act VIII of 1859. IMAMAN *v.* FAZUL KARIM . . **7 N. W., 251**

101. ——————— *Suit for same object on different cause of action.—Decision in former suit.*—Plaintiff, claiming as grandson of one *S. M.*, the only undivided brother of *S.*, sought to recover half of the village sold by *S.* to first defendant's father in 1855; the village having been (as alleged) family property, and sold without the consent of plaintiff's father, who succeeded his father, *S. M.*, and not for family purposes. In a former suit (No. 3 of 1855), brought by the plaintiff's father against *S.* and *R.*, the father of the present first defendant, and the present second defendant, the paternal nephew of the first defendant, for possession of the whole of the family property belonging to him and *S.* as coparceners, and to rescind the sale to *R.*, the plaint stated, amongst other things, that

RES JUDICATA—*continued.*

6. CAUSES OF ACTION—*continued.*

Decision as to validity of document—*continued.*

S. was imbecile; and that the sale-deed was obtained by taking a fraudulent advantage of his imbecility, and that it was invalid as being made without plaintiff's consent. The Court decided that *S.* was "both physically and mentally qualified to manage, and legally competent to deal with the estate, supposing it to be undivided, to the extent of his own share," and dismissed the suit. In 1862 the plaintiff again sued the present defendant for the whole of the village on the same ground of imbecility and fraud. The Civil Court decided that the suit was barred by the decree in the first suit, and on appeal the decree was affirmed. *Held* that the present cause of action,—namely, the plaintiff's right as coparcener to a moiety of the property, and the invalidity of the instrument of sale to pass that right to the defendant,—was not *res judicata.* CHINNIYA MUDALI *v.* VENKATACHELLA PILLAI . . **3 Mad., 320**

102. ——————— **Former suit on same cause of action.**—*Suits stating different grounds for right to succeed to estate.*—Plaintiff sued to recover a zemindari from his step-brother, alleging that the zemindari was hereditary property belonging to the family, the succession thereto being governed by the law of primogeniture; that his father died in 1859, leaving the plaintiff, defendant, and another, his sons, the former by the first wife, and the latter two by the second wife; and that the defendant (respondent) unlawfully enjoyed the estate, while plaintiff, as the eldest son, had a legal claim thereto. In defence it was pleaded that the claim was *res judicata* by the decree in a suit which was brought by plaintiff to obtain a declaration of his status as the son of his father's pattaba stri, or royal wife, in which suit the plaintiff's father was first defendant, and defendant's mother was second defendant, and wherein they both denied that plaintiff was son of the pattaba stri and affirmed that second defendant was first defendant's first wife, and that her sons were preferential heirs to the zemindari. Among the points recorded was for "plaintiff to prove his status and right as alleged," and that issue was set down for defendants to rebut. The Judge disbelieved that plaintiff was the son of his father's first wife, and added, "Plaintiff further pleads that he is the eldest son, a position not denied, but one which cannot confer on him the status he now claims." The Judge decided that plaintiff had failed to prove that his mother was the pattaba stri, and that he was heir to the exclusion of second defendants' sons. On appeal to the Sudder Adawlat the decree below was confirmed and the Court made the following observation: "It has been attempted at the hearing of the appeal to maintain the plaintiff's right to succeed as being the eldest son. This, however, was not the position taken in the Court below, where the succession was allowed to depend on another circumstance,—namely, the mother being the pattaba stri; and the Court, therefore, held the argument to be an inadmissible one." *Held*, on appeal, that the present suit was barred by *res judicata*, a different

RES JUDICATA—*continued.*

6. CAUSES OF ACTION—*continued.*

Former suit on same cause of action—*continued.*

cause to the former not having been adduced. To the judgment in *Chinnaya Mudali* v. *Venkatachella Pillai*, *3 Mad.*, *326-34*, after the words in page 334, "in favour of the defendant all the objective grounds of the decision which have led to the dismissal of the suit," the following ought to be added: "and without the establishment of which the suit could not have been logically or legally dismissed." MUTHUMADEVA NAIK *v.* SEVATTAMUTHUMADEVA NAIK . . . . . **7 Mad., 160**

103. ——— Suit for enhancement of rent.—*Subsequent suit for admitted rent.*—A suit for enchanced rent after notice having been dismissed on appeal, plaintiff sued to recover rent for the same year at the rate admitted by the defendant in the former suit. *Held* that the cause of action in the subsequent suit was not the same as in the former, and that the law of *res judicata* did not apply in bar. KHEDAROONISSA BIBEE *v.* BOODHEE BIBEE **[13 W. R., 317**

104. ——— Suit for rent against same tenant as in former suit.—*Decision in former suit.*—*A.* and *B.* were co-sharers in a certain talook to the extent of 7 annas and 4 annas respectively. *B.* died in 1868, and in 1872 *A.*, who used to collect the rents on behalf of *B.*, brought a suit against one of the ryots for the rent of the 11 annas. An issue having been raised as to the extent of *A.'s* share, omitting that of *B.*, it was decided to be 7 annas only, and he got a decree accordingly. In a subsequent suit by *A.'s* widow against the same tenant for the rent due for the 11 annas share,—*Held* that the decision in the former suit did not debar her from showing that she was entitled to the rent due on account of *B.'s* 4 annas share. SHAMADANISSA BEEBEE *v.* FERASUTOOLLAH SIRDAR . . . **2 C. L. R., 23**

105. ——— Claim as heir to property as joint and undivided.—*Subsequent claim as reversioner on death of widow.*—*A.*, a brother's son, in 1847 claimed, on the ground that he had title as heir to the moiety of an estate, prior to the other brother's widow, on the plea that it was joint and undivided, and that suit was dismissed. In a subsequent suit accepting the decision of 1847, and regarding the widow's title to be prior to his, and as holding a life interest in the whole estate before him, *A.* claimed as heir next in reversion after the widow, regarding her property as separate, with a view to a declaration of his right as such heir to have a certain alienation by the widow (alleged by him to be illegal under Hindu law) set aside. *Held* that the two cases and causes of action were essentially different. SUNKUR DYAL SINGH *v.* PURMESSUR DYAL SINGH . **6 W. R., 44**

106. ——— Dismissal of former suit to set aside assignments.—*Subsequent suit for possession by reversioner.*—*C.*, the reversioner expectant in the life interest of a Hindu widow, instituted a suit in her lifetime to set aside sales of the estate. It had first been sold in execution of a decree

RES JUDICATA—*continued.*

6. CAUSES OF ACTION—*continued.*

Dismissal of former suit to set aside assignments—*continued.*

against the widow and purchased by *A.*, and then for arrears of revenue due by *A.* and had been purchased by *B.*; but this suit was dismissed under Act I of 1845, section 24, on the ground that more than a year had elapsed since the sale for arrears of revenue. After the death of the widow, the reversioner sued *B.* for recovery of possession of the lands. *Held* that the plaintiff was not barred by the dismissal of the suit instituted in the lifetime of the widow; the object of that suit being to set aside the assignments of the widow's interest, and not for the assertion of the plaintiff's right to the reversion. DOORGA CHURN *v.* KASSY CHUNDER MOITREE **[Marsh., 539: 2 Hay, 646**

107. ——— Suit to set aside alienation by widow.—*Subsequent suit to recover property as reversioner.*—A widow (a life-tenant of an ancestral estate), having executed an ikrar transferring a share to *N.*, her granddaughter, afterwards sued to set it aside on the ground that *N.* had not conformed to its terms. While the suit was in the appeal stage the widow died, and her reversioner applied to be made, and was admitted as, her kaem mukam, to carry on the appeal on her behalf. He afterwards sued to recover possession of the share as reversioner, alleging that the succession opened out to him on the death of the widow. *Held* that the causes of action in the two suits were different, and that it was not necessary for the reversioner, when he took up the widow's case in its appeal stage, to disclose his title and claim as reversioner, as he was not competent then to introduce any pleas arising out of a new state of facts not existing when the suit was instituted. DEORANEL KOOWAR *v.* INDURJEET KOOWAR **[12 W. R., 234**

108. ——— Dismissal of suit to establish plaintiff's adoption.—*Civil Procedure Code, s. 13.*—*Representation of estate by Hindu widow.*—*Decree in favour of widow.*—*Admission by widow subsequent to decree.*—In 1877, *S.*, claiming to be the adopted son of *M.*, sued *A.*, the widow of *M.*, to recover his estate. *A.* denied the adoption. *S.* failing to adduce any evidence, the suit was dismissed under section 158 of the Code of Civil Procedure, 1877. In 1882, by an agreement made between *A.* and *S.*, *A.* acknowledged the title of *S.* as adopted son of *M.* *A.* having died, a suit was brought against *S.* by a reversioner of *M.* to recover the estate of *M.* *Held* that *S.* was estopped by the decree in the former suit from setting up his claim as adopted son against the plaintiff, and that the subsequent agreement between *A.* and *S.* did not affect plaintiff's right. ARUNACHALA *v.* PANCHANADAM **[I. L. R., 8 Mad., 348**

109. ——— Suit on bond.—*Failure to prove execution.*—*Subsequent suit for same money on account.*—A previous suit against the same defendant on a bond having been dismissed on the ground that plaintiff had failed to prove the execution of the bond,

RES JUDICATA—*continued.*

6. CAUSES OF ACTION—*continued.*

Suit on bond—*continued.*

defendant sued to recover the identical sum as a balance due on a khatta account. *Held* that the second suit was not brought on a cause of action previously tried and determined between the parties, and was cognisable by the Court of Small Causes. AUGHORE NATH GHOSSAL *v.* ROOP CHAND MUNDUL [13 W. R., 97

110. ——— *Deed inadmissible as being unregistered.—Subsequent suit on registered bond.—I.*, to whom the obligee of a bond for the payment of money in which immoveable property was hypothecated had assigned by sale her right thereunder, sued in virtue of the deed of sale on such bond for the money due thereunder, claiming to recover by the sale of the hypothecated property. This suit was dismissed on the ground that the deed of sale, not being registered, could not be received in evidence, and consequently *I.'s* right to sue on such bond failed. *I.*, having procured the execution of a fresh deed of sale and caused it to be registered, brought a second suit on such bond in virtue of such deed of sale, claiming as before. *Held* that the second suit was not barred by the provisions of section 13 of Act X of 1877. ISHRI DAT *v.* HAR NARAIN LAL . . . I. L. R., 3 All., 334

111. ——— **Dismissal of suit for amount due on document.**—*Subsequent suit for same amount.*—The defendants and two others jointly executed a document (A), whereby they promised, on the 27th April 1874, to pay to the plaintiff R25 at the end of April 1875, and also to give to the plaintiff, in April 1875, a certain quantity of grain by way of interest. *Held* in a suit on the document (KERNAN, *J.*, dissenting) that the suit was not barred by the dismissal of a suit in 1877 in which the plaintiff sued the defendants for a proportionate amount due by them under the document (A), alleging a verbal promise by the defendants, in November 1876, to pay such proportionate amount. MUTTU CHETTI *v.* MUTTAN CHETTI . . . . I. L. R., 4 Mad., 296

112. ——— **Suit for sum due on mortgage.**—*Decisions in former suits for interest.—Civil Procedure Code, 1877, s. 13.—Sale of mortgaged property in execution of decree.*—Certain immoveable property was mortgaged to *R.* and then sold to *N.* It was then brought to sale in execution of a decree against *N.* and was purchased by *H.* The balance of the sale-proceeds after satisfaction of that decree was paid to *N.* Under the terms of the mortgage to *R.* interest on the principal amount was payable annually, and its payment was charged on the property as well as the payment of the principal amount. The mortgagors having failed to pay the interest annually, *R.* in 1875 sued them and *N.* and *H.* to recover the interest due. It was decided in that suit that *N.* was primarily and personally liable for the interest then due on the mortgage, as he had received the sale-proceeds of the property, and that the property was only liable in case he failed to satisfy the claim. *N.* subsequently paid into Court

RES JUDICATA—*continued.*

6. CAUSES OF ACTION—*continued.*

Suit for sum due on mortgage—*continued.*

the sale-proceeds he had received and *R.* was paid the same. In 1878 *R.* again sued the same persons for interest and again *N.* was declared primarily and personally liable, on the ground that he had not at once made over the sale-proceeds to *R.* In 1880 *R.* sued the same persons to recover the principal amount and interest due on the mortgage, by the sale of the mortgaged property. *Held* that, whatever might have been the rights and relations of the parties so long as any portion of the sale-proceeds remained with *N.*, their position towards him assumed an entirely different character when once he had discharged himself of those moneys, and with this change in the situation the *ratio decidendi* of the suits of 1875 and 1878 no longer existed, and therefore the decisions in those suits did not preclude *R.* from bringing a suit to recover the principal and interest due on his mortgage from the mortgaged property. RATAN RAI *v.* HANUMAN DAS [I. L. R., 5 All., 118

113. ——— **Suit declaring right to redemption.**—*Subsequent suit by representative for redemption.*—Where *D.* sued for redemption, and obtained a conditional decree, and subsequently the plaintiff sued *D.* to establish his right to the mortgaged property and obtained a decree,—*Held* that a suit by the plaintiff for redemption was not barred by section 2, Act VIII of 1859. BHOOP SINGH *v.* NURSINGH RAI . . . . 3 Agra, 144

114. ——— **Dismissal of suit for ejectment.**—*Subsequent suit for redemption.*—Failure in a suit of simple ejectment does not bar a subsequent suit for redemption, notwithstanding that the defendant had asserted the existence of his mortgage in the former suit. SHRIDHAR VINAYAK *v.* NARAYAN VALAD BABAJI . . . . 11 Bom., 224

115. ——— **Suit for redemption.**—*Issue as to sale of equity of redemption.—Subsequent suit under a different title for same object.*—In 1870 the plaintiffs sued to redeem a mortgage of certain lands from the defendants' predecessors in title. The suit was dismissed on the ground that the plaintiffs' equity of redemption had been sold in execution of a decree to *A. B.* The plaintiffs having repurchased the equity of redemption from *A. B.*, brought a second suit to redeem the lands in the defendants' possession. *Held* that the question whether the equity of redemption of the lands in suit had been sold to *A. B.* was *res judicata* and could not be reopened by the defendants on the ground that the plaintiffs were litigating under a different title in the former suit. ALI MOIDIN RAVUTHAN *v.* ELAYACHANIDATHIL KOMBI ACHEN [I. L. R., 5 Mad., 239

116. ——— *Foreclosure in the Central Provinces.*—By a bond, dated 10th February 1857, a certain village was mortgaged by one *G.* to the appellants and their father as security for a loan; the bond providing that, "if I fail to pay the money as stipulated, I and my heirs shall, without

RES JUDICATA—*continued.*

6. CAUSES OF ACTION—*continued.*

Suit for redemption—*continued.*

objection, cause the settlement of the said village to be made with you." The interest of *G.* in the village was described as that of a malguzar, and his proprietary right therein was declared by the revenue authorities shortly after the execution of the mortgage; but his payments of revenue being in arrear, the Board of Revenue granted a lease of the village for ten years to the appellants' father. The mortgagees in a suit on the bond obtained the following decree on 3rd November 1860: "As the defendant acknowledges the plaintiffs' claim, it is ordered that a decree be given to the plaintiffs for principal and interest and costs against the defendant and the mortgaged property." In proceedings in the Civil Court taken under this decree, the mortgagees asked for possession of the village, and obtained, on 17th July 1862, an order, in pursuance of which they were put in possession, an appeal by *G.* being rejected. *G.* took various steps to recover possession of the mortgaged property, or a declaration of his proprietary interest therein, but failed in his endeavours; an application for a grant of the proprietary right in the village, and an appeal from an order cancelling his pottah, being rejected by the revenue authorities, on 8th December 1864 and 27th July 1865, respectively; and on 12th August 1867 *G.* conveyed the village by deed of sale to the respondents. In a suit brought by them to redeem the mortgage and obtain possession of the property,—*Held*, the suit was not barred by the order of the Civil Court of 17th July 1862, nor had the orders of the revenue officers of 8th December 1864 and 27th July 1865 effected such a transfer of any right which *G.* might have had to the appellants as to render the sale to the respondents invalid. GOKULDASS *v.* KRIPARAM [13 B. L. R., P. C., 205

117. ——————— *Limitation.*—*Declaratory mortgage-decree for redemption not executed for 15 years.*—In 1866 *S.* obtained a decree authorising him to recover certain property on payment of a certain sum to the mortgagee, but not declaring that *S.* would be foreclosed if he did not exercise his right of redemption,—*Held* that *S.* was not debarred from bringing a suit to redeem the same property in 1881. SAMI ACHARI *v.* SOMASUNDRAM ACHARI . . . . I. L. R., 6 Mad., 119

118. ——————— *Decree for redemption.—Second suit to redeem.—Civil Procedure Code, ss. 13, 244.*—A decree obtained by a mortgagor, which declared that the mortgagee should deliver up possession on payment of the sum found due to him, not having been executed for three years, a purchaser of the equity of redemption sued the mortgagee to redeem. *Held* that this suit was not barred by the former decree and that the plaintiff was entitled to redeem. *Sami* v. *Somasundram, I. L. R., 6 Mad., 119*, approved. *Gan Savant Bal Savant* v. *Narayan Dhond Savant, I. L. R., 7 Bom., 467*, dissented from. KARUTHASAMI *v.* JAGANATHA . . . . I. L. R., 8 Mad., 478

RES JUDICATA—*continued.*

6. CAUSES OF ACTION—*continued.*

Suit for redemption—*continued.*

119. ——————— *Omission to direct foreclosure.—Neglect to redeem.—Second suit to redeem.—Hindu family.—Suit by manager in his own name.—Representative character.—Practice.—Parties.—Civil Procedure Code (Act XIV of 1882), s. 50.*—In 1856 *V.*, a member of an undivided Hindu family, sued the defendants, and obtained a decree for the redemption of certain immoveable property, but the decree was never executed. At the date of that suit *V.* was the manager of the family, consisting of himself and the plaintiff *N.* who was then a minor. The decree did not provide for the foreclosure of the mortgage in the event of *V.* failing to redeem. In 1878 *N.* brought another suit to redeem the same property. The Lower Court held that as the former decree did not direct foreclosure, the relation of mortgagor and mortgagee continued between the parties, and that the plaintiff's suit was not barred by the former decree. The defendant appealed. *Held* (PINHEY, *J., dissentiente*), reversing the decree of the Lower Court, that the plaintiff's suit was barred. A decree for redemption, on the default of the decree-holder to pay the money declared to be due within the time fixed by the decree, or if none be fixed, within the time allowed by the law for the execution of the decree, operates as a judgment of foreclosure, and debars the mortgagor from afterwards bringing a second suit to redeem the same property. GAN SAVANT BAL SAVANT *v.* NARAYAN DHOND SAVANT [I. L. R., 7 Bom., 467

120. ——— **Dismissal of former suit for rent of portion of estate.**—*Suit to establish proprietary right to whole estate.*—The dismissal of a suit for the declaration of plaintiff's right to receive rent from a tenant of a portion of an estate cannot be pleaded as an estoppel in a suit to establish plaintiff's general right as proprietor of the whole estate. KISHEN DHUN NUNDEE *v.* BHOOKTO POLLY . . . . . 9 W. R., 461

121. ——— **Dismissal of suit for rent.**—*Subsequent suit for possession.*—A suit for rent, in which the sole defendant denied the plaintiff's title, alleging that *B.* and *A.* were his landlords, having been dismissed on the ground that the plaintiff had failed to prove his title, another suit was brought by the plaintiff against *A., B.,* and *C.* for possession. *Held* that the suit was barred under section 13 of the Civil Procedure Code, 1882. GOPAL DASS *v.* GOPI NATH SIRCAR . . . 12 C. L. R., 38

122. ——— **Suit for enhancement of rent.**—*Suit for rent of succeeding years.*—A decree passed in a suit as to the propriety of enhancement of rent in a preceding year is no bar to a suit for enhancing the rent in a subsequent year, nor does it preclude a comparison of the rents paid by actual cultivators for the year in respect of which the second enhancement was made. GUNGA PERSHAD *v.* BULDEO SINGH . . . 3 Agra, 310

RES JUDICATA—*continued.*

6. CAUSES OF ACTION—*continued.*

Suit for enhancement of rent—*continued.*

123. ———————— *Civil Procedure Code, s. 2.—Declaratory decree.*—Where, in a suit for enhancement of rent, the plaintiff failed to prove notice of enhancement, but the Court enquired into and gave a declaratory decree as to his right to enhance, such decree is decisive of the right in a subsequent suit for enhancement of the rent of the same tenure founded on a valid notice. NUFFERCHUNDER PAUL CHOWDRY *v.* POULSON

[12 B. L. R., P. C., 53 : 19 W. R., 175

RAKHAL DOSS BOSE *v.* GOLAM SURWAR

[2 W. R., Act X, 69

124. ———————— *Former suit in which right to enhance was declared.*—The plaintiff sued to enhance the rent of the defendant's holding. In a former suit between the parties which the defendant had brought to determine the plaintiff's right to enhance, it was held that the plaintiff was not entitled to enhance. *Held* that the decision in the former case was rightly admitted as conclusive evidence in the present case as to the plaintiff's right to enhance. MANICK SINGH *v.* PIRTHEE SINGH

[5 N. W., 163

SREEDHESSURY CHOWDRY *v.* MUDDUN KOOWAR JHA . . . . . 1 W. R., 128

125. ———————— *Declaration of right in suit for enhancement.*—Where a Munsif, in a suit for enhancement of rent, found that the tenure was not protected from enhancement, but granted a decree for rent at the old rate, because the grounds on which enhancement was claimed had not been established,—*Held* that, as the Munsif was competent to make a declaration between the parties, his finding that the tenure was liable to enhancement, although not forming a portion of the first decree, was binding in a second suit for enhancement of rent. ENAETOOLLAH *v.* AMEER BUKSH *alias* MOHEEDOOLLAH . . . . . 25 W. R., 225

126. ———————— *Suit for khas possession.*—The plaintiffs, as taloukdars, brought a suit against their tenant *M.* for recovery of rent at enhanced rates of land held by him, as to two cottahs of which he denied that they were part of his holding, but alleged that they were part of the lakhiraj holding of one *H.*, and *H.* intervened in that suit and claimed the two cottahs as lakhiraj. The result of that suit was that the rent was assessed on the land admitted by *M.* to be in his possession, excluding the two cottahs. The plaintiffs then brought a suit against *H.* for a declaration that these two cottahs were their mâl lands, and obtained a decree simply declaring their mâl rights over the land in dispute. In a suit brought by the plaintiffs against *H.* after serving him with notice to quit, for recovery of khas possession of the two cottahs with mesne profits, and praying that he might be ordered to remove a mud house erected by him on the land, the defence was that as the plaintiffs had already claimed khas possession and obtained a decree simply declaring their right to receive rent, the suit was barred, and that as *H.* had been twenty years in possession and had erected a house without any opposition from the plaintiffs, they had no right now to sue for khas possession. *Held* that the suit was not barred by section 2, Act VIII of 1859, and the plaintiffs were entitled to a decree for khas possession. ESHAN CHUNDER GHOSE *v.* HURRISH CHUNDER BANERJEE

[10 B. L. R., Ap., 5 : 18 W. R., 19

127. ———————— Suit for declaratory decree. —*Civil Procedure Code, 1877, s. 13.—Dismissal of suit for declaratory decree and to have deed set aside.—Subsequent suit for possession with respect to same property and to set aside same deed.*—In December 1878 *H.*, a Hindu widow, in possession, by way of maintenance, of a certain estate, of which *R.* owned one-third, and *P.*, *B.*, and *S.* one third jointly, made a gift thereof, to *N.* *H.* died in January 1879. In February 1879 *R.* and *P.*, *B.*, and *S.* joined in suing *N.* for a declaration of their proprietary right to two thirds of the estate and to have the deed of gift set aside. The Court trying this suit treated it as one for a mere declaration of right, and dismissed it with reference to the provisions of section 42 of the Specific Relief Act, 1877, on the ground that the plaintiffs had omitted to sue for possession although they were not in possession and were able to sue for it. In November 1879 *R.* and *P.*, *B.*, and *S.* again joined in suing *N.* In this suit they claimed possession of two thirds of the estate and to have the deed of gift set aside. *Held* by the Full Bench (reversing the judgment of PEARSON, *J.*, and affirming that of OLDFIELD, *J.*) that the decision in the former suit was no bar to the determination in the second suit of the question as to the validity of the deed of gift. RAM SEWAK SINGH *v.* NAKCHED SINGH

[I. L. R., 4 All., 261

128. ———————— *Suit for declaration of title.—Subsequent suit to recover arrears. —Deshpande vatan.—Suit by one sharer against other.*—Where a person having previously obtained a decree declaratory of his title sues his co-sharer in a deshpande vatan, who is bound by the decree, to recover arrears, the previous decree operates as *res judicata* as regards the plaintiff's title, except so far as circumstances subsequent to decree may affect it DULABH VAHUNJI *v.* BANSIDHAR RAI

[I. L. R., 9 Bom., 111

129. ———————— *Suit for moveables after former suit declaring right to them.*—Where a suit for a share of ancestral property was decreed, but the decree was modified on appeal as regards certain immoveables so far as to be made declaratory of plaintiff's right to a specified share without any specific declaration of value, and plaintiff subsequently brought a second suit for the value of the moveables,—*Held* that the second suit was not barred by Act VIII of 1859, section 2. SHEORAJ NUNDUN SINGH *v.* RAJCOOMAR BABOO DEO NUNDUN SINGH

[24 W. R., 23

RES JUDICATA—*continued.*

6. CAUSES OF ACTION—*continued.*

Suit for declaratory decree—*continued.*

130. ——————— *Civil Procedure Code, 1877, s. 13.—Instalment-bond.—Hypothecation.—Declaratory decree.*—In 1864 the obligee of an instalment-bond, in which certain immoveable property was hypothecated as collateral security for the payment of the instalments, brought a suit upon such bond "against *Z.* and *A.* (the obligors) and the property hypothecated in the bond, defendants," claiming to recover instalments which were due and unpaid, and a declaration of his right to recover instalments which were not due, as they fell due. He obtained a decree in such suit for "the amount claimed" against the "two defendants." It was also provided in such decree that, "until the satisfaction of the entire amount of the bond, the plaintiff can realise the amount of each instalment by executing this decree." The obligee applied in execution of such decree to recover, by the sale of such property, which had passed into the hands of third parties after the passing of such decree, instalments which had become due after the passing of such decree, and had not been paid. Such execution having been refused on the ground that such decree was a money-decree, the obligee brought a second suit upon such bond to recover such instalments by the enforcement of the lien therein created on such property. *Held* that, although the enforcement of such lien was claimed in the former suit, yet, inasmuch as it was very questionable whether the Court was competent to grant the second relief claimed in that suit, *viz.*, a declaration of right to recover instalments which were not due in execution of a decree for instalments which were due, and the claim in the second suit was not the same as that in the former suit, the plaintiff asking for instalments said to be actually due, and not for a declaratory decree for instalments not due, the second suit was not barred by section 13 of Act X of 1877. UMRAO LAL *v.* BEHARI SINGH

[I. L. R., 3 All., 297

131. ——— **Suit for partition.**—*Right of widow.—Subsequent suit to get rid of partition.*—Where a widow was treated as an equal sharer in her husband's estate with her sons, and in conjunction with one son applied for partition as a sharer, and objections taken to the partition were overruled and no appeal made to the Civil Court,—*Held* that a suit to declare the widow only entitled to maintenance was not maintainable. OODIA *v.* BHOPAL

[3 Agra, 137

132. ——————— *Civil Procedure Code, 1859, ss. 2 and 3.—Admission.—Revision of judgment.*—Plaintiffs having purchased the rights of a widow in certain properties, sued the defendants for partition of the share purchased; defendants admitted the widow's right to a certain extent, but the suit was dismissed on the ground that plaintiffs before they could obtain partition must establish the extent of their right and the validity of the purchase. *Held*, on plaintiffs' second suit, that it being between the same parties, and for the same property on the same cause of action, was barred by section 2, Act VIII of 1859; that defendants' admission, which was merely an admission in plaintiffs' favour, gave no new cause of action; and that if the Courts failed to decide all the matters in dispute which they had before them in the former suit, their judgment could not be revised in a new suit; such revision being contrary to the provisions of section 3, Act VIII of 1859. GHASEE KHAN *v.* KULLOO . **1 Agra, 152**

133. ——————— *Bom. Act V of 1864.*—In 1871 the plaintiff sued to establish his sole right to a portion of a field on the ground that it had been allotted to him by partition. The defendant also claimed it as his share obtained by partition. The Court rejected the plaintiff's claim, holding that no partition had taken place, and that the field was the joint property of five coparceners, including the plaintiff and defendant. In 1878 the plaintiff brought a second suit for a partition of the field, including the portion for which his former suit had been instituted. *Held* that the present suit for partition was not barred by the previous suit which was brought to establish the plaintiff's sole right to the lands in question. SHIVRAM *v.* NARAYAN

[I. L. R., 5 Bom., 27

134. ——————— *Former suit for declaration of right to partition.—Civil Procedure Code (Act VIII of 1859), s. 2.*—A Hindu of the Southern Maratha Country having two sons undivided from him, died in 1871, leaving a will disposing of ancestral estate substantially in favour of his second son, excluding the elder who claimed his share in this suit. In 1861, a suit brought by this elder son against his father and brother to obtain a declaration of his right to a partition of the ancestral estate was dismissed, on the ground that he had no right in his father's lifetime to compel a partition of moveables; and that as to the immoveables, the claim failed, because they were situate beyond the jurisdiction of the Court. In a suit by the elder son against his brother after the father's death for a share of the property on the ground that it was ancestral estate,—*Held* that this suit was not barred under Act VIII of 1859, section 2; the proceedings of 1861 not having amounted to an adjudication between the brothers as to their rights in the estate arising on their father's death. LAKSHMAN DADA NAIK *v.* RAMCHANDRA DADA NAIK. **I. L. R., 5 Bom., 48**

[L. R., 7 I. A., 181 : 7 C. L. R., 320

135. ——————— *Effect of unexecuted decree for partition in subsequent suit for partition of same property.—Mortgage of share.—Purchase by a stranger of portion of the lands included in the decree.—Suit by him for partition.*—*A.* and *B.* were the joint owners in equal shares of certain property. In 1869 *B.* mortgaged his share to *A.* under a mortgage-deed drawn up in the English form. Later on, in 1869, *A.* brought a suit against *B.* for partition, and in 1870 obtained a decree appointing a Commissioner of partition and directing the partition. No return was made to this

RES JUDICATA—*continued.*

6. CAUSES OF ACTION—*continued.*

Suit for partition—*continued.*

Commission, and no actual partition was come to. In 1873, *A.* obtained a decree for an account, and for payment, or in default for sale of the property. In 1878, *B.'s* share was put up for sale, and purchased by *C.* and *C.* was put into possession. In 1881, *C.* brought a suit against *A.* for partition. *Held* that the decree obtained by *A.* in 1873 put an end to *B.'s* right to redeem, unless he paid the amount found due against him, and therefore at the time of the sale to *C.*, *B.'s* right to redeem had ceased to exist, and the property was no longer subject to partition under the decree of 1870, and therefore the partition asked for under the suit of 1881 could be granted. KIRTY CHUNDER MITTER *v.* ANATH NATH DEY **[I. L. R., 10 Calc., 97: 13 C. L. R., 249**

136. ——————— *Decree in former suit for partition.—Partial and general partition.—Account.*—In a previous suit between the plaintiff and the defendant, the plaintiff alleged that there had been a partition of the family property into two parcels, and, under a deed of partition drawn up at the time, claimed one of these parcels. The deed being held invalid, the suit was rejected, with liberty to the plaintiff to sue for a general partition. In the second suit the plaintiff prayed for a general partition as a member of an undivided Hindu family. *Held* that the second suit was not *res judicata;* for, although the plaintiff might in the first suit have made an alternative case and prayed for a general partition in case he failed to establish the previous partition which he alleged, yet it could not be said that he ought to have done so. *Held*, also, that in the case of joint enjoyment by the members of the whole family, or enjoyment by different members of different portions of the family property, the Court will not, except under special circumstances, order an account to be taken of past transactions, but will make division of the property actually existing at the date of partition. *Lakshman Dada Naik* v. *Ramchandra Dada Naik, I. L. R., 5 Bom., 48,* followed. KONERRAV *v.* GURRAV . **I. L. R., 5 Bom., 589**

137. ——— **Suit for mesne profits.**—*Former suit for possession.*—The plaintiff sued to recover possession of land and for wasilat from the period at which he alleged he was dispossessed; and he obtained a decree for possession of the lands and for wasilat from the date of the plaint. He afterwards sued the defendant for wasilat from the date of the alleged dispossession to the date of the plaint. *Held* that wasilat having been claimed in the previous plaint for that period, and there having been an adjudication upon his claim for wasilat, and no evidence that wasilat was withheld for the period for which it was now claimed, through inadvertence or by mistake, the case was within Act VIII of 1859, section 2, excluding from the jurisdiction of the Court causes of action "which shall have been heard and determined by a Court of competent jurisdiction to a former suit between the same parties." LUTEEFOONISSA BIBEE *v.* LUCKEEMONEE DOSSEE **[Marsh., 93: 1 Hay, 161**

RES JUDICATA—*continued.*

6. CAUSES OF ACTION—*continued.*

Suit for mesne profits—*continued.*

138. ——————— Where a plaint prayed for possession and wasilat, and a decree was given for possession without mention of the wasilat; and on application for review it was urged, though not in the written grounds of application, that the question of wasilat ought to have been disposed of, but no decision was given as to it either by the High Court, or by the Court of first instance, to which application was afterwards made,—*Held* that the fact that a prayer for wasilat was contained in the plaint in the suit in which only a decree for a possession was given was not a bar to a subsequent suit for mesne profits within section 2, Act VIII of 1859. GAURI BAIJNATHPRASAD *v.* BUDHU SING **[2 B. L. R., S. N., 16**

S. C. BYJNATH PERSHAD *v.* BADHOO SINGH **[10 W. R., 486**

139. ——————— *Former suit alleging tenancy.—Suit for mesne profits.*—*D.* sued *R.* for an arrear of rent, but *R.* denied his tenancy and *D.'s* title to the land, and was successful in that defence. *D.* then sued in the Civil Court to recover possession with wasilat, which he estimated at the rate of the rent previously claimed, and obtained a decree for possession without wasilat. *Held* that the second suit was not for the same thing as the first under a different name, and that plaintiff was entitled to wasilat as well as possession. DATARAM *v.* RAM KRISTO . . . . . **9 W. R., 594**

140. ——— **Suit for ejectment.**—*Former suit deciding as to relinquishment of the land.—Held* that a former suit which decided the question of relinquishment of the land by defendant, a ryot, did not bar a subsequent suit, which was brought on the allegation that the land being sír land, the defendant, the occupant, had no right of occupancy, and should consequently be ejected. NAIPAL SINGH *v.* RAM NARAIN . . . . . **2 Agra, 93**

141. ——————— *Suit to recover possession, Dismissal of.—Subsequent suit to enhance rent.*—In a suit to recover khas possession of land, of which the plaintiff alleged he had been fraudulently dispossessed by the defendant, the defendant claimed to be entitled to the possession of the land under a deed of gift at a fixed rent. The Judge found upon the facts that the deed of gift was invalid; that the land was mâl; and that the defendant was entitled to retain the possession, and thereupon dismissed the suit. *Held* that the plaintiff was not precluded by the decision in that suit from afterwards maintaining a suit against the defendant to enhance the rent. NEELMONEY SINGH DEO *v.* SHOBHAN BEBEE **[Marsh., 600**

142. ——— **Suit for same land on different title.**—*Failure in former suit.*—Plaintiff, after failing in a former suit to establish her right to certain land as belonging to her putni talook, was not allowed to fall back on a different title and bring a separate suit claiming the same

RES JUDICATA—*continued.*

6. CAUSES OF ACTION—*continued.*

Suit for same land on different title—*continued.*

land as belonging to her mirasi, the cause of action in both cases being really the same. AUNUNGO MOHUN DEB *v.* UNNODA DOSSEE . **17 W. R., 351**

143. ——— **Suit for possession.**—*Dismissal of former suit for possession as heir.*—A suit for possession as the heir of *S.* is not barred by section 2, Act VIII of 1859, because plaintiff's former claim to the same property as the heir of *S.'s* father was dismissed. GOOROO DUTT *v.* SOOROO **[16 W. R., 264**

144. ——— *Suit on title derived by gift.—Subsequent suit as heir.—Held* (MITTER, *J., dubitante*) that a suit claiming property on a title by inheritance was barred by sections 2 and 7, Code of Civil Procedure, 1859, where plaintiff's claim on a title derived by gift had already been adjudicated upon. DUDSAR BIBEE *v.* SHAKIR BURKUNDAZ . . . . . **15 W. R., 168**

145. ——— *Suit for ejectment based on alleged lease.—Subsequent suit to eject tenant as trespasser founded on ownership.*—The present plaintiffs in 1869 sued the present defendants to eject the latter from a certain piece of land, alleging that the defendants held it under certain leases dated July 1864. The genuineness of the alleged leases was put in issue in that suit and was decided by the Subordinate Judge in favour of the plaintiffs, who accordingly obtained a decree. On appeal the District Judge reversed that decree, being of opinion that the alleged leases were not proved. In 1874 the plaintiffs brought the present suit to eject the defendants. In this suit the plaintiffs sued simply as owners, and alleged that the defendants were in occupation as tenants paying rent to the plaintiffs, and that they (the defendants) had refused to give up possession. *Held* (MELVILL, *J., dissentiente*) that the plaintiffs were not barred by the judgment in the former suit. The fact of both the suits being against the defendants as tenants of the plaintiffs did not imply that the suits were on the same cause of action. The term "tenancy" may be applied to a great many different relations between the occupier and the owner of property, agreeing perhaps only in the single circumstance of a holding by the one of the property of the other. The test in each case is, not whether a tenancy has in both suits been sued on, but whether the particular contract or relation put forward in the first case was the same specific contract sued on in the second. A cause of action reduced to the concrete form in a contest between individuals implied a specific right and a specific infringement of the right; and a judgment that one such specific right had not been made out, was not a trial and determination of a cause of action resting on another specific right. The specific rights on which the plaintiffs relied in the two suits were different, and would have to be proved by different evidence. GIRDHAR MANORDAS *v.* DIYABHAI KALABHAI . . . . . **I. L. R ,8 Bom., 174**

RES JUDICATA—*continued.*

6. CAUSES OF ACTION—*continued.*

Suit for possession—*continued.*

146. ——— *Civil Procedure Code, 1859, s. 2.—Suit for accretion —Different cause of action.*—A suit for a declaration of the plaintiffs' right to a chur, which they claimed as an accretion to mouzah L., was held to be barred under Act VIII of 1859, section 2, by a judgment in a former suit, in which they had claimed the same land as an accretion to mouzah R., because, whether by accretion to the one estate or to the other, the question in both suits was that of title by accretion. A complainant is bound to bring forward in his suit all the grounds of origin of his right. A difference in the origin of the right is not a matter which makes a different cause of action. KASHEE KISHORE ROY CHOWDHRY *v.* KRISTO CHUNDER SANDYAL CHOWDHRY . . . . . **22 W. R., 464**

147. ——— *Former suit for kabuliat.—Decision as to quantity of land held.*—In a previous suit the plaintiff sought to obtain a kabuliat from the defendant in respect of land held by him alleging the quantity to be 8 bighas and 17 cottahs. It was therein determined that the defendant held only 7 bighas and no more. In the present suit brought to eject the defendant from 1 bigha 17 cottahs of land,—*Held*, that it was not maintainable, as it was for the determination of a question decided in the former suit. GOPAL CHANDRA ROY *v.* NABIN CHANDRA BHANDARI . . **3 B. L. R., Ap., 34**

148. ——— **Decision as to quantity of land held.**—*Suit for rent.—Suit for measurement.—Civil Procedure Code (Act X of 1877), s. 13.*—In a suit by ryots against their zemindar, praying for measurement of certain land, and for a declaration of the amount of yearly rental, it appeared that, in a previous suit for rent by the zemindar against the ryots, the ryots had alleged that the amount of rent and the extent of land had been overstated by the zemindar, but the Court decided that the ryots were bound by a jummabundi signed by them, and refused to try whether the extent had been overstated. *Held* that the present suit was not barred as *res judicata.* ROGHOONATH MUNDUL *v.* JUGGUT BUNDHOO BOSE **[I. L. R., 7 Calc., 214: 8 C. L. R., 393**

149. ——— **Decision as to boundaries of land.**—*Civil Procedure Code (Act X of 1877), s. 13.*—The plaintiff sued to recover certain lands, claiming them as a portion of A. and alleging that A. was portion of a mouzah which had been leased to him in putni by the zemindar. The suit was dismissed, on the ground that though A. was known as a part of the plaintiff's mouzah, yet it had been included in a putni lease of an adjoining mouzah, which the zemindars had granted to the defendants previously to the date of the plaintiff's lease. The plaintiff brought a second suit claiming another portion of A. on the same title. *Held* that the claim was barred as *res judicata. Mohidin* v. *Muhammad Abrahim, 1 Mad., 245; Nundkishore Singh* v. *Huree Pershad Mundul, 13 W. R., 64; Prannath Sandyal* v. *Ram-*

RES JUDICATA—*continued.*

6. CAUSES OF ACTION—*continued.*

Decision as to boundaries of land—*continued.*

coomar Sandyal, 2 C. L. R., 33; and *Gobind Chunder Koondoo* v. *Taruck Chunder Bose, I. L. R., 3 Calc., 145*, followed. SUNDHYA MALA v. DABI CHURN DUTT . . . . **I. L. R., 6 Calc., 715**

S. C. SUNDHYAMULA *v.* DEVI CHURN DUTT **[9 C. L. R., 216**

150. ——————— *Failure of suit for possession.*—Where a party failing to obtain judgment for the possession of land claimed by her in her first suit as taufir, brought a fresh suit claiming the land as property belonging to her talook according to the true boundary line,—*Held*, affirming the decision of the High Court, that her suit was barred by section 2 of Act VIII of 1859. WOOMATARA DEBIA *v.* UNNOPOORNA DASSEE **[11 B. L. R., P. C., 158 : 18 W. R., 163**

S. C. in High Court. UMATARA DEBIA *v.* KRISHNA KAMINI DASI . **2 B. L. R., A. C., 102**

S. C. WOOMATARA DABEE *v.* UNNOPOORNA DOSSEE **[10 W. R., 426**

SHIB SHUNKUR NEOGY *v.* HURO SOONDUREE GOOPTA . . . . **13 W. R., 209**

151. ——— *Suit for possession and to set aside sale in execution of decree.—Subsequent suit on the ground that sale was ab initio void.*—When a plaintiff sues for possession and determination of right to a certain property, and to set aside an execution sale of a portion of the property on the ground of irregularity, and his suit is dismissed on the merits, a subsequent suit for possession of the property sold, on the ground that the sale was void *ab initio*, is barred as *res judicata*. *Wooma Tara Debia* v. *Unnopoorna Dassee, 11 B. L. R., 158*; and *Periya Odaya Taver* v. *Katama Natchiar, 11 Moore's I. A., 50*, cited and followed. PIGOU *v.* MOHAMED ABOO SYED . . **3 C. L. R., 253**

152. ——— *Suit to set aside sale in execution of decree.—Sales under different decrees.—Reversal on appeal of decision setting aside sale.—Civil Procedure Code, 1859, s. 2.*—In execution of a decree, the right, title, and interest of *A.* in a certain property were sold and purchased by *B.* In execution of another decree, the right, title, and interest of *A.* and *C.* in the same property were sold and purchased by *D.* In a suit by *A.* the sale to *B.* was set aside, but on appeal the decision of the Court of first instance was, upon consent of the parties, set aside, and the sale allowed to stand good. *D.* sued for possession of the share of *A.* and *C.* in the property purchased by him, and obtained a decree for possession of the share of *C.* only. *D.* now sued to set aside the sale to *B.* and for possession of the share of *A.* *Held* that the suit was not barred by section 2, Act VIII of 1859. CHANNA LAL SAHU *v.* MANU LAL . . **5 B. L. R., 220 : 13 W. R., 343**

153. ——— **Subsequent suit on different grounds for same property.**—*Civil Procedure Code, 1859, s. 2*—*Act XXIII of 1861, s. 11*,—On the 30th June 1855, *S.*, a Lingayat priest, died, possessed of moveable and immoveable property. The right of succession to it being disputed, the District Judge placed it under the management of the nazir, under Bombay Regulation VIII of 1827, section 9. In 1869, *B.*, representing himself as the disciple of *S.*, and claiming, as such, to be entitled to the whole of the property left by *S.*, brought a suit (No. 962 of 1869) against the defendant to establish his right to the property in question, and to recover possession of it. The suit was compromised by an agreement, upon which the Court passed a decree on the 23rd March 1870, dividing the property of *S.* in certain shares between *B.* and the defendant. When *B.* and the defendant applied for possession of the property in execution of this decree, the nazir, who had it in his charge, resisted them. The execution proceedings dropped in consequence of the death of *B.* The plaintiff thereupon (as a disciple of *B.*, deceased), and the defendant sued the nazir separately, each claiming the whole property of *S.* The plaintiff's suit was rejected on the ground that he failed to prove himself the disciple of *B.* In that suit the plaintiff produced neither the compromise made between *B.* and the defendant, nor the decree passed on it in suit No. 962 of 1869. The defendant succeeded in his suit, and obtained possession of the whole property. The plaintiff then sued, as the disciple of *B.*, to recover from the defendant the portion of the property of *S.* which fell to the share of *B.* according to the compromise on which the decree in suit No. 962 of 1869 was made. *Held* by WEST, *J.*, that the suit was barred, *first*, because the plaintiff had been judicially pronounced not to be the disciple of *B.* in his suit against the nazir to which the defendant was a party as the true successor or *primâ facie* successor represented by the nazir in that suit. It was not open to those who had as heirs sued the official representative of an estate, and failed, to sue the owner, when ascertained, a second time on the same right. *Secondly*, because the plaintiff, in his suit against the nazir, was bound to bring forward every ground on which he could claim the property; and if the compromise effected by *B.* was such a ground, that compromise and the decree founded on it ought to have been brought forward to sustain the claim, as it would have shut out a ground of defence consisting of the defendant's superior right. As the plaintiff omitted to do so, the more recent decree, which pronounced him not entitled to any part of the property of *S.*, superseded the earlier one, which ineffectually awarded *B.* a moiety of that property as against the person not in possession; and while that decree was unreversed, another decree could not be made awarding to the same plaintiff one-half of the same property in the same right as against the defendant whom the nazir represented in the earlier suit. *Held* by PINHEY, *J.*, that the property claimed in the present suit had been specifically awarded to *B.* by the decree of the 23rd

RES JUDICATA—*continued.*

6. CAUSES OF ACTION—*continued.*

Subsequent suit on different grounds for same property—*continued.*

March 1870, and if that decree were not time-barred, *B.* or his legal representative could obtain possession by taking out execution proceedings on that decree. The present suit, therefore, was barred alike by section 2 of Act VIII of 1859 and section 11 of Act XXIII of 1861, and the fact that execution of the decree in suit No. 962 of 1869 was time-barred did not confer on *B.*, or any legal heir of his, a new right to sue for the estate of *S.* or any part of it. SHIVALINGAYA *v.* NAGALINGAYA

[I. L. R., 4 Bom., 247

154. ——— Suit for same property on different cause of action.—*Civil Procedure Code, 1859, s. 2.*—In 1856 the plaintiff, the zemindar of Tarla (who had attained his majority in 1853), instituted suits for the recovery of the two villages claimed in the present suit on the ground that the villages were jerayati, and had been temporarily alienated, and he claimed a right of resumption. It was decided that the villages had formed a mokasa jaghir from a date prior to that of the permanent settlement, and that, as they did not constitute a portion of the assets of the zemindari at the date of the settlement, there was no right of resumption. Pending those suits, an order was issued by Government which plaintiff construed as a transfer to him of the Government right in the villages, and he founded the present suit upon the lapse of the mokasa to Government, and the order transferring the right to him. *Held* that the present suit was not *res judicata.* RAMA CHANDRA SURYA ARICHANDRANA DEO *v.* DARVADA RAMANNA CHANDIRI

[3 Mad., 207

155. ——— Suit for same property on same cause of action.—*Suit for possession.*—*Civil Procedure Code, 1859, ss. 223, 224.*—Where a suit was preferred for the purpose of recovering possession of defendants' lands, for possession of which plaintiff had already obtained a decree against the same defendants and others, the suit was held to be barred, as the cause of action was not different from that which had been previously determined. Instead of asking for delivery of possession under section 224, plaintiff's proper course would have been a resort to the provisions of section 223 of the Procedure Code. RAM SUBN MUHTON *v.* JINONAUTH BHUGGUT . . . 10 W. R., 396

156. ——— Suit for confirmation of sale.—*Subsequent suit for certificate of sale.*—The purchaser at the sale of a taluk sold under a judgment upon a decree, sued to reverse the order of a Judge annulling the sale, and in that suit he craved confirmation of the sale, that he might be put into possession of the taluk, and for a decree for mesne profits. This suit being dismissed on the merits, he instituted another suit, in which he craved a bynamah, or certificate of sale. *Held* that the second suit was brought for the same causes and subject-matter as the first, and that the plaintiff was therefore precluded

RES JUDICATA—*continued.*

6. CAUSES OF ACTION—*continued.*

Suit for confirmation for sale—*continued.*

by the dismissal of the first suit from obtaining it. LAMB *v.* DEWAN PUDDUM LOCHUN

[Marsh., 96: W. R., F. B., 28
1 Hay, 168

157. ——— Suit for right to share in ancestral property.—*Cause of action different.*—*Judgment in former suit.*—A suit to establish the plaintiff's right to a share of ancestral property, part of which was in his sole possession, cannot operate as a *res judicata* in a subsequent suit to recover possession of a part of the ancestral property which was, as he alleges, in his sole possession, and from which he was forcibly evicted by the defendant during the pendency of that suit. HURONATH ROY *v.* GOOROO DOSS ROY. GOOROO DOSS ROY *v.* HURONATH ROY . . . . . 7 W. R., 423

158. ——— Causes of action identical.—*Title.*—*Test for determination as to res judicata.*—The plaintiff purchased certain lands from the heirs of a Mussulman proprietor: the defendant *M.* purchased other lands of the same estate from their co-heirs. In 1864 the plaintiff sued to have the sale to the defendant *M.* set aside. In the course of the suit, however, he admitted that he was in possession of all the lands he had bought, and his claim was, therefore, rejected. In 1869 the plaintiff brought a suit, in the form of a partition-suit, praying for demarcation of the lands bought by the defendant *M.* and himself. It was treated as substantially an ejectment suit, and rejected on the same grounds as the first suit, namely, his admission as above stated. In appeal to the High Court it was urged by the plaintiff that, since the date of his admission in the first suit, some of his tenants had attorned to the defendant *M.*, and thus deprived him of part of his land; but as this allegation had not been made in his plaint, the Court refused to allow the point to be raised. The present suit was founded on the attornment of plaintiff's tenants to the defendant *M.* alleged to have been made in 1868. The plaintiff contended that, although the cause of action was in existence when the second suit was brought in 1869, yet that it had not been adjudicated upon, and that in appeal he had been prevented from arguing it. *Held* that the plaintiff was estopped. The causes of action in the second and third suits were identical. Having striven to establish his title by one means and failed, the plaintiff could not establish the same title by other means which were equally at his command when the previous suit was instituted, and which were so connected with the grounds on which he in that suit relied, that they ought to have been submitted together for the consideration of the Court. In determining whether a question is *res judicata*, the Court will have regard to the substance of the previous suit rather than its form. If the cause of action is based on a right identical in both suits, or on the same group of facts infringing that right, the second suit is barred. HASAM IBRAHIM *v.* MANCHARAM KALIANDAS

[I. L. R., 3 Bom., 137

RES JUDICATA—*continued.*

6. CAUSES OF ACTION—*continued.*

159. ——— Suit for share of joint property under an agreement.—*Subsequent suit as heir.*—A Hindu of the Sudra caste died in 1850, leaving him surviving his two widows, *B.* and *S.*, a son *M.*, and daughter *D.*, the children, respectively, of *B.* and *S.*, and an illegitimate son, the plaintiff. The plaintiff and *M.* continued to live together for some time after their father's death. But subsequently, owing to domestic quarrels, they lived separately, and the plaintiff was allowed by *M.* a portion of the family property, under an agreement in writing. They were, however, joint and undivided in estate, and continued to be so until the death of *M.* in 1865. In 1866 the plaintiff brought a suit on the agreement, and obtained a decree against *B.*, *S.*, *D.*, and *R.* (a lessee of *B.*) for the property mentioned in the agreement. In 1870 the plaintiff brought a second suit as heir of his father and brother, and claimed the whole of the ancestral property. Both the lower Courts rejected his claim as barred by the previous suit. *Held* in special appeal by MELVILL and NANABHAI HARIDAS, *JJ.*, that the claim was not barred, inasmuch as the former suit was brought on the agreement, while the latter was instituted to establish plaintiff's general rights as heir of his father and brother. SADU *v.* BAIZA

[I. L. R., 4 Bom., 37

160. ——— Suit on a family arrangement.—*Second suit for the same subject-matter as co-sharers.*—*Causes of action.*—The defendant's great-grandfather was uncle of one *B. H.*, who was the great-grandfather of the plaintiffs, and they (*i.e.*, the defendant's great-grandfather and his nephew *B. H.*) were entitled in equal half shares to a certain vatan property. The defendant and his brothers now represented the former, and were entitled to his half share, and the plaintiffs represented the latter, and were entitled to his half share. The plaintiff's father, *B. R.*, lived with the defendant and the defendant's brothers, *M.* and *K.*, as members of an undivided family up to the year 1845, in which year the plaintiffs' father, *B. R.*, being then absent from the village, the defendant's brothers, *M.* and *K.*, executed a deed of partition whereby they divided the ancestral property into two equal shares, one half of which the plaintiff's father was to receive, the other half going to the defendant and his brothers. The deed, among other recitals, contained a clause to the effect that the plaintiff's father being then absent from the village, the defendant's brothers would manage his share during his absence, and on his return hand the same over to him on his paying the expenses incurred by them in such management. In 1873 the plaintiffs' undivided brother brought a suit against the defendant and others on an agreement alleged to have been executed between him (plaintiffs' brother) and the defendant and his brothers by which the said brothers had bound themselves to return one-third share to him (the plaintiffs' brother). This suit was dismissed as against the defendant, as he had not been a party to that agreement, and plaintiffs' brother was referred to a separate suit for partition against the defendant. The plaintiffs, therefore, now brought

RES JUDICATA—*continued.*

6. CAUSES OF ACTION—*continued.*

Suit on a family arrangement—*continued.*

the present suit, claiming their share in the vatan estate. The defendant (*inter alia*) contended that the suit was barred as *res judicata* by the former suit, that neither the plaintiffs nor their forefathers had enjoyed the property during the previous 150 years, and that the claim was barred by limitation. Both the lower Courts allowed the plaintiffs' claim. The defendant preferred a second appeal to the High Court. *Held*, confirming the decree of the lower Court, that the former suit having been brought on an alleged agreement, it did not bar the present suit, which was based on the plaintiffs' hereditary right to sue as members of the family. NILO RAMCHANDRA *v.* GOVIND BALLAL . **I. L. R., 10 Bom., 24**

161. ——— Suit under will.—*Subsequent suit in right of heirship.*—*Former suit on different grounds.*—*N.* sued *M.* and *K.*, claiming proprietary possession under the Mahomedan law of a share in certain property by right of heirship to her deceased husband. She had previously sued the same persons to recover a portion of the same property under a will of her husband, and obtained a decree which was reversed on the ground of the will being invalid. *Held* (in accordance with the opinion of the Full Bench) that the second suit was not barred by section 2, Act VIII of 1859 NOUSHA BEGUM *v.* UMRAO BEGUM . . **7 N. W., 60**

162. ——— Suit for possession as heiress.—*Subsequent suit on ground of family custom.*—In a suit governed by the Mitakshara, in which *A.*, a Hindu widow, was the plaintiff, and *B.* was one of the defendants, the plaintiff sought and obtained a decree for possession of certain lands to which she claimed to be entitled as mother and heiress of her deceased son. *B.* subsequently brought a suit against *A.*, alleging that he, and not *A.*, had become entitled thereto on the death of *A.'s* son, under a kulachar, or family custom, which excluded female heirs, and gave him a preferential right among male heirs, and thereby sought to recover from her possession of the same lands, and alternatively to obtain a declaration that he was as such heir if then living entitled to possession of them on her death, and that a deed executed by her alienating a portion of them was valid only for her lifetime. *Held* that the decision in the former suit, that *A.* was entitled to the lands as mother and heiress of her deceased son, was conclusive against *B.'s* claim for possession during her lifetime, on the ground that she was not the heiress; but that the plaintiff was not barred by the adjudication in the former suit from setting up the family custom with the object of showing that on *A.'s* death he would be entitled to succeed her, if living, and was by reason of such heirship entitled to obtain a declaratory decree as to the deed of alienation. DOORGA PERSAD SINGH *v.* DURGA KONWARI

[I. L. R., 4 Calc., 190: 3 C. L. R., 31
L. R., 5 I. A., 149

163. ——— Suit for property in right of inheritance.—*Ground of claim disposed of in*

RES JUDICATA—*continued.*

6. CAUSES OF ACTION—*continued.*

Suit for property in right of inheritance—*continued.*

former suit.—Civil Procedure Code, 1859, s. 2.—In a suit to recover, in virtue of a right of inheritance, a share of a deceased father's estate from which plaintiff had been ousted in 1858,—*Held* that as the plaintiff had brought a suit in 1853 in which she claimed the same properties as belonging to her father's estate, and had accepted and acted upon the decree then passed, which excluded the property in question from her claim, her present suit was barred by section 2, Act VIII of 1859; and further that she could not claim the property on the ground of a solenamah by which it was admitted and declared that the property belonged to her father's estate, when it had been already decided in the former suit that it ought not to appertain to that estate. SYUDOONISSA *v.* FEDA HOSSEIN

[12 W. R., 182

164. ——— Compromise of suit.—*Civil Procedure Code, 1859, s. 2.—Suit on same cause of action as former suit.*—A suit between two brothers, *A.* and *B.*, respecting ancestral property, was compromised, and the particulars of the compromise embodied in a razinama presented in Court by both parties. *A.* having died, his widow and *B.* presented in Court another razinama embodying the particulars of an arrangement respecting the property in which she had become interested as widow, and which was comprised in the former razinama; and of this second razinama they subsequently put in an amended copy. *Held* that a claim arising out of such arrangement could not, within the meaning of Act VIII of 1859, section 2, be considered to have been a cause of action heard and determined in the former suit. LAKSHMI AMMAL *v.* TIKARAM TOVAJI

[1 Mad., 240

165. ——— Suit for property as joint.—*Former suit for same property as separate.—Civil Procedure Code, 1859, s. 2.*—The plaintiffs in the present suit claimed, as the heirs of *J.*, certain property from *M.*, the daughter of *R.*, alleging that such property was the joint and undivided property of *R.* and *J.* to which on *R.'s* death *J.* had succeeded. The plaintiffs had formerly, after the death of *J.*, sued *M.* for such property, alleging that it was the separate property of *R.*, and that on the death of *R.'s* widow they were entitled to succeed thereto. *Held* that the decision in the former suit that such property was the separate property of *R.* to which *M.* was entitled to succeed on the death of his widow was a bar to their present suit. RADHIA *v.* BENI

[I. L. R., 1 All., 560

166. ——— Suit for property as heirs.—*Failure to put forward all grounds.—Civil Procedure Code (Act VIII of 1859), s. 2.—Former suit to recover same property on different grounds.*—Certain property, originally belonging to the husband of the plaintiff, was conveyed by him by deed of gift to his daughter, after her marriage with the defendant, as her stridhan. Some years after the daughter's death, the plaintiff brought a suit to recover the property, on the ground that the deed of gift was a forgery, and that she was entitled to the property as heiress of her husband; but her suit was dismissed, the deed of gift being found to be genuine. In a suit subsequently brought to recover the same property, on the ground that the plaintiff was heiress of her daughter,—*Held* by the majority of a Full Bench (GARTH, *C. J.*, dissenting), that the suit was barred. DENOBUNDHOO CHOWDHRY *v.* KRISTOMONEE DOSSEE

[I. L. R., 2 Calc., 152

167. ——— Suit for specific sum of money.—*Act VIII of 1859, s. 2.*—In a suit for a specific sum of money, it was held, in accordance with the Full Bench decision in *Dinobundhoo Chowdhry v. Kristomonee Dossee, I. L. R., 2 Calc., 152,* that the plaintiff was bound to put forward every right under which he claims. BHEEKALALL *v.* RHUGGOO LALL . . I. L. R., 3 Calc., 23

168. ——— Subsequent suit for same cause of action but larger amount.—*Civil Procedure Code, 1877, s. 13.*—The decision of a District Judge deciding that the plaintiff is not entitled to sue in a suit for road cess, where the amount claimed is less than R100, and therefore no second appeal lies to the High Court, is a bar to a second suit in which the amount claimed is above R100. DAVID *v.* GRISH CHUNDER GUHA

[I. L. R., 9 Calc., 183 : 11 C. L. R., 305

169. ——— Suit for account.—*Subsequent suit for balance due.—Principal and agent.*—In the mofussil, if a principal, in a suit against his agent, prays merely that the defendant be ordered to render accounts to the plaintiff, a second suit brought by him for the recovery of the money found due by the defendant on examining the accounts will not be barred as *res judicata.* GOBIND MOHUN CHUCKERBUTTY *v.* SHERIFF

[I. L. R., 7 Calc., 169 : 8 C. L. R., 357

170. ——— Suit to recover property from zur-i-peshgidars.—*Subsequent suit alleging discharge of mortgage.—Civil Procedure Code, 1859, s. 2.—Different cause of action.*—The plaintiffs had brought a former suit to recover possession of certain property which had been mortgaged to the defendants under a zur-i-peshgi lease, and obtained a decree for possession on their depositing the sum which the Court found to be due on the mortgage. The plaintiffs delayed applying for execution till four years after, when they alleged that the money had been paid off by the usufruct of the land. Their application having been refused they brought the present suit for possession, alleging that the debt had been dicharged by the usufruct. *Held* that the present cause of action within the meaning of Act VIII of 1859, section 2, was a fresh cause of action as compared with the former one, which was for an adjudication of the state of the accounts between the parties up to a certain date, whereas the latter had

RES JUDICATA—*continued.*

6. CAUSES OF ACTION—*continued.*

Suit to recover property from zur-i-peshgidars—*continued.*

reference to the accounts since that date. ROY DINKUR DOYAL *v.* SHEO GOLAM SINGH [22 W. R., 172

171. ——— Suit to set aside attachment, Dismissal of.—*Subsequent suit to recover property.*—The plaintiff sued to raise an attachment placed upon a certain house, but failed in the lower Court, and the decision of the lower Court was confirmed upon appeal. The house was then sold. The plaintiff sued the purchaser to recover possession of it. *Held* that he was not estopped from suing by the decision in the former suit refusing to raise the attachment, and that such decision could not be given in evidence in the latter suit. MORO BALKRISHNA MULE *v.* SHEK SAHEB VALAD BADRUDDIN KAMBLE [5 Bom., A. C., 199

172. ——— Suit to establish title.—*Former suit to raise attachment.*—*K.* sued to establish his title to a house purchased by him from *D. D.'s* guardians during minority, alleging that the greater part of the purchase-money was employed in paying off a mortgage-claim upon the house; that after he had obtained possession under his deed one *D. S.*, the holder of a decree against *D. D.'s* guardians, attached the house; and that he brought the suit to raise the attachment, in which having failed he paid into Court the amount of *D. S.'s* claim. *Held* that *K.* was not estopped from bringing this suit against *D. D.* by the decree in his former suit to raise the attachment, which declared that the deed of sale now relied upon was fraudulent and void as against *D. S.* DAGDU BIN DAUD TELI-PARDESHI *v.* SHEK SAHEB VALAD BADRUDDIN KAMBLE [2 Bom., 369: 2nd Ed., 348

173. ——— Suit to set aside order releasing from attachment properties as to which a former suit has been dismissed.—*Civil Procedure Code (Act VIII of 1859), ss. 2 and 7.—Relinquishment.—Mortgage made during infructuous attachment.—Subsequent attachment and sale.*—*R.*, on the 30th December 1870, obtained an *ex parte* decree against *D.*, in execution of which he attached properties X. and Y. on the 4th January 1871. *D.* applied for a re-hearing, which was granted; and on the 30th of December 1871 a decree was again passed against *D.*, in execution of which the same properties were attached on the 9th of August 1872, and purchased at the execution-sale on the 1st August 1874 by *R.* On the 14th February 1871, *D.* had executed a solehnama and mortgage in favour of *G.*, pledging, among other properties, X. and Y. as security for a loan made to him by *G.* *D.* having made default in payment, *G.* obtained a decree against him in terms of the solehnama on the 28th February 1871. Subsequently, *D.* granted another mortgage of the same properties in favour of *G.* *G.* sold his decree and mortgage to the plaintiff, who in execution of the decree attached properties X and Y. In these execution proceedings *R.* brought forward

RES JUDICATA—*continued.*

6. CAUSES OF ACTION—*continued.*

Suit to set aside order releasing from attachment properties as to which a former suit has been dismissed—*continued.*

the fact of his purchase of the same properties in August 1874, and his claim was allowed, and the properties X and Y. released from attachment on the 4th March 1876. The plaintiffs had, on the 8th March 1872, obtained a mortgage from *D.*, on which they had obtained a decree on the 28th September 1874, in execution of which they had attached X. and Y.; but on *R.* claiming them under his purchase in August 1874, an order was made on the 10th April 1875 releasing X. and Y. from attachment; and in a suit by the plaintiff to set aside that order, they failed as to properties X. and Y., on the ground that those properties were not included in the mortgage of March 1872. In a subsequent suit brought by the plaintiffs against *R.* and *D.* to set aside the order of the 4th March 1876, and to have X. and Y. declared liable to be sold under the decree of the 28th February 1871,—*Held* that the suit was not barred under section 2 of Act VIII of 1859 by the decree in the previous suit, nor was it barred by section 7 of the same Act. *Held*, also, that the purchase by *R.* in August 1874 was subject to the mortgage to *G.* of the 14th February 1871. RADHANATH KUNDU *v.* LAND MORTGAGE BANK OF INDIA [I. L. R., 6 Calc., 559: 8 C. L. R., 10

174. ——— Attachment, Application to remove.—*Removal of attachment unknown to applicant.—Failure of application.—Second attachment.—Second application to remove.—New cause of action.*—The plaintiff, mortgagee in possession of certain property, applied for the removal of an attachment placed on it by the defendant in execution of a decree against a third party. In default of payment of court fees by the defendant the attachment was removed, but in ignorance of this fact the plaintiff's application was proceeded with, and ultimately rejected. The plaintiff then brought a suit for a declaration of his right, but it was dismissed, on the ground that the attachment had already been removed. Subsequently the defendant placed a second attachment on the property, which the plaintiff again applied to remove. The defendant contended that the plaintiff's application was barred by the proceedings on the first attachment. *Held* that the decision on the plaintiff's first application having no object existing on which to operate, the attachment having then been removed, it could not properly be regarded as *res judicata* at all, since no one was seriously interested in having it decided in a different way; and that supposing submission to that decision on the part of the plaintiff for a certain time could have given it a final effect, there had, as a matter of fact, been no such submission, the plaintiff having done all that was incumbent on him to get the summary inquiry and orders replaced by a formal trial and judgment: and that there was nothing, therefore, in these proceedings disentitling the defendant to oppose the second attachment. *Held*, also, that the second attachment, after the first had been removed,

RES JUDICATA—*continued.*

6. CAUSES OF ACTION—*continued.*

Attachment, Application to remove—*continued.*

was a new and distinct act, giving rise to a new cause of action, or complaint, to the plaintiff, on which, in any case, he was entitled to a fresh inquiry and decision. KASHINATH MORSHETH *v.* RAMCHANDRA GOPINATH . . . **I. L. R., 7 Bom., 408**

175. ——— Suit for declaration of title. —*Subsequent suit for possession.—Application to remove attachment.—B.* sold to *J.* a turuf of which 3½ kanees were subsequently attached on a decree obtained by *M.* After objecting unsuccessfully to the attachment, *J.* brought a suit against the auction-purchaser, joining *B.* as a defendant, to have it declared that the 3½ kanees belonged to himself; but failed on the ground that he was holding it benami for *B.* Subsequently the auction-purchaser bought from *B.* the rest of the talook and sued her for possession. *J.* got himself entered as a defendant under section 73, Act VIII of 1859. *Held* that there was no identity between the subjects of the two suits, and *J.'s* former suit for all that he was then entitled to sue for on the cause of action that he had on the attachment did not deprive him of his right to a fresh and independent judgment in the present case. *Held,* also, that the former judgment did not create an adjudication of the cause in the latter suit, and if evidence, it was not conclusive evidence or binding on the Judge. RAM CHUNDER CHOWDHRY *v.* KASHEE MOHUN . . . **21 W. R., 57**

176. ——— Continuing contract.—*Suit for damages.—A*, on the 1st of February 1868, entered into a contract with *B.* to supply him with straw for twelve months, the supplies to be sent as ordered daily. On the 12th of March *B.* brought an action in the Small Cause Court against *A.* for damages sustained by the plaintiff by reason of *A's* having failed to supply straw as agreed upon. The Judge decided the questions in issue (namely, of the *factum* of the contract and the authority of the person who executed it in *A.'s* behalf) in favour of *B.*, and gave him a decree. On the 21st of April, a second suit was brought by *B.* against *A.* on the same contract. The claim was for damages sustained by the plaintiff by reason of *A.'s* having failed to supply straw as agreed from the 20th of February to the 17th April. That suit was dismissed, the Judge holding that the matter was *res adjudicata*, as he considered that the contract was an entire one, and that *B.* had shown by suing on it for general damages, that he treated it as such, and had elected to rescind it. On the 9th of May a rule *nisi* was granted for a new trial, and on the 16th of May the rule was made absolute. On the 12th June, at the new trial, a decree was made in favour of *B.* for so much of the damages claimed as had been sustained subsequently to the date of the decree of the 25th March. In an action brought by *B.* on the same contract for damages sustained between the 17th April and the 16th of June, by reason of *A.* having failed to supply straw according to the terms of the same contract, *A.* denied that there had been any such

RES JUDICATA—*continued.*

6. CAUSES OF ACTION—*continued.*

Continuing contract—*continued.*

contract, and further pleaded that the matter of the contract, if there had been one, had already been adjudicated upon. On a reference from the Small Cause Court, *Held* that the finding of the Judge upon the contract in the action brought on the 12th of March was conclusive between the parties, and that *A.'s* plea of *res adjudicata* was not well founded. COOK *v.* JADUB CHANDRA NANDI **[2 B. L. R., O. C., 48**

177. ——— Suit on joint contract.—*Civil Procedure Code, s 2.—Suit on joint bond.—D.* and *B.* executed a bond, by which they mortgaged certain lands as security for a loan taken by them from the plaintiffs. A suit was brought and a decree was obtained by the plaintiffs against *D.* and *B.*, under which they recovered a portion of the amount due on the bond. The plaintiffs now sued *S.* and others, on the ground that they were joint proprietors of the land mortgaged, that the loan was taken by *D.* and *B.*, as managers for the use of all the parties interested, and for carrying on their joint business and trade, and that therefore they were all jointly liable. *Held* that the suit could not be maintained. *Ramnath Roy Chowdry* v. *Chunder Sekhur Mohapattur, 4. W. R., 50,* dissented from. NUTHOO LALL CHOWDHRY *v.* SHOUKEE LALL **[10 B. L. R., 200: 18 W. R., 458**

178. ——— *Civil Procedure Code, 1882, ss. 13 and 43.—Joint owners.—Suit against one share.—Decree against property.—Claim by other co-sharer allowed.—Suit against both sharers.*—Through ignorance of the position of affairs, one only of two persons, joint owners in a property, was sued for a debt for which the property had been pledged by the person sued, and a decree was obtained and execution issued against the property; and in such execution proceedings the other sharer put in a claim, and obtained an order releasing her share of the property from attachment. A second suit was then brought by the judgment-creditor against both sharers, for the purpose of making the share of the co-sharers, who had not been previously sued, available to satisfy the defendant, and praying that the order releasing the property from attachment might be set aside. *Held* that such a suit would lie, and would not be barred as *res judicata.* NOBIN CHANDRA ROY *v.* MAGANTARA DASSYA . . **I. L. R., 10 Calc., 924**

179. ——— *Suit for arrears of rent—Joint and joint and several liability.*—In the year 1877, *A.*, who was the owner of a fractional share of a zemindari, which was let in putni, and of a 4 annas share in the putni, sued his co-sharers in the putni for his share of the arrears of rent for the years 1873 to 1875, after deducting the rent of his 4 annas share. Before the hearing of the suit, *B.* intervened, alleging that he had purchased a 6 annas share of the putni, and he was made a defendant. *A.* then discovered that his co-sharers in the putni had sold their remaining shares

RES JUDICATA—*continued.*

6. CAUSES OF ACTION—*continued.*

Suit on joint contract—*continued.*

to *C.* *A.* applied to make *C.* a party to the suit, and subsequently for leave to withdraw the suit. Both these applications were refused, and a decree for the arrears of rent was made. *A.* alleging that he did not wish to enforce the decree in the previous suit, then instituted this suit against *C.* and the defendants in the former suit, for the purpose of recovering arrears of rent for the years 1874 and 1875 from *C.* in proportion to the share purchased by him. *Held* that the relative position of *C.* to the defendants, whose share he had purchased, resembled that which exists between persons who have made themselves jointly and severally liable to perform a particular contract; and that as a decree obtained against one of the joint and several promisors without satisfaction is no bar to a suit against another, the present suit was not barred by the decree obtained in the suit of 1877. *Nuthoo Lall Chowdhry* v. *Shoukee Lall, 10 B. L. R., 200;* and *Hemendro Coomar Mullick* v. *Rajendro Lall Moonshee, I. L. R., 3 Calc., 353,* distinguished. DHUNPUT SING *v.* SHAM SOONDER MITTER

[I. L. R., 5 Calc., 291: 4 C. L. R., 501

180. ——————— *Judgment against one co-sharer, Effect of, on interest of other co-sharers.—Code of Civil Procedure (Act X of 1877), s. 13, expl. 5.—Repeal, Effect of.*—Explanation 5 to section 13 of the Code of Civil Procedure would not make a judgment obtained in a suit against one co-sharer binding on another co-sharer no party to such suit, in respect of the rights enjoyed in common by such co-sharers in their common property. Nor could such explanation be applied to a case instituted, or the judgment delivered in such case, during the time when the old Code of Civil Procedure was in force. HAZIR GAZIE, SONAMONEE DASSEE

[I. L. R., 6 Calc., 31: 6 C. L. R., 516

181. ——— **Suit on mortgage.**—*Right of mortgagee to exercise another remedy after obtaining decree for sale.*—A mortgagee can resort to all his remedies on the mortgage at the same time, and is not estopped in an action on the covenant to pay the mortgage-money by the fact of his having obtained a decree for sale. MACKINNON *v.* GUNNES CHUNDER DEY . . **1 Ind. Jur., N. S., 370**

182. ——————— *Civil Procedure Code, 1859, s. 2.—Suit to set aside sale under mortgage-decree.—Subsequent suit to declare property liable to sale.*—Certain property having been sold in execution of a money-decree against the representative of a mortgagor, a suit was instituted and a decree obtained setting aside the sale as being that of land in which the mortgagor had no interest. The holders of the original money-decree then again brought a suit to obtain a declaration that the said property was liable to be sold in satisfaction of the said decree. *Held* that the matter in issue having been heard and determined by a Court of competent jurisdiction, the suit was barred by section 2,

RES JUDICATA—*continued.*

6. CAUSES OF ACTION—*continued.*

Suit on mortgage—*continued.*

Act VIII of 1859. NUFUR CHUNDER PAUL CHOWDHRY *v.* LUCKHEE MONEE DABEE . **9 W. R., 300**

183. ——— **Taking money-decree on mortgage.**—*Registration Act, XX of 1866, s. 53.—Suit on mortgage-bond.*—A proceeding under section 53 of Act XX of 1866 was a suit of a civil nature within the meaning of section 1, Act VIII of 1859, independently of any peculiarities in the special procedure to be adopted. Therefore, where a creditor had resorted to the summary procedure provided by section 53, and had recovered a portion of his claim in execution of the decree so obtained, a regular suit subsequently brought to enforce his remedies on the bond, giving the defendant credit for the amount already recovered, was barred by section 2, Act VIII of 1859. EMAM MOMTAZOODEEN MAHOMED *v.* RAJCOOMAR DOSS. HARAN CHUNDER GHOSE *v.* DINOBUNDHOO BOSE

[14 B. L. R., F. B., 408: 23 W. R., 187

MOTHOORA MOHUN ROY CHOWDHRY *v.* PEAREE MOHUN SHAHA . . . **23 W. R., 344**

But *see* UTSHUB NARAYAN CHOWDHRY *v.* CHITTRA RAKA GUPTA . . **8 B. L. R., Ap., 9?**

S. C. OOTSHUB NARAIN CHOWDHRY *v.* CHITTRA REOKA GOOPTA . . . **17 W. R., 154**

where it was held that a regular suit will lie for a declaration that property mortgaged by a bond on which a simple money-decree had been obtained by the mortgagee under the provisions of Act XX of 1866, continues liable for the decree though in the hands of a third person.

184. ——————— *Civil Procedure Code, 1859, s. 2.—Suit on mortgage-bond.—Registration Act, 1866, s. 53.*—*A.* having a simple mortgage-bond, which was specially registered, obtained a summary decree under the provisions of the Registration Act, and attached the lands under mortgage to him. Prior to *A.'s* decree these lands had been attached by other creditors, and subsequently to *A.'s* decree they were sold to *B.* After such sale *A.*, under his attachment, sold the right, title, and interest of the mortgagor, which he himself purchased. *A.* now sued the mortgagor and *B.* to enforce his mortgage lien against the mortgaged properties. *Held* that, according to the decision of *Eman Momtazooddeen Mahomed* v. *Rajcoomar Dass, 14 B. L. R., 408,* the suit should be dismissed. DOSS MONEY DOSSEE *v.* JONMENJOY MULLICK

[I. L. R., 3 Calc., 363: 1 C. L. R., 446

185. ——————— *Civil Procedure Code, 1859, s. 2.—Suit to enforce lien on bond after suit in which money-decree has been obtained.*—*B.* sued on a bond to recover its amount and to enforce a mortgage lien. He obtained only a money-decree on the 26th of August 1871. *D.*, who also held a decree against the same debtor, caused a portion of the property which had been included in the plaintiff's mortgage to be brought to sale. *B.* instituted a second suit on the 21st of January 1873, to enforce the lien. *Held* (in accordance with the opinions of

RES JUDICATA—*continued.*

6. CAUSES OF ACTION—*continued.*

Taking money-decree on mortgage—*continued.*

TURNER, OLDFIELD, and BRODHURST, *JJ.*, STUART, *C.J.*, and PEARSON, *J.* dissenting) that the suit was unmaintainable. BHAO SINGH *v.* HET RAM [7 N. W., 17

186. ——— Suit to enforce lien on mortgaged property.—*First and second mortgagees.*—In 1870 *M.* granted a certain person a lease of a certain zemindari share, for a term of years, at an annual rent, *L.*, as the lessee's surety, hypothecating a mouzah called A. as security for the payment of such rent. In 1871 *L.* gave *B.* a bond for the payment of certain moneys, hypothecating mouzah A. as security for their payment. In 1872 and again in 1873 *M.* obtained a decree in the Revenue Court against his lessee and *L*, his surety, for arrears of rent. In execution of the decree of 1872 *M.* caused *L.'s* rights and interests in mouzah A. to be put up for sale, and purchased them himself. In 1874 *B.* sued *L.* and *M* to enforce his lien on mouzah A. *M.* defended this suit on the ground that he was the holder of a prior lien on the property. The Court gave *B.* a decree in 1875, holding that he was entitled to an order for the sale of the property, but that it would be competent to *M.* to sue to enforce his lien, and that, when he did so, the purchaser under *B.'s* decree would have th option of discharging the first incumbrance. The property was accordingly put up for sale in execution of *B.'s* decree, and was purchased by *B.* himself. In 1876 *M.* sued *L.* and *B.* to enforce his lien on the property, claiming to recover by the sale thereof the amount of the arrears of rent awarded by the decrees of 1872 and 1873, together with the costs awarded him in the Revenue Court, and interest. *Held*, affirming the judgment of STUART, *C. J.*, that the decree of 1875 did not preclude *M.* from claiming to enforce his lien on mouzah A., nor was his claim affected by the circumstance that he had brought to sale in execution of the decree of the Revenue Court the rights and interests of *L.* in that mouzah. All that was then sold was the equity of redemption, which was sold to satisfy the money-decree held by *M.* No doubt the proceeds of the sale would, after satisfaction of the costs of the decree, go *pro tanto* to the satisfaction of the sums secured by the first incumbrance, but *M.* by selling in execution the mortgagor's equity of redemption did not forego his incumbrance. *Held*, also, that *M.* could not enforce his lien for the recovery of the costs incurred by him in the Revenue Courts, as the surety-bond did not provide for the payment of such costs; that he could enforce his lien for the recovery of interest, as that bond did provide for the payment of interest; and that the moneys realised by the sale of the equity of redemption of the property in the execution of the Revenue Court's decree of 1872 must be applied, in the first place, in satisfaction of the costs of the suit in which that decree was made, and then in satisfaction of the arrear sued for in that suit, or the balance of that arrear, and of the arrear sued for in the second suit, with interest at the rate agreed upon in the surety-bond from the date

RES JUDICATA—*continued.*

6. CAUSES OF ACTION—*continued.*

Suit to enforce lien on mortgaged property—*continued.*

of the accrual of those arrears until realisation. BABULAL *v.* ISHRI PARSAD NARAIN SINGH [I. L. R., 2 All., 582

187. ——— Suit for possession.—*Agreement not to appeal.—Suit for possession in terms of agreement.*—*A.* having sued *B.* for possession of a piece of land and obtained a decree for possession of portion only, entered into an agreement, by the terms of which he was to take a greater part of the land than he was entitled to under the decree upon the condition that he (*A.*) should not prefer an appeal, and that in the event of his doing so the whole land claimed in the suit should become the property of *B.* In contravention of this agreement *A.* appealed and obtained a decree for possession of the entire piece of land, whereupon *B.* instituted a suit claiming to have possession of the same in terms of the agreement. *Held* that the agreement was valid, although its effect was practically to render the former suit inoperative, and further, that the previous suit between the parties was no bar to *B.'s* suit, a new cause of action having arisen upon the breach of the agreement. JATI RAM TALOOKDAR *v.* DASS RAM KOLITA [3 C. L. R., 574

7. MATTERS IN ISSUE.

188. ——— Reasons for decision.—*Estoppel by former judgment.—Final decision of same question.*—A party to a suit is not estopped, merely by the reasons which a Judge may give for his decision. In order to make out that a decision in a former suit is an estoppel, it must be established that the same identical question has been formally raised and finally decided. NUGENDUR NARAIN *v.* RUGHOONATH NARAIN DEY . W. R., 1864, 20

189. ——— *Collateral matters.*—Such matters only as are decided between the parties by the decree in the suit ought to be treated as binding against them in subsequent litigation. No part of the reasoning on the findings of facts which have induced the Court to come to its decision is binding as between the parties further than for the purposes of the particular decision. AUKHIL CHUNDER MOOKERJEE *v.* SHIB NARAIN GHOSE [15 W. R., 527

HURO DOSS DOSTEDAR *v.* HURO PRIA [21 W. R., 30

RAMASAMI PADEIYATCHI *v.* VIRASAMI PADEIYATCHI . . . . . 3 Mad., 272

190. ——— Opinions not material to decision.—*Civil Procedure Code, 1877, s. 13.—Judgment.—Decree.*—In order to see whether a question is "*res judicata*" within the meaning of section 13 of the Code of Civil Procedure, the former decree and the questions decided thereby must alone be considered. The words in section 13 of the Code of Civil Procedure, "has been heard and finally

RES JUDICATA—*continued.*

7. MATTERS IN ISSUE—*continued.*

Opinions not material to decision—*continued.*

decided by such Court," do not apply to an opinion expressed in the judgment on other issues not material for the purpose of the decree, though properly determined under section 204 of the Code of Civil Procedure by the Court of first instance, *Niamut Khan* v. *Phadu Buldia, I. L. R., 6 Calc., 319;* and *Lachman Singh* v. *Mohan, I. L. R., 2 All., 497,* dissented from. DEVARAKONDA NARASAMMA *v.* DEVARAKONDA KANAYA . **I. L. R., 4 Mad., 134**

191. ——— Decree not in conformity with judgment.—*Civil Procedure Code, 1882, s. 13.—Omission to make reservation in decree though in judgment.*—It is by the decree and not by the judgment that a question of *res judicata* must be decided. In 1881 *A.* sued *K.* and others claiming a declaration of his title to certain land and an injunction against interference with his possession. *K.* claimed part of the land by purchase from *M.* The Munsif decreed for *A.*, and this decree was confirmed on appeal by the District Judge, but in his judgment the District Judge recorded that *K.'s* claim was not adjudicated upon and that he should bring a fresh suit if he had any claim. In 1883 *K.* sued *A.* to recover the land, which he claimed by purchase from *M.* *A.* pleaded that the claim was *res judicata* by virtue of the decree in the former suit. The District Munsif and, on appeal, the District Judge, held that the claim was not *res judicata* and decreed for *K.* *Held*, on appeal to the High Court, that as no reservation was made in the decree of *K.'s* right to bring another suit, the plea of *res judicata* was good, but that, under the circumstances, an opportunity should be given to *K.* to apply to the District Court to have the decree in the former suit brought into conformity with the judgment. This having been done, the decree of the lower Courts was confirmed. AVALA *v.* KUPPU **[I. L. R., 8 Mad., 77**

192. ——— Finding in judgment not embodied in decree. *Suit for enhancement of rent.—Civil Procedure Code (Act X of 1877), s. 13.*—*N.* brought a suit against *P.* for enhancement of rent. *P.'s* defence was, *first*, that no notice of enhancement had been given; *secondly*, that the rent was not enhanceable, as he and his predecessors in title had held it at a fixed rent from the date of the permanent settlement. The suit was dismissed on the ground that no notice had been given; but the Munsif stated in his judgment, that he considered the rent enhanceable, because he did not believe in the genuineness of the documentary evidence produced by *P.* The decree merely ordered that the suit should be dismissed, the portion of the judgment as to the enhanceability of the rent not being embodied in the decree. *P.*, therefore, had no right of appeal against that portion of the judgment. In a subsequent suit by *N.* against *P.*, for enhancement of rent of the same tenure,—*Held* that, on the rule laid down by the Privy Council in *Soorjeemonee Dayee* v. *Suddanund Mohapatter, 12 B. L. R., 304,* and *Krishna Behari Roy* v. *Bunwari Lall Roy,*

RES JUDICATA—*continued.*

7. MATTERS IN ISSUE—*continued.*

Finding in judgment not embodied in decree—*continued.*

I. L. R., 1 Calc., 144, P. was precluded, by the decision in the former suit, from denying that the rent of the tenure was enhanceable, although the decision on that point was not embodied in the decree. The material findings in each case should be embodied in the decree, and if they are not, it is incumbent on the parties, to avoid their being bound by decisions against which they have no right of appeal, to apply to amend the decree in accordance with the judgment. NIAMUT KHAN *v.* PHADU BULDIA **[I L. R., 6 Calc., 319**

S. C. NIAMUT KHAN *v.* BHADU BULDIA **[7 C. L. R., 227**

But *see* RUN BAHADUR SINGH *v.* LUCHO KOER **[I. L. R., 11 Calc., 301 : L. R., 12 I. A., 23**

193. ——— ——— *Objections by respondent to decree.—Civil Procedure Code, 1882, ss. 13, 540, 561, 584.*—In a suit to obtain possession of certain property, and to set aside a deed called a deed of endowment (wakfnama) on the ground that the defendant had fraudulently obtained its execution, the defendant pleaded (i) that the deed was a valid one, and (ii) that she was in possession of the property in satisfaction of a dower-debt, and her possession could not be disturbed so long as the debt remained unsatisfied. The Court of first instance held that the deed was invalid, but that the defendant was entitled to remain in possession of the property till her dower-debt was satisfied, and the Court passed a decree which merely dismissed the suit, without embodying the finding as to the deed. On appeal by the plaintiff to the District Judge, the defendant filed objections under section 561 of the Civil Procedure Code in regard to the first Court's decision that the deed of endowment was invalid. The Judge dismissed the plaintiff's appeal, affirming the finding as to dower, and, refusing to decide the question of the validity of the deed as being unnecessary for disposal of the claim, disallowed the defendant's objections. The defendant appealed to the High Court. *Held* by the Full Bench (OLDFIELD and MAHMOOD, *JJ.*, dissenting) that if a decree is, upon the face of it, entirely in favour of a party to a suit, such decree being the thing which by law is made appealable, and nothing else, that party has no right of appeal therefrom. If, in the judgment of which such decree is the formal expression, findings have been recorded upon some issues against that party, and he desires to have formal effect given to them by the decree, so as to allow of his filing objections thereto under section 561 of the Civil Procedure Code or of appealing therefrom under section 540, he must take steps under section 206 to have the decree properly brought into conformity with the judgment, so that there may be matter on the face of it to show that something has been decided against him; but if he fails to take this course, the decree, though in general terms, will stand good as finally deciding the issues raised by the pleadings upon which the ultimate determination of the cause and the decree

RES JUDICATA—*continued.*

7. MATTERS IN ISSUE—*continued.*

Finding in judgment not embodied in decree—*continued.*

itself rested. The findings in a judgment upon matters which subsequently turn out to be immaterial to the grounds upon which a suit is finally disposed of, as to the plaintiff's right to any portion of the relief sought by him as declared by the decree, amount to no more than *obiter dicta*, and do not constitute a final decision of the kind contemplated by section 13 of the Civil Procedure Code. *Held*, also, that, in the present case, the Judge was right in holding that the question as to the validity or otherwise of the deed of endowment was wholly immaterial. The judgment of STRAIGHT, *J.*, in *Lachman Singh* v. *Mohan*, *I. L. R.*, *2 All.*, *497*, approved and followed. *Per* OLDFIELD, *J.*, *contra*, that the decree, to agree with the judgment and fulfil the requirements of section 206 of the Civil Procedure Code, should contain the material points for determination arising out of the claim and material for the decision thereon; that if this has not been done, the defect is a good ground of appeal, notwithstanding that the decree, on its face, may be altogether in favour of the appellant, and notwithstanding that he may not have applied for amendment of the decree under section 206, or for review of judgment; and that, in the present case, the defect in the decree would afford a good ground of appeal. *Per* MAHMOOD, *J.*, that inasmuch as the provisions of section 13 of the Civil Procedure Code relate as well as to the trial of issues as to the trial of suits, and in the present case the validity or otherwise of the deed was a matter directly and substantially in issue between the parties, and was adjudicated upon, the finding of the first Court upon that issue was not a mere *obiter dictum*, but would be binding upon the defendant as *res judicata*, notwithstanding the fact that the suit against her was dismissed on the ground that she held possession of the property in lieu of dower; that whatever has the force of *res judicata* is necessarily appealable; that the word "from" as used in section 540, or section 584, and the expression "objection to the decree" in section 561, refer not only to matters existing upon the face of the decree, but also to those which should have existed but do not exist there; and that the defendant in the present case was aggrieved or injured by the omission in the decree of the first Court and was therefore entitled to file objections to it, and, for the same reason, to appeal to the High Court from the decree of the lower Appellate Court. Also *per* MAHMOOD, *J.*, that it was doubtful whether the reliefs contemplated by sections 206 and 623 were open to the defendant; but that, even conceding that she ought to have sought her remedy under either of those sections, her neglect to do so did not make her incapable of obtaining the same result by the exercise of her right of appeal. *Anusuyabai* v. *Sakharam Pandurang*, *I. L. R.*, *7 Bom.*, *484*; *Man Singh* v. *Narayan Das*, *I. L. R.*, *1 All.*, *480*; *Mohan Lal* v. *Ram Dayal*, *I. L. R.*, *2 All.*, *843*; *Niamat Khan* v. *Phadu Buldia*, *I. L. R.*, *6 Calc.*, *319*; and *Pan Kooer* v. *Bhagwant Kooer*, *6 N. W.*, *19*, referred to. JAMAITUNNISSA *v.* LUTFUNNISSA

[I. L. R., 7 All., 606

RES JUDICATA—*continued.*

7. MATTERS IN ISSUE—*continued.*

194. ——— **Incidental finding.**—*Appeal from favourable decree.*—The plaintiff sued for a declaration that certain lands were his, and for possession of them. Defendant No. 1 claimed the ownership of the lands; defendant No. 2 claimed to be mortgagee in possession. The decree simply dismissed the suit; but the lower Court found, as a fact, that the ownership of the lands was in the plaintiff, although the plaintiff was not entitled to possession of them by reason of the mortgage to defendant No. 2. Defendant No. 1 now appealed on the ground that, although the decree itself was entirely in her favour, she would be prejudiced in any future proceedings if the finding of fact as to the ownership of the lands were left unchallenged. *Held* that the appeal would not lie; for the decree is what must be looked to to see what was conclusively decided, and there was nothing in the decree actually passed which the plaintiff could afterwards use as *res judicata* in his favour; and an appeal is not admissible on any point not having the authority of *res judicata*. An adjudication is only conclusive evidence of the facts established therein or properly tending thereto; hence from a simple judgment against him a party cannot deduce any thing in his favour as *res judicata*, for nothing in his favour can have been an essential element of an adverse decree. ANUSUYABAI *v.* SAKHARAM PANDURANG

[I. L. R., 7 Bom., 464

195. ——— **Collateral issue.**—*Dismissal for want of notice.*—Where a suit for arrears of rent, at enhanced rates for a certain year, was dismissed for want of notice, but the Court also found that the pottah set up by defendant was not genuine,—*Held* that the decision was no bar to a subsequent suit by the same plaintiff for arrears of rent at enhanced rates for a subsequent year. A matter which is directly adjudicated upon by a Court of competent jurisdiction can be treated as *res adjudicata*, but not matters determined for collateral or incidental purposes only. JARDINE, SKINNER, & CO., *v.* DWARKANATH CHUCKERBUTTY . . 14 W. R., 412

196. ——— *Finding in former suit.*—A finding in one suit to which *A.* was a party is no bar against *A.* in another suit, unless it is shown that the issue in question in the latter was raised in the former suit, and was a material issue in it. DAHOO MUNDER *v.* GOPEE NUND JHA

[2 W. R., 79

NANAH *alias* NARAIN RAO *v.* JUMNA BAEE

[2 Agra, 192

SALAHMUNISSA KHATOON *v.* MOHESH CHUNDER ROY . . . . . 16 W. R., 85

197. ——— *Issue material to rights of parties.*—Any issue which is material to the rights of parties in the matter of the suit between them, whether actually contested or not, shall not afterwards be raised in a subsequent suit between the same parties. DEOKEE NUNDUN ROY *v.* KALEE PERSHAD . . . . . 8 W. R., 366

RAMSOOKH *v.* TARA SINGH . 3 Agra, 40

RES JUDICATA—*continued.*

7. MATTERS IN ISSUE—*continued.*

Collateral issue—*continued.*

198. ——————— When a Court of competent jurisdiction in deciding upon a particular subject-matter thinks it necessary to go into collateral facts for the purposes of its decision, its opinion on those facts is not conclusively binding in a subsequent suit which relates to a different subject-matter. MODHOO RAM DEY *v.* BOYDONATH DOSS [9 W. R., 592

199. ——————— *Civil Procedure Code, 1859, s. 2.—Matter incidentally in issue.*—The cause of action in a suit cannot be said to have been heard and determined in a former judgment unless it was put in issue and directly determined. Any finding or observations merely bearing on such issue or any opinion incidentally expressed cannot be considered a finding upon the issue so as to make that judgment a determination of the cause of action within the meaning of Act VIII of 1859, section 2. SHIB NATH CHATTERJEE *v.* NUBO KISHEN CHATTERJEE . . . . . 21 W. R., 189

200. ——————— *Civil Procedure Code, 1859, s. 2.—Trial and determination of issues unnecessary for disposal of suit.*—A Court of competent jurisdiction, having tried and determined an issue arising in a suit on which the suit might have been disposed of, proceeded to try and determine another issue which also arose out of the pleadings, but the determination of which in that suit was not required for its disposal. *Held* that such Court was not bound under the circumstances to refrain from trying and determining such last-mentioned issue, and that the trial and determination of it could not be treated as a nullity, and the issue could not again be tried and determined in another suit. MAN SINGH *v.* NARAYAN DAS . I. L. R., 1 All., 480

201. ——————— *Issue not affirmed and denied.—Requisites for res judicata.*—In order to constitute the bar of *res judicata*, it is not sufficient merely that an issue on the same point should have been raised in the former suit, although that issue may have been incidentally decided; but it must appear that the matter referred to was alleged by one party, and either denied or admitted expressly or impliedly by the other. SHAMA CHURN CHATTERJEE *v.* PROSONO COOMAR SANTIKAREE [5 C. L. R., 251

202. ——————— *Suit to set aside will.—Question as to validity of will.—Suit for possession.—Cause of action.*—*C.*, a Hindu subject to the Mitakshara law, adopted *S.*, and afterwards *B.*, and made a will, whereby, after providing for his widow, the family worship, &c., he made a division of his real and personal property between his two adopted sons. Provision was also made for forfeiture by either of the sons in case they disputed the will, in which event the whole estate was to go to the other son. This will was registered and filed in the Collector's Court. *S.* was subsequently disowned by *C.* and declared to have forfeited his right to anything

RES JUDICATA—*continued.*

7. MATTERS IN ISSUE—*continued.*

Collateral issue—*continued.*

under the will. In 1859 *S.* brought a suit against *C.*, *B.*, and certain persons who claimed portions of the property under deeds executed by *C.*, to cancel those deeds, to cancel the will, to set aside the adoption of *B.*, and for maintenance. In this suit he alleged that *C.* had no power to make any of the devises of real estate contained in the will, inasmuch as the whole estate, consisting of property inherited by *C.* and property acquired by him from the income of such inherited property, was ancestral. The only issue raised in that suit referring to the will was whether it was assented to by *S.* The first Court found that it had been so assented to; that the adoption of *B.* was valid; and that *S.'s* conduct justified *C.* in disinheriting him: the suit was accordingly dismissed. *S.* appealed to the High Court, and in his grounds of appeal raised the same contention as before, *viz.*, that the whole of the real property was ancestral, and therefore *C.* had no power to dispose of it without his consent. The High Court, in 1863, varied the decree of the first Court and held that the will must be set aside so far as it affected the right of *S.* in the ancestral property, but that the ancestral property only included that inherited, and not that acquired by *C.* with the income of the inherited property. In a suit brought by *S.*, after the death of *B.* and *C.*, against *B.'s* widow and the parties to the former suit, or their representatives, to obtain possession of the whole estate of *C.* on the ground that both the inherited property and the property acquired from the income thereof were ancestral,—*Held* (reversing the decision of the High Court) that, although the issue as to the assent of *S.* to the will clearly embraced only a portion of the controversy between the parties, the Court had jurisdiction, and indeed was bound, to decide whether or not the will was operative as to all or to any, and what portion, of the property, and that its decision on that point was binding on the parties. According to the general law relating to *res judicata*, where a question has been necessarily decided in effect, though not in express terms, between parties to a suit, they cannot raise the same question as between themselves in any other suit in any other form. Section 2, Act VIII of 1859, does not prevent the operation of this general law. The words "cause of action" in that section must be construed in reference to the substance rather than the form of the action. SOORJOMONEE DAYEE *v.* SUDDANUND MOHAPATTER [12 B. L. R., P. C., 304: 20 W. R., 377 L. R., I. A., Sup. Vol., 212

reversing the decision of the High Court in SUDANUND MOHAPATTUR *v.* SOORJOMONEE DEBEE [8 W. R., 455

and on review . . . . . 11 W. R., 436

203. ——————— *Suit to set aside adoption.—Decree in former suit.*—In a suit brought to set aside the adoption of the first defendant, to declare plaintiff's title to certain lands and for possession, the first defendant pleaded that the question of his adoption was *res judicata* in a

RES JUDICATA—*continued.*

7. MATTERS IN ISSUE—*continued.*

Collateral issue—*continued.*

former suit. In that suit, between the present plaintiff's son as plaintiff and his father (the present plaintiff) as the first defendant, and the present first defendant, the alleged adopted son as second defendant, the latter was found to be the adopted son of the undivided brother of the present plaintiff. *Held* that the first defendant's adoption was not *res judicata*. *Ayyavu Muppanar* v. *Niladatchi Ammal*, *1 Mad.*, *45*, and *Udaiya Taver* v. *Katama Nachiyar*, *2 Mad.*, *131*, distinguished. GOPALAYYAN *v.* RAGHUPATI AYYAN *alias* AIYAVAYYAN . **3 Mad., 217**

204. ——————— *Failure to prove adoption.*—*A.* claimed certain property as the adopted son of *B.*, and it was decided in that suit that *A.* had failed to prove that he was the adopted son of *B.* *Held* that this decision was no legal bar to *A.'s* proving in another suit that he was the adopted son of *B.*, in which *A.* sought to obtain a different property upon a different cause of action, though the parties to the suit were the same. KRIPARAM *v.* BHAGWAN DASS **[1 B. L. R., A. C., 68 : 10 W. R., 100**

205. ——————— *Suit to set aside adoption.*—*B.*, as adopted son and heir of *G.*, instituted a suit to set aside certain putni leases, under which certain persons claimed to hold lands which had belonged to *G.* The defence was that *B.* was not the legally adopted son of *G.*, and an issue on this point having been settled, *K.*, who claimed to be the reversionary heir of *G.*, was made a defendant under section 73 of Act VIII of 1859; and it was eventually decided in that suit that *B.* was the duly adopted son of *G.* *Held* that a subsequent suit by *K.* against *B.* to set aside the adoption could not, on the principles laid down in the case of *Soorjeemonee Dayee* v. *Suddanund Mohapatter*, *12 B. L. R.*, *304*, be maintained. *Kriparam* v. *Bhagawan Das*, *1 B. L. R.*, *A. C.*, *68*, overruled. KRISHNA BEHARI ROY *v.* BUNWARI LALL ROY **[I. L. R., 1 Calc., 144 : 25 W. R., 1**

S. C. KRISHNA BEHARI ROY *v.* BROJESWARI CHOWDHRANEE . . **L. R., 2 I. A., 283**

affirming the decision of the High Court in KRISTO BEHAREE ROY *v.* BUNWAREE LALL ROY **[19 W. R., 62**

Followed in RUN BAHADUR SINGH *v.* LUCHO KOER . . . . **I. L. R., 11 Calc., 301 [L. R., 12 I. A., 23**

206. ——————— *Civil Procedure Code, s. 2.—Cause of action.*—*A.*, a Hindu of Gya, died, leaving a sister, *B.*, and *C.*, the son of a deceased sister. On *A.'s* death *B.* took possession of the property left by *A.* In a suit by *C.* against *B.* for recovery of possession thereof as heir to his maternal uncle, the Court of first instance held that *B.* should retain possession of the property during her lifetime without power of waste, and that on her death *C.* should be entitled to the possession thereof. This was reversed by the High Court on appeal, who held that the decree should have been simply a

RES JUDICATA—*continued.*

7. MATTERS IN ISSUE—*continued.*

Collateral issue—*continued.*

decree of dismissal of the plaintiff's suit. *B.* died, leaving an adopted son, *D.* *C.* sued *D.* for recovery of possession of the property, the subject-matter of the former suit, on the ground that *D.* was not the adopted son of *B.*, and that *C.*, who came within the class of bandhus, was entitled to succeed to the property left by *A.* and *B.*, there being no nearer heir in existence. *Held* that section 2, Act VIII of 1859, did not bar the suit. MOHUN LAL BHAYA GYAL *v.* LACHMAN LAL **[5 B. L. R., 663 : 14 W. R., 73**

207. ——————— *Civil Procedure Code, 1882, s. 13.—Estoppel.—Privity in estate.*—A competent Court having decided upon an issue directly raised in a suit brought by a person alleging himself to have been adopted, that this adoption had not taken place, it was held that the present suit was barred under Act X of 1877, section 13, as *res judicata*, having been brought by the son of the defendant in the former suit, claiming through his father, to establish the same adoption; and that the section applied, although the suits related to different properties. The establishment of the adoption alleged in the first suit would have obliged the father of the present plaintiff to share with the adopted son his ancestral estate. That adoption having been negatived, the son, in this suit, ought to be estopped from making title on the ground that the adoption had placed the person, from whom he claimed to inherit, in the relation of father's brother to him. VENKATA MAHIPATI GANGADHARA RAMA RAU *v.* BUCHI SITAYYA. PITTAPUR RAJA *v.* BUCHI SITAYYA . . . **I. L. R., 8 Mad., 219**

S. C. RAJAH OF PITTAPUR *v.* BUCHI SITAYYA GARU **[L. R., 12 I. A., 16**

208. ——— **Issue as to rate of rent.**—*Possession.—Suit for kabuliat.—Decision on right of occupancy.*—A suit for a kabuliat in which the rate of rent is the subject-matter, and the question of the right of occupancy is not the main point, is not an estoppel to a suit for repossession, under clause 6, section 23, Act X of 1859. KHODA BUKSH *v.* AKOOL GAZEE . . . . **9 W. R., 595**

209. ——— **Issue as to amount of rent.**—*Suit for rent.—Civil Procedure Code, 1859, s. 2.—Held*, with reference to Act VIII of 1859, section 2, that where the cause of action is the same in substance in both suits, and where the former suit was so constituted that the parties to the present suit were in direct contest with each other and had full opportunity of asserting their rights, the decision in the former suit is *res adjudicata*,—*e.g.*, decrees passed in suits for putni rent in which the jumma payable is put in issue are decisive as to the amount of such jumma. RAKHAL DOSS SINGH *v.* HEERA MOTEE DOSSEE . . . . **22 W. R., 282**

210. ——— **Issue as to title.**—*Subsequent suit for declaration of right.*—In a former suit *A. G.* (appellant) sought to establish his right, in exe-

RES JUDICATA—*continued.*

7. MATTERS IN ISSUE—*continued.*

Issue as to title—*continued.*

cution of his decree against *R. R.*, to have a talook sold as belonging to *R. R. D. S.*, a defendant in that suit, pleaded that the whole talook had been conveyed to him absolutely by his father, *R. R.*, under a hibbanamah. An issue was raised and tried whether the talook belonged to *D. S.*, or not; and it was expressly decided that it did not, and that the zemindari was liable to be attached and sold in execution of *A. G.'s* decree as belonging to *R. R.* *Held* that it was not open to *D. S.* or to plaintiff claiming under him in a subsequent suit to come into Court and ask for a declaration of his right to a half share of the talook as against *A. G.* ABDOOL GUNNER *v.* KISHANUND DOSS *alias* KEBUL RAM DOSS . **17 W. R., 350**

211. ——————— *Civil Procedure Code, s. 13, expls. I and II, and s. 44.*—*L.* was the owner of a 4-anna share in a village. On the 1st March 1880, his childless widow *R.*, and his nephew *B.*, who had separated from his two brothers and lived for some years with both *L.* and *R.*, sold to *S.* one third of the 4-anna share. The brothers of *B.* sued the vendors and the vendee to enforce a right of pre-emption, alleging that they, as well as *B.*, had acquired and entered into exclusive possession of the estate of *L.* as his heirs. In the second appeal in this suit the High Court held that, as it was proved that the 4-anna share was *L.'s* separate estate, and *R.* had succeeded to it and was in possession of it, and thus the plaintiffs had not established a title to, or acquired possession of, any part of the share, the plaintiffs were not in a position to assert a preferential claim to purchase the property in dispute. The plaintiffs also pleaded that the question of the right and title asserted by them as the actual heirs of *L.* should have been tried and determined in the suit; but the High Court rejected this plea on the ground that the suit had been based merely on the allegation of *de facto* possession, and that their claim was to obtain by purchase one-third share only, and not for any remedy in respect of their right to possession by inheritance of the entire 4-anna estate. Subsequently to this decision, the same plaintiffs, alleging equal rights with *B.* as reversionary heirs of *L*, sued the same defendants for a declaration of the incompetence of *R.*, the widow, to alienate the property, and that the sale-deed might be declared, as against them, null and of no effect. The cause of action was stated to be the execution, on the 1st March 1880, of the deed of sale. *Held* that the plea of *res judicata* failed. The matter now substantially in issue between the parties, *viz.*, the presumptive title of the plaintiffs to possession of the property, had not been "heard and finally decided" in the sense of section 13 of the Civil Procedure Code. Such title was not "alleged and denied" by the parties in that suit, within explanation I, section 13. It was not matter which "might and ought" to have been made the ground of attack in the former suit, within explanation II. The law does not require a plaintiff at once to assert all his titles to property, or to be thereafter estopped from advancing them. A plaintiff may with the leave of the Court (section 44, Civil Procedure Code) join causes of action; but he is nowhere compelled to do so. The cause of action in the second suit, although the date of its accrual was the same, was separate and distinct from the cause of action asserted in the previous suit. SHEO RATAN SINGH *v.* SHEOSAHAI MISR

[I. L. R., 6 All., 358

212. ——————— **Issue as to account.**—*Suit for money due on bond.—Act X of 1877, s. 13.—M.* sued *R.* in the Court of the Munsif for a bond, alleging that he had satisfied the bond-debt, and for a certain sum which he alleged had been paid by him to *R.* in excess of the bond-debt. On the 24th November 1875 the Munsif, having taken an account and found that R188-7-4 of the bond-debt were still due, made a decree dismissing the suit. *R.* appealed to the Subordinate Judge, who on the 16th September 1876, finding that R520-2-2 of the bond-debt were still due, affirmed the Munsif's decree. *M.* appealed to the High Court on the ground that an appeal by *R.* did not lie to the Subordinate Judge, as *R.* was not aggrieved by the Munsif's decree. The Division Bench before which the appeal came, on the 10th August 1877, holding that *R.* was not competent to appeal to the Subordinate Judge, set aside the proceedings of the Subordinate Judge. In deciding the case the Division Bench made certain observations to the effect that the account between the parties was not finally settled, but might be taken again in a fresh suit. In November 1877 *M.* instituted a fresh suit against *R.* to recover the bond on payment of R188-7-4, the sum found by the Munsif in the former suit to be due by him to *R.* *Held*, on the question whether the finding of the Munsif in the former suit was final and conclusive between the parties or the account might be again taken, that that finding, being a finding on a matter directly and substantially in issue in the former suit which was heard and finally decided by the Munsif, was final and conclusive between the parties and the account could not be again taken. *Held*, also, that the observations of the Division Bench in the former suit were mere "*obiter dicta*" which did not bind the Courts disposing of the fresh suit. MOHAN LAL *v.* RAM DIAL . . . **I. L. R., 2 All., 843**

213. ——————— **Issue as to satisfaction of money-bonds.**—*Subsequent suit on bonds.—Civil Procedure Code, 1882, s. 45.—Matter directly and substantially in issue.—Meaning of "suit" in Civil Procedure Code, 1882, s. 13.—S.* sued *K.* for four bonds, alleging that the same had been satisfied. *K.* had formerly sued *S.* on two of these bonds. *S.* had alleged in defence of that suit that those two bonds, as also the other two, had been satisfied. It was decided in that suit that not one of the bonds had been satisfied. *Held* by PETHERAM, *C. J.*, and OLDFIELD, BRODHURST, and DUTHOIT, *JJ.*, that the only issue in the former suit which had to be decided being whether the bonds on which that suit was brought had been satisfied or not, the second suit was, under section 13 of the Civil Procedure Code, *res judicata*

RES JUDICATA—*continued.*

7. MATTERS IN ISSUE—*continued.*

Issue as to satisfaction of money-bonds —*continued.*

only in respect of those bonds, and not in respect of the other two bonds. The Court which tried the former suit had not jurisdiction to try the subsequent suit. *Per* MAHMOOD, *J.*—This being so, if the word "suit" in section 13 were taken literally, it might, with some plausibility, be contended that there was no *res judicata* in respect of any of the bonds. The word "suit," however, must be understood to mean such a matter as might have formed the subject of a separate suit independently of the special provisions of the Civil Procedure Code, such as section 45, which enables the plaintiff to unite several causes of action in one and the same suit. Adopting this interpretation, it was clear that the two bonds which were the subject of the former suit could not be allowed to form the subject of litigation again. As to the other two bonds, which were not the subject-matter of the former suit, they did not, in the former suit, constitute a "matter directly and substantially in issue," within the meaning of section 13, and, even if they were "directly and substantially in issue," the decision in the former suit would not support the plea of *res judicata*, because the Court which tried that suit was not a Court of jurisdiction competent to try the subsequent suit in which the plea was raised. SHEORAJ RAI *v.* KASHI NATH **[I. L. R., 7 All., 247**

214. ——— Issue as to validity of mortgage.—*Suit for possession.—Civil Procedure Code, 1877, s. 13, expls. I and II.*—*H.*, the proprietor of a one-third share of a certain undivided estate, made a gift of such share to *P.* He subsequently, in February 1875, gave a mortgage of such share, in his capacity as *P.'s* guardian, to *N.* and *S.*, the two other co-sharers of such estate. In March 1878 *P.*, having attained his age of majority, brought a suit, as a co-sharer of such estate, under such gift, against *N.* and *S.* for possession of certain land appertaining to such estate, on the ground that they were using such land as if they were the sole proprietors thereof. The lower Appellate Court, observing that such land was the property of the three co-sharers, that the mortgage of *P.'s* rights to *N.* and *S.* did not affect those rights as such, and that *N.* and *S.* were not justified in using such land as if they were the exclusive proprietors thereof, gave *P.* a decree for possession of one-third share of such land. *N.* and *S.* appealed to the High Court on the ground that *P.* should not have been awarded possession, as they were in possession of such land as mortgagees. The High Court remanded the cases for the determination of the issue thus raised by *N.* and *S.*, and the lower Appellate Court found that *N.* and *S.* were in possession of *P.'s* share of such estate as mortgagees under the mortgage made by *H.* above referred to, and of such land as such. *P.* did not take any objection to this finding; and it was adopted by the High Court and embodied in its final decree. In October 1879 *P.* sued *N.* for possession of his share in such estate, claiming under the gift from *H.*, and alleging that the mortgage of such share by *H.* to *N.* was invalid. *Held* that, inasmuch as such mortgage was matter substantially in issue in the former suit, the matter in issue in the second suit was *res judicata* under explanations I and II, section 13, of Act X of 1877. NIRMAN SINGH *v.* PHULMAN SINGH **[I. L. R., 4 All., 65**

215. ——— Issue as to interest on instalment bond.—*Civil Procedure Code, 1877, s. 13.—"Subject-matter" of suit.*—The obligee of a bond payable by instalments sued the obligor for four instalments, claiming, with reference to the terms of such bond, interest on such instalments from the date of such bond. The obligor contended in that suit that, on the proper construction of the bond, the interest on such instalments should be calculated from the dates of default. The obligee obtained a decree for interest as claimed. The obligee subsequently again sued the obligor for four instalments, again claiming interest on such instalments from the date of such bond. The obligor contended again in the second suit that interest should only be calculated from the dates of default. *Held* that the question as to the date from which interest due on the defaulting instalments was exigible under the terms of such bond was *res judicata.* It is the "matter in issue," not the "subject-matter" of the suit, that forms the essential test of *res judicata* in section 13 of Act X of 1877. PAHLWAN SINGH *v.* RISAL SINGH . **I. L. R., 4 All., 55**

216. ——— Issue as to right to property.—*Civil Procedure Code, s. 13, expl. I.—Issue previously determined.*—*N.* sued *W.* for a moiety of a brick-kiln, claiming by right of inheritance, and alleging in respect of the other moiety that it was his own property. *W.* in her defence to the suit denied that *N.* had any right in the kiln and that a moiety of the kiln belonged to him. An issue was framed on the point whether a moiety of the kiln belonged to *W.* which the Court of first instance decided in *N.'s* favour. *N* eventually obtained a decree for a moiety of the kiln which he claimed by right of inheritance. *W.* appealed, contending, *inter alia*, that it was not proved that a moiety of the kiln belonged to *N.* The appeal was decreed, and the decree of the Court of first instance in *N.'s* favour was set aside. *W.* subsequently sued *N.* for the value of bricks which he had wrongfully taken from the kiln. *N.* set up as a defence to the suit that a moiety of the kiln belonged to him. *Held* that the issue whether a moiety of the kiln belonged to *N.* was *res judicata*, under section 13, explanation I, of the Civil Procedure Code. WILAITI BEGAM *v.* NUR KHAN . . **I. L. R., 5 All., 514**

217. ——— Issue as to possession.—*Suit for recovery of produce of land.—Civil Procedure Code, 1877, s. 12.—Matter in issue in former suit.*—Pending the final hearing in appeal of a suit for confirmation of possession of certain land, and for the recovery of the produce of such land alleged

RES JUDICATA—*continued.*

7. MATTERS IN ISSUE—*continued.*

Issue as to possession—*continued.*

to have been carried away by the defendants, the plaintiff brought a suit again asking for confirmation of possession but also for the recovery of the produce which had arisen since the institution of the other suit. *Held*, the second suit so far as it sought for the recovery of the produce was not barred by the previous suit. BISSESSUR SINGH *v.* GUNPUT SINGH . . . . . **8 C. L. R., 113**

218. ——— Issue of law erroneously decided.—*Decree prohibiting erection of temple.—Rights of rival religious sects.—Right to open temple for worship.*—The erroneous decision by a competent tribunal of a question of law directly or substantially in issue between the parties to a suit does not prevent a Court from deciding the same question, arising between the same parties in a subsequent suit, according to law. In a suit in 1850 between the Tenkalais and Vadakalais, rival religious sects, represented by the plaintiffs and defendants respectively, the Vadakalais, having endeavoured to open a temple for public worship in a certain public street, were, by the decree of the Sudder Court, prohibited from erecting a temple or instituting public worship on the spot of ground objected to by the Tenkalais and which lay within the range of the Tenkalai temple, *i.e.*, within the usual range of the processions conducted in connection with the temple worship. In 1879 the Vadakalais opened a temple for public worship on another site, their private property, in the same street. *Held* that the decree of the Sudder Court in the former suit was no bar to the action of the Vadakalais. PARTHASARADI *v.* CHINNAKRISHNA **[I. L. R., 5 Mad., 304**

219. ——— Issue as to validity of grant.—*Issue not decided in former suit.*—In a suit to recover, with mesne profits and other incidents, a jerayati village alleged by the plaintiff to form part of the zemindari, and to be wrongfully held by defendant by virtue of the execution of a decree of the late Commissioner of the Northern Circars passed in 1844, the defendant pleaded that he held on a permanent lease subject to a fixed quit-rent, that he and his ancestors had held on that tenure since and previously to the permanent settlement, and that the quit-rent had been received from him by the plaintiff. The Agent dismissed the suit, on the ground that the matter had become *res judicata* against the plaintiff by a former decree in 1807. *Held* that the matter of the present claim was not *res judicata*, because the question of the existence and validity of the alleged grant, on which the defendant relied, was not determined in the former decree. VAIRICHARLA SURYA NARAYANA *v.* NADIMINTI BHAGAVAT PATANJALI SHASTRI . . . . . **3 Mad., 120**

220. ——— Issue as to proprietorship of land.—*Civil Procedure Code, 1877, s. 13.—Suit to recover land under rental agreement.—Subsequent suit for ejectment.*—In 1874 *V.* sued *P.* to recover certain lands held by him under a rental agreement

RES JUDICATA—*continued.*

7. MATTERS IN ISSUE—*continued.*

Issue as to proprietorship of land—*continued.*

dated 1873. *S.* was made a defendant on the ground that he held one plot as under-tenant to *P.* *S.* claimed to hold under *N.* As to this plot, the issue raised was whether the land was held by *S.* under *P.*; the decision, that *S.* did not hold under *P.*, but under *N.* since 1828; the decree, that *V.'s* suit be dismissed as to this plot. *Held*, in a suit brought in 1881 by *V.* against *N.* and *S.* to recover the same plot of land, that the suit was not barred by reason of the previous decision in 1874. ANANDA RAMAN VATHIAR *v.* PALIYIL VITTIL NANU NAYAR **[I. L. R., 5 Mad., 9**

221. ——— Issue as to tenancy.—*Civil Procedure Code, 1882, s. 13.—Questions decided by decree.*—A landlord having tendered a pottah at a certain rate, sued his tenants in the Court of the District Munsif to recover rent for Fasli 1289 (1879-80). The tenants pleaded that they were not bound to accept the pottah tendered by virtue of an implied contract, which entitled them without exchange of pottah and muchalka to hold the land permanently at a lighter rent. The District Munsif and, on appeal, the District Court, decided that no implied contract had been proved by the tenants. The suit was dismissed on the ground that the pottah tendered was not one which the tenants were bound to accept under Act VIII of 1865 (Madras). The landlord then sued in the Revenue Court to compel the tenants to accept a pottah for Fasli 1291 (1881-82), and the tenants again put forward the same plea. *Held* that the question whether the tenants were entitled to hold permanently at a lighter rate without exchange of pottah and muchalka was not *res judicata* by virtue of the decree in the former suit. MUTTUKUMARAPPA REDDI *v.* ARUMUGA PILLAI . . . **I. L. R., 7 Mad., 145**

222. ——— Issue as to transferability of tenure.—*Estoppel.—Civil Procedure Code, 1877, s. 13.*—Plaintiff having brought a suit to recover damages for the removal by the defendants of certain crops, alleging (1) that he was transferee of the jote upon which the crops were, and (2) that he had purchased the crops, it was objected that the transfer to the plaintiff was invalid. It being found that the crops in question had been purchased by the plaintiff as alleged by him, he obtained a decree for damages for their removal. The plaintiff now brought a second suit as transferee of the jote to recover possession of it from the defendants who again pleaded that the transfer was invalid. *Held*, reversing the decision of FIELD, *J.*, that the defendants were not estopped under section 13, explanation II, of the Civil Procedure Code, from setting up that defence, inasmuch as the question of the transferability of the jote was immaterial in the first suit and had not in fact been determined, and the question of estoppel was not raised by the parties themselves. CHURN MANJEE *v.* ISHAN CHUNDER DHUR **[9 C. L. R., 474**

223. ——— Issue as to right of pre-emption.—*Civil Procedure Code, 1882, ss. 562, 568*

RES JUDICATA—*continued.*

7. MATTERS IN ISSUE—*continued.*

Issue as to right of pre-emption—*continued.*

(28).—*Second appeal.—Civil Procedure Code, ss. 565, 566.—Determination of case by High Court.*—In a suit for pre-emption, based on the wajib-ul-urz of a village, the Court of first instance dismissed the claim on the ground that no right of pre-emption had been proved to exist in the village. The lower Appellate Court, dissenting from this opinion, reversed the first Court's decree, and remanded the case under section 562 of the Civil Procedure Code for a decision on the remaining question of fact, *viz.*, the amount of the consideration for the sale. On appeal from the order of remand, the High Court, on the 3rd January 1884, observed that it was not disposed to interfere with the finding of fact that the plaintiffs had a right of pre-emption, and accordingly dismissed the appeal, but added that the Judge was in error in remanding the case under section 562 of the Code; that his order must so far be set aside; and that he should proceed under section 565 or section 566 as might be applicable. The Judge, on receipt of this order, replaced the case on his file, remitted an issue to the Court of first instance, under section 566, as to the amount of consideration, and, accepting the first Court's finding upon that issue, decreed the plaintiff's claim. In second appeal by the defendants the High Court was of opinion that the Judge had disposed of the case upon a condition of things which the plaintiffs had never asserted, inasmuch as he had treated the right of pre-emption which was in issue as one arising from custom, and not, as alleged by the plaintiffs, as arising from a contract between the ancestors of the parties. All the evidence necessary to the determination of the case was on the record. *Held* by the Full Bench that the defendants were not prevented by the operation of the High Court's order of the 3rd January 1884 from disputing the right of pre-emption, inasmuch as that order was a decision of a merely interlocutory character passed in the same suit, and the questions of fact involved therein were decided only so far as was necessary for the purpose of passing the order, and it could not be regarded as determining the main question in the suit which was still open, and must be decided in the final decree in the suit. *Per* STRAIGHT, *J.*, that the jurisdiction of the High Court in appeal under section 588 of the Code from the Judge's order of remand was, like the jurisdiction of the Judge in passing the order, limited by the terms of section 562; and hence the remark made in the High Court's order, dealing with the plaintiffs' right of pre-emption, could only be regarded as an *obiter dictum*, and not as determining any question as to the pre-emptive right. DEOKISHEN *v.* BANSI . . . . **I. L. R., 6 All., 172**

224. ——— **Question of title.**—*Question collaterally in issue.*—A suit to have a declaration of right and to set aside a thakbust proceeding in respect to certain lands is not barred by section 2, Act VIII of 1859, by reason of the decision in a previous suit for the value of fruit growing on that land in which the question of title to the land came collaterally in issue. MAHIMA CHANDRA CHUCKERBUTTY *v.* RAJKUMAR CHUCKERBUTTY **[1 B. L. R., A. C., 1: 10 W. R., 22**

225. ——— *Incidental decision of title.—Suit afterwards for possession.*—*A.*, alleging himself the owner of a certain garden, brought a suit for damages against *B.* and *C.* for forcibly carrying off fruit grown in such garden. In this suit, the question whether *A.* was exclusively in possession of the garden, was incidentally raised and decided against *A.* Thereupon *A.*, who in the meantime had been ousted from possession, brought a subsequent suit in which *B.* and *C.* together with others were co-defendants, in which he claimed an undivided share in the same garden. *Held* that under the circumstances the doctrine of *res judicata* did not apply, and that such suit was maintainable. DOORGA RAM PAL *v.* KALLY KRISTO PAUL **[3 C. L. R., 549**

226. ——— *Civil Procedure Code, 1877, s. 13.—Former suit on different cause of action for same land.*—In 1878 plaintiff sued to recover certain land from defendant on the ground that she being the owner had made an oral lease of the land to the defendant in 1876. Issues were framed both as to title and as to the letting, but the Munsif, without trying the question of title, dismissed the suit on the ground that the oral lease was not proved. *Held* that a fresh suit to recover possession of the land on the ground of title was not barred as being *res judicata*. Explanation (3) of section 13 of the Code of Civil Procedure refers to relief applied for, which the Court is bound to grant with reference to the matters directly and substantially in issue. *Bheeka Lall* v. *Bhuggoo Lall, I. L. R., 3 Calc., 23;* and *Denobundhoo Chowdry* v. *Kristomonee Dossee, I. L. R., 2 Calc., 152*, dissented from. THYILA KANDI UMMATHA *v.* THYILA KANDI CHERIA KUNHAMED . . . **I. L. R., 4 Mad., 308**

227. ——— *Civil Procedure Code, 1859, s. 2.—Collateral decision on title.*—*K.* died, leaving a widow, *M.*, as his heir. *M.* also died, leaving a will in favour of *B.*, who accordingly applied for letters of administration with the will annexed. This application was refused by the District Judge, who granted a certificate under Act XXVII of 1860 to one *G.* Upon this, *B.* sought his remedy in a suit before the Subordinate Judge, who held that the property being that of the husband, the widow's will passed nothing to plaintiff, and that, although the evidence in favour of *G.* was doubtful, yet the Court could not say that he was not her heir. In a suit by *G.* against *B.* for the rents of the property accruing since the widow's death, where *G.* contended that the decision of the Subordinate Judge operated as a bar to the questioning of his title,—*Held* that the principle of *res judicata* did not apply. GOOROO CHURN SIRCAR *v.* BRIJA NATH DHUR . **24 W. R., 111**

228. ——— *Issue incidentally raised.—Suit for possession.*—In 1852, *T.*

RES JUDICATA—*continued.*

7. MATTERS IN ISSUE—*continued.*

Question of title—*continued.*

acquired a plot of land, X., under a Government grant. In 1851 *N.*, claiming to be the owner of the adjoining plot Y., granted a lease of it to *R.*; but in 1853 another lease of the same plot was granted by an agent of *N.* to *G.* In 1859 *G.* sued *T.* to recover possession of lot X. as being part of plot Y., and obtained a decree, against which *T.* appealed to the Privy Council. Pending the appeal *R.* sued *G.* for possession of plot Y. and obtained a decree against *G.* Meanwhile, *R.* having failed to pay rent, plot Y. was put up for sale, and purchased by the present respondent. In 1872, the respondent, who was unable to get possession of his purchase, obtained leave to be admitted a party respondent in the appeal to the Privy Council, and filed a case averring that the interests of the original respondents had ceased, and that he was, pending the appeal, precluded from enforcing his rights. The Privy Council held that the plaintiff *G.* had not proved that plot Y. included plot X., but they stated that they did not adjudicate upon any question of title between the respondents on that appeal, or *N.* or any other person's interest in plot Y. The present respondent subsequently sued *T.'s* representative for possession of plot X. as being parcel of plot Y. *Held*, reversing the judgment of the High Court, that the respondent's claim was *res judicata* by reason of the previous judgment of the Privy Council. BELCHAMBERS *v.* ASHOOTOSH DHUR

[7 C. L. R., P. C., 308

229. ——————— *Order of remand.—Decision of question of title.—Suit for possession.*—In 1814 litigation commenced between a zemindar and his tenants by reason of his having dispossessed them of lands held under a jote tenure, and a decree having been obtained by the tenants the zemindar assessed the jote lands at a certain rent. Subsequently this rent fell into arrear, and under a decree the jote lands were in 1836 sold in satisfaction of the arrears to *J.*, who was put in possession in 1839. Another suit, which was pending between the tenants and their mortgagee, in which a question arose whether these jote lands were included in the mortgage, was decided in favour of the mortgagee in 1841. *J.*, the then jote tenant, was no party to that suit, and continued in possession of his jote lands. Disputes arose, and by an order of the Sudder Court in 1845 the jote lands were directed to be put in possession of the mortgagee. In 1856 a suit was brought by *J.'s* representative to set aside that order and to recover possession of the jote lands. The Privy Council held that, as *J.*, the jote tenant, was not a party to the suit under which the decree was made in 1841, the decree was not binding upon him or those deriving title through him, and remanded the case in order that the issue whether the land was parcel of the jote or not might be tried. *Held* that this order of remand was conclusive that the question of the title of the representatives of *J.* to the jote lands could not be reopened. JUGGODUMBA DOSSEE *v.* TARAKANT BANERJEE

[6 C. L. R., P. C., 121

RES JUDICATA—*continued.*

7. MATTERS IN ISSUE—*continued.*

Question of title—*continued.*

230. ——————— *Civil Procedure Code, 1882, s. 13.—Suit for right to malikana and for registration of names.—Decision in previous suit.—Court of competent jurisdiction.*—Previous to 1825 dearah X. accreted to mouzah Y., and some time before 1860 the maliks of Y. executed two conveyances in favour of *A.* and *B.* respectively. In 1860 *A.* sued *B.* in the Munsif's Court for possession of a share in X. which *B.* claimed under his conveyance. In that suit *A.* succeeded on the ground that *B.'s* conveyance did not cover the share claimed by him in X. but merely covered the share in the mouzah itself, whereas by his conveyance *A.* had acquired the right to the share in X. which he claimed. In 1866 the Collector refused to recognise *B.'s* right to malikana payable in respect of the share in X. which had been the subject of the suit in 1860 or to register his name in respect thereof; but acknowledged *A.'s* right thereto, relying on the decision of the Civil Court in the suit between *A.* and *B.* Subsequently *B.'s* representatives, *C.* and *D.*, in 1876 sought to have their names registered in respect of the same malikana, but they were opposed by *E.*, who alleged that *A.* had been acting throughout as his benamidar. Their application was eventually disallowed on reference by the Collector to the Civil Court. *C.* and *D.* thereupon instituted the present suit against *E.* in the Court of the Subordinate Judge for a declaration of their right to the malikana and for a reversal of the order refusing to allow their names to be registered in respect thereof. *Held* that the suit was barred as *res judicata*, on the ground that the right to malikana was substantially the same question as the proprietary right to the share in the dearah, and that this issue had been tried and decided in the suit in 1860 in favour of *A.*, who must be taken to be *E.* In a suit for malikana the issue between the parties substantially raises the question of the proprietary right to the estate in respect of which the malikana is claimed, and when the question of the proprietary right has been decided in a previous suit between the same parties, a subsequent suit for malikana will be barred as *res judicata.* GOPI NATH CHOBEY *v.* BHUGWAT PERSHAD . . . . I. L. R., 10 Calc., 697

231. ——————— *Finality of decision.—Suit for possession.—Civil Procedure Code (Act X of 1877), s. 13.*—In a suit to recover possession of certain land, where it appeared that there had been a previous suit between the same parties with respect to the same land, in which the then plaintiffs sought to have their possession confirmed, and that in that suit the lower Courts had decided the case both on the question of title and of possession, but on special appeal the High Court had dealt only with the question of possession, and in dismissing the appeal had not gone into the question of title, and the defendant in that suit subsequently sued to recover possession of the land,—*Held* that the question of title was still open between the parties, and had not been heard and finally decided by a Court of competent jurisdiction in a former suit within the

RES JUDICATA—*continued.*

7. MATTERS IN ISSUE—*continued.*

Question of title—*continued.*

meaning of section 13 of Act X of 1877. GUNGABISHEN BHUGUT *v.* ROGHOONATH OJHA

[I. L. R., 7 Calc., 381 : 9 C. L. R., 34

232. ——————— *Landlord and tenant.—Suit for ejectment.—Issue previously heard and determined.—Estoppel.—Civil Procedure Code, 1882, s. 13.*—In a suit by a landlord against his tenant for ejectment, the defences were: (1) no notice to quit had been served; and (2) the tenure was a permanent one. The suit was dismissed on the first ground, the Court holding at the same time that the tenure was not a permanent one. In a subsequent suit for ejectment from the same holding, brought by the same plaintiff against the same defendant, the defences were: (1) the tenure was permanent; and (2) the plaintiff was estopped by the conduct of his predecessor in title from asserting as against the defendant that the tenure was not a permanent one. The lower Appellate Court found the question of estoppel in favour of the defendant, and dismissed the suit. On appeal to the High Court,—*Held* that the decision was right, and must be affirmed. *Semble,*—That where a former suit between the same parties in respect of the same subject-matter has been dismissed on a preliminary point, a finding in that suit on the merits in the plaintiff's favour will not bar the defendant from putting forward the same defence on the merits in a subsequent suit by the same plaintiff against the same defendant. *Semble,*—That the case of *Niamut Khan* v. *Phadu Buldia, I. L. R., 6 Calc., 319,* has been impliedly overruled by the case of *Run Bahadoor Singh* v. *Lucho Koer, L. R., 12 I. A., 23 : I. L. R., 11 Calc., 301.* NUNDO LALL BHUTTACHARJEE *v.* BIDHOO MOOKHY DEBEE

[I. L. R., 13 Calc., 17

233. ——————— *Civil Procedure Code, Act X of 1877, s. 13.—Matters directly and substantially in issue in a suit.*—Where a decree, awarding to one of the parties money deposited in a treasury by a third party, as the compensation for land taken by the latter for railway purposes, was based upon the right to the land, the question of title having been directly and substantially in issue between the parties,—*Held* that the contest of title was conclusive between them under section 13 of Act X of 1877. In a suit brought by a ghatwal to resume, as determinable at will, an under-tenure granted by one of his ancestors of land, part of the ghatwali mehal, it was alleged for the defence that the under-tenure was permanent. A prior judgment upon conflicting claims made by the ghatwal and the under-tenure-holders to receive the above-mentioned compensation-money, which had been paid in respect of lands in part comprised in the under-tenure, determined that the ghatwal was entitled to the money, being founded on the under-tenure-holders having been in possession of it by the mere sufferance of the ghatwal, who could put an end to it at any time. *Held* that the question whether the latter had a permanent tenure, having been directly and substantially in issue in the former suit, could not be

RES JUDICATA—*continued.*

7. MATTERS IN ISSUE—*continued.*

Question of title—*continued.*

contested in another. RAM CHUNDER SINGH *v.* MADHO KUMARI

[I. L. R., 12 Calc., 484 : L. R., 12 I. A., 188

234. ——————— *Question incidentally decided.—Boundary dispute.*—Where, in a suit for some land, a Judge had considered it necessary to find out the boundary between two villages, and had given a decision in favour of one of the parties, who in a second suit of the same kind, but with reference to some other land, brought in the former decision to show that the land in dispute in the second suit must be his if the finding as to the village boundary in the former suit was correct,—*Held* that the finding as to the village boundary in the former suit was conclusive only as to the land in dispute in the former case, but did not make the former decision conclusive as to the boundary line itself. MONI ROY *v.* RAJBUNSEE KOOER

[25 W. R., 393

235. ——— **Defence not raised in previous suit.**—*Civil Procedure Code (Act X of 1877), s. 13, expl. ii.—Estoppel.*—Explanation ii of section 13 of Act X of 1877 was meant to apply to a case where the defendant has a defence which, if he had so pleased, he might, and ought to, have brought forward; but, as he did not bring it forward, the suit has been decreed against him. Under such circumstances the defendant is as much bound by the adverse decree as if he had set up the defence, and he is equally estopped from setting up that defence in any future suit under similar circumstances. The explanation was never intended to enable a party to treat a point of law as having been decided in his favour in a former suit which was in fact not so decided, and which it was not necessary, for the purposes of the suit, to decide at all. GHURSOBHIT AHIR *v.* RAMDUT SINGH

[I. L. R., 5 Calc., 923 : 6 C. L. R., 537

236. ——————— *Party raising only one defence, having others.—Civil Procedure Code, 1859, s. 2.*—When a plaintiff claims an estate, and the defendant, being in possession, and knowing that he has two grounds of defence raises only one, he shall not, in the event of the plaintiff obtaining a decree, be permitted to sue on the other ground to recover possession from the plaintiff. *Woomatara Debia* v. *Unnopoorna Dassee, 11 B. L. R., 158.* Where, therefore, the defendants purchased an estate in the plaintiff's possession and sued him to recover possession of it, and the plaintiff resisted the suit merely on the ground that he was the auction-purchaser of it, and the defendants obtained a decree, and the plaintiff then sued claiming a right of pre-emption in respect of the property, a claim which he might have asserted in reply to the former suit,—*Held* that he was debarred from suing to enforce such claim. BALDEO SAHAI *v.* BATESHAR SINGH

[I. L. R., 1 All., 75

JADU LAL *v.* RAM GHOLAM

[I. L. R., 1 All., 316

RES JUDICATA—*continued.*

7. MATTERS IN ISSUE—*continued.*

Defence not raised in previous suit—*continued.*

237. ——————— *Civil Procedure Code, 1859, s. 2; and 1877, s. 13.—Omission to raise defence.—Subsequent suit.*—In a suit for rent and for ejectment, the defendant pleaded that his tenure was transferable and istemrari, and consequently protected by the Rent Law. In a former suit for arrears of previous years in which the defendant pleaded that his tenure was istemrari, the plaintiff obtained a decree for ejectment on non-payment of rent within fifteen days. In that case the defendant saved his tenure by payment within the time stated. *Held* that inasmuch as the defendant might in the former suit, in which the nature of the tenure was put in issue, have urged that his tenure was both transferable and istemrari, he could not in the present suit be allowed to alter his defence and rely upon the tenure being transferable. *Woomatara Debia* v. *Unnopoorna Dassee, 11 B. L. R., 158,* cited and followed. DINOMOYI DABIA CHOWDHRAIN *v.* ANUNGO MOYI **[4 C. L. R., 599**

238. ——————— *Civil Procedure Code, 1859, s. 2.*—If the plaintiff's cause of action might and ought properly to have been made a ground of defence in a former suit, brought against him by the defendant, his suit is barred by section 2 of Act VIII of 1859. The father of *A.* and *B.* having died, *A.* alleging that his father's assets amounted in value to R12,000, and admitting that he (*A.*) had received R1,000, part thereof, in 1866, sued *B.*, whom he alleged to be in possession of the rest of the property, for R5,000, as the residue of *A.'s* share, and obtained a decree for a half share in immoveable property of their father of the value of about R700, and no more. In 1871 *B.* sued *A.* for a moiety of the R1,000, which *A.*, in his suit in 1866, had admitted to be in his possession. *Held* that such a suit could not be maintained, as the claim on which it was founded must be deemed a *res judicata* in *A.'s* suit in 1866. MAKTUM VALAD MOHIDIN *v.* IMAM VALAD MOHIDIN . . . . **10 Bom., 293**

239. ——————— *Suit to enforce rights not raised.*—Where a party claiming certain land by right of pre-emption failed to set up her rights in a suit in which the purchaser of that land sued her for possession and obtained a decree, it was held that she was not entitled to bring a fresh suit to enforce the same rights. ASGUR MAHOMED *v.* NUZEEMA BIBEE . . . **14 W. R., 272**

240. ——————— *Former suit deciding right of lien for dower.*—Where a widow who had taken possession of her husband's property was ejected by means of a suit in which her defence raised no right of lien for dower, in which suit an absolute decree of right was given to his heirs, the right of lien, as between her and them, is a *res adjudicata.* WAFEAH *v.* SAHEEBA . **8 W. R., 307**

Contra, JANEE KHANUM *v.* AMATOOL FATIMA KHANUM . . . . . **8 W. R., 51**

RES JUDICATA—*continued.*

7. MATTERS IN ISSUE—*continued.*

Defence not raised in previous suit—*continued.*

241. ——————— *Civil Procedure Code (Act X of 1877), s. 13.—Ancestral property.—Partition.—Omission to insist on property being brought into hotchpot.—Property out of the jurisdiction.—Subsequent suit for partition.*—The three defendants, *G.*, *R.*, and *K.*, and their brother *M.*, the grandfather of the plaintiff, were members of one family possessing undivided ancestral property consisting of the villages of B., P., and S., the two former being situated in the Poona Zillah, and the latter in the Satara Zillah. In 1866 the three defendants (each in a separate suit) sued *M.* in the Poona Courts for partition of the villages of B. and P. They in their plaints alluded to the village of S., stating that it was their own, and not subject to partition. *M.* in his answer contented himself with denying the right to partition of the villages of B. and P., and made no claim, in the alternative, to a share in the ownership of S. The plaintiff, the grandson of *M.*, now sued the defendants in the Satara Courts for partition of the village of S., contending that he was not concluded from so doing by the former proceedings in the Poona Courts. *Held* that the plaintiff's claim was *res judicata,* and that his suit was concluded under the provisions of the Civil Procedure Code (Act X of 1877), section 13, explanations I and II. A member of an undivided family, suing his coparceners for partition of family property, is bound to bring into hotchpot any undivided property in his own possession, in order that there may be a complete and final partition, and cannot claim to withhold any such property on the ground that it is situated within another jurisdiction. That being so, the plaintiff's grandfather *M.* having neglected in the previous suit to make the exception of the village of S. a ground of defence, the judgment which followed involved the decision of every claim of title upon the cause of action, and must be taken between the parties as amounting to a positive adjudication of all such claims, including the claim to the village of S. HARI NARAYAN BRAHME *v.* GANPATRAV DAJI **[I. L. R., 7 Bom., 272**

242. ——————— *Civil Procedure Code, 1877, s. 13.*—*S.* and *B.* jointly sued *N.* for the redemption of a mortgage of an 8-anna share of a village, *B.* suing as the purchaser from the mortgagor of a moiety of such share. *N.* did not in defence of such suit assert a right of pre-emption in respect of such moiety, although such right had accrued to him on its sale by the mortgagor to *B.* *S.* and *B.* obtained a decree in such suit, and the mortgage was redeemed. *N.* subsequently sued *B.* and his vendor to enforce his right of pre-emption in respect of such moiety. *Held* that it was incumbent upon *N.* in the former suit to have asserted in defence his right of pre-emption in respect of such moiety, inasmuch as if that right had been established, it must, so far as *B.* was concerned, have proved fatal to his title to redeem; and that, as he had not done so, the suit to enforce his right of pre-emption

RES JUDICATA—*continued.*

7. MATTERS IN ISSUE—*continued.*

Defence not raised in previous suit—*continued.*

was barred by the provisions of section 13 of Act X of 1877, explanation II. NARAIN DAT *v.* BHAIRO BUKHSHPAL . . . I. L. R., 3 All., 189

243. ——— *Civil Procedure Code, 1877, s. 13.*—*B.*, who held a decree for money against *I.*, caused certain property to be attached in execution of such decree as the property of his judgment-debtor. *M.*, the wife of *I.*, objected to such attachment, claiming such property as her own. Her objection was disallowed, and she consequently brought a suit against *B.* to establish her right to such property. She died while that suit was pending, leaving by will such property to her sons. That suit proceeded in the names of her sons, who claimed such property under such will. The lower Courts only decided in that suit that such property belonged to *M.* and not to *I*, and it was therefore not liable to be sold in execution of *B.'s* decree against the latter. They did not consider the question whether *M.'s* sons were entitled to such property under their mother's will. In second appeal in that suit *B.* contended that *I.*, as heir to *M.*, was entitled to a fourth share of such property, and such share was liable to be sold in execution of such decree. *M.'s* sons did not contend before the High Court that they were entitled to the whole of such property under their mother's will to the exclusion of *I.* The High Court allowed *B.'s* contention. *B.* brought a fourth share of such property to sale in execution of his decree and purchased it himself. Thereupon *M.'s* sons sued him for such share, claiming it under their mother's will. *Held* that their mother's will was a matter which should have been made a ground of defence by *M.'s* sons in the course of the trial of the second appeal in the former suit between them and *B.*, and that, not having been so made, it was *res judicata* in the sense of section 13, explanation II, Act X of 1877. SULTAN AHMAD *v.* MAULA BAKHSH . . I. L. R., 4 All., 21

244. ——— **Relinquishment of part of claim.**—*Civil Procedure Code, 1882, ss 13 and 43.*—*Dekkhan Agriculturists' Relief Act, XVII of 1879.*—*Mortgagor.*—*Mortgagee.*—*Suit for account merely.*—*Subsequent suit for possession.*—Where there has been a suit between an agriculturist mortgagor and his mortgagee for an account merely, a subsequent suit for possession on payment of the money declared to be due is barred, under either section 13 or section 43 of the Code of Civil Procedure. BHAU BALAJI *v.* HARI NILKANTHRAV

[I. L. R., 7 Bom., 377

245. ——— *Civil Procedure Code, 1877, ss. 13 and 43.*—*Right of karnavan to recover tarwad property in possession of anandravan.*—A karnavan of a Malabar tarwad, having the right at any time to demand restoration of the property of the tarwad in the hands of the anandravan, is not debarred by section 13 or section 43 of the Code of Civil Procedure from bringing a second suit to recover

RES JUDICATA—*continued.*

7. MATTERS IN ISSUE—*continued.*

Relinquishment of part of claim—*continued.*

lands in the wrongful possession of an anandravan, either by the fact that in a former suit between the same parties the karnavan only laid claim to some of the lands sued for, or by the fact that the former suit was dismissed upon the joint petition of the parties, alleging a compromise and a surrender of the lands, which, as a fact, were not surrendered, but wrongfully retained by the anandravan. URAMKUMARATH KANNAN NAYAR *v.* URAMKUMARATH TENJU NAYAR . . . I. L. R., 5 Mad., 1

8. PARTIES.

(*a*) SAME PARTIES OR THEIR REPRESENTATIVES.

246. ——— **Judgment not inter partes.**—*Questions of fact.*—A judgment *inter partes* between *A.* and *B.* cannot be considered to conclude *A.* in a suit between *A.* and *C.*, and is not admissible in the second suit as evidence of the truth of the facts adjudicated in the former one. BALAJI VISHVANATH JOSHI *v.* DHARMA

[2 Bom., 385: 2nd Ed., 363

247. ——— **Judgment inter partes.**—*Point decided in former suit.*—In a foreclosure suit in which *A.* was plaintiff and *B.*, *C.*, and *D.* were defendants,—*Held* that a verdict on the point in issue in an ejectment suit in which *C.* and *D.* were plaintiffs and *A.* was defendant, was a bar to the suit. MOHIDIN *v.* MUHAMMAD IBRAHIM

[1 Mad., 245

NUND KISHORE SINGH *v.* HUREE PERSHAD MUNDUL . . . . . 13 W. R., 64

248. ——— *Judgment in rem.*—*Decree obtained by fraud.*—*Civil Procedure Code, 1877, s. 13.*—*Evidence Act, s. 44.*—Where a decree in a suit has been honestly obtained without fraud it cannot be subsequently disputed by the parties thereto or their privies, or by persons who were represented by such parties. Strangers to the suit (*i.e.*, persons neither privies to nor represented by the parties thereto) are not bound by such a decree if it be a decree *inter partes*; but if it be a decree *in rem* and passed by a competent Court, they are bound by it and cannot controvert it. Where a decree has been obtained by means of the fraud of one party against the other, it is binding on parties and privies, and on persons represented by the parties, so long as it remains in force, but it may be impeached for fraud, and may be set aside if the fraud is proved. In the case of judgments *in rem* the same rule holds good with regard to persons who are strangers to the suit. Where a decree has been obtained by the fraud and collusion of both the parties to the suit, it is binding upon the parties. It is also binding upon the privies of the parties,—except, probably, where the collusive fraud has been on a provision of the law enacted for the benefit of such privies. But persons represented by, but not claiming through, the parties to the suit may, in any subsequent proceeding,

RES JUDICATA—*continued.*

8. PARTIES—*continued.*

(*a*) SAME PARTIES OR THEIR REPRESENTATIVES —*continued.*

Judgment inter partes—*continued.*

whether as plaintiff or defendant, treat the previous judgment so obtained by fraud and collusion as a mere nullity, provided the fraud and collusion be clearly established. The same rule applies with regard to strangers where the previous judgment is a judgment *in rem.* Section 13 of the Civil Procedure Code (Act X of 1877) is not exhaustive as to the effect of *res judicata.* It does not deal with the case of judgments *in rem*, nor with that of parties represented by, though not claiming under, the parties to a former suit. *Quære,*—As to the proper construction of section 44 of the Evidence Act. AHMEDBHOY HUBIBHOY *v.* VULLEEBHOY CASSUMBHOY

[I. L. R., 6 Bom., 703

249. ——— **Decree against Hindu widow.**—*Fraud.—Reversioner.*—Upon the death of *R.*, a Hindu, who was separate from his brother *S*, his widow *G.* became life-tenant of his estate, and his daughter *B.* became entitled to succeed after *G.'s* death. In 1882 a suit was brought by *S.* and *G.* against *V.* to recover the value of a branch of a mangoe tree wrongfully taken by the defendant, and for maintenance of possession over the grove in which the tree was situate. The suit was dismissed, and it was decided that *R.* was not the owner of the grove, nor was *G.* the owner. In 1885 *B.* brought a suit against *G.*, *S.*, *V.*, and *A*, to whom *V.* had sold some of the trees, claiming a declaration of her right and possession of the grove, upon the allegation that the proceedings of 1882 were carried on in collusion between *S.* and *G.* on the one hand and *V.* on the other, for the purpose of improperly preventing her from asserting her rights. *Held* that if the suit of 1882 was a genuine suit and was properly contested by the then plaintiffs, though *S.* might have been improperly joined as plaintiff, any decision then passed against *G.* would be binding upon the present plaintiff, and estop her again litigating questions which were then decided. *Held*, also, that if the plaintiff's specific allegation of fraud and collusion in the proceedings of 1882 were established, and even if the decree of 1882 did dispose of the question now sought to be reopened, the decision in that suit would not be binding on the plaintiff under the circumstances. *Katama Natchiar's case, 9 Moore's I. A., 539; Adi Deo Narain Singh* v. *Dukharan Singh, I. L. R., 5 All, 532;* and *Sant Kumar* v. *Deo Saran, I. L. R., 8 All., 365,* referred to. SACHIT *v.* BUDHUA KUAR

[I. L. R., 8 All., 429

250. ——— *Reversioners.*—*Effect on successors in estate to widow of decree against her.—Bona fides.*—The rule whereby decrees obtained against a Hindu widow succeeding to her husband's estate as heir are binding by way of *res judicata* against all who in the order of succession come after her, and in that sense may be dealt with as her representatives, is limited to decrees fairly obtained against the widow in a contested and *bonâ fide* litigation, and would not apply to a com-

RES JUDICATA—*continued.*

8. PARTIES—*continued.*

(*a*) SAME PARTIES OR THEIR REPRESENTATIVES —*continued.*

Decree against Hindu widow—*continued.*

promise which could scarcely be regarded as on a higher footing than an alienation which the widow in possession of her husband's divided estate might have made, and which the plaintiff distinctly alleged had not been fairly obtained. *Anund Koer* v. *Court of Wards, I. L. R., 6 Calc., 764; Nand Kumar* v. *Radha Kuari, I. L. R., 1 All., 282;* and *Katama Natchiar's case, 9 Moore's I. A., 539,* referred to. Also that *M.'s* withdrawal of her suit was not a bar to the suit of the plaintiff. SANT KUMAR v. DEO SARAN

[I. L. R., 8 All., 365

251. ——— *Reversioner.*—On her husband's death, a Hindu widow obtained possession of his estate as his heir, and, in a suit against her for possession thereof by certain persons claiming to succeed to the estate as rightful heirs, a decree was obtained by them. *Held* that such decree was a bar to a new suit against those persons by the daughter claiming the estate in succession to the widow, the decree having been fairly and properly obtained against the widow. NAND KUMAR *v.* RADHA KUARI . . I. L. R., 1 All., 282

252. ——— **Decree in suit by Hindu widow.**—*Reversioners, Suit by.—Alienation by life-tenant.—Adverse possession.*—A daughter succeeded to a share of her father's estate, and transferred it in full property by a formal instrument or ikrarnama, dated March 1849, to her granddaughter, expressly naming her and treating her as her heiress, —the transfer being in the nature of a release, reserving maintenance and other advantages to the donor. Upon the application of the granddaughter before the Collector for the mutation of names according to the terms of the ikrarnama, the reversioners (collateral heirs of the father) affected to contest the unauthorised nature of the alienation, but dropped their opposition. In 1857 the diaras, or alluvial lands attached to the estate, were perpetually settled with the granddaughter. The alienor quarrelled with her granddaughter, and in 1857 brought a suit against her to set aside the ikrarnama, upon the ground of the non-performance of a condition subsequent. The plaintiff succeeded in the first Court, but the judgment was reversed (October 1858) on appeal to the Zillah Judge. Pending the appeal the plaintiff died (February 1858), and the reversioners applied to be, and were, admitted as her heirs to conduct the appeal. The granddaughter remained in possession from the date of transfer until 1866, when she died. In April 1867 the present suit was brought by the surviving reversioner, who claimed to be entitled to recover possession of the property by right of inheritance from the alienor's father. He was one of the reversioners who had been admitted to conduct the appeal in the former suit upon the death of the alienor. *Held* (on special appeal and review), there had been no adverse possession; the instrument enured as a transfer of the donor's life-interest only; the judgment in the former suit

RES JUDICATA—*continued.*

8. PARTIES—*continued.*

(*a*) SAME PARTIES OR THEIR REPRESENTATIVES —*continued.*

Decree in suit by Hindu widow—*continued.*

brought to set it aside did not bind or affect the reversioners, who in that suit merely represented the interest of their predecessors, the life-tenant. RAJ KUNWAR *v.* INDURJIT KUNWAR **[5 B. L. R., 585 : 13 W. R., 52**

253. ——— *Suit against remote reversioner.— Subsequent suit for possession by reversioner.* — A Hindu widow and her son, the then presumptive heir to property claimed by the widow, obtained a decree against a more remote reversionary heir. The son predeceased his mother, and the person against whom the decree had been obtained became the next reversionary heir. *Held*, in a suit for possession by him, that the decree in the previous suit did not operate as a *res judicata.* RAM CHUNDER PODDAR *v.* HARI DAS SEN **[I. L. R., 9 Calc., 463**

254. ——— **Decree against member of joint family.**—*Civil Procedure Code, 1859, s. 2.—Former suit by one of several parties who afterwards sue through a receiver.*—A previous decision against one member of a family suing to recover his own share of certain property is no bar, under section 2, Act VIII of 1859, to a suit by the receiver in the name of the whole family to recover the whole property. JUGGUNNATH PERSHAD DUTT *v.* HOGG **[12 W. R., 117**

255. ——— **Decree in suit by manager of joint family.**—*Manager of joint family as representative of other members.— Subsequent suit by another member on same cause of action.*—A Hindu family is regarded as a corporation whose interests are necessarily centred in the manager, the presumption being that the manager is acting for the family, unless the contrary is shown. Before the introduction of the Civil Procedure Code this was so equally with regard to litigation as to other transactions, and it was not then obligatory, or even customary, for a Hindu manager to set forth that he sued in a representative character (as now required by the Code, section 50), or to add the co-owners as parties to the suit (as required by English law). A suit, therefore, brought in 1856 by the manager of a joint Hindu family consisting of himself and the plaintiff, and no fraud or collusion being alleged, bound the plaintiff, though then a minor, and he could not afterwards bring a second suit on the same cause of action. GAN SAVANT BAL SAVANT *v.* NARAYAN DHOND SAVANT . . **I. L. R., 7 Bom., 467**

256. ——— **Decree against manager of joint family.**—*Civil Procedure Code, 1877, s. 13.—Karnavan of Malabar tarwad, Decree against.*—A decree against a karnavan of a Malabar tarwad, as such, is binding upon the members of that tarwad, though not parties to the suit, in the absence of fraud or collusion. Explanation 5 of section 13,

RES JUDICATA—*continued.*

8. PARTIES—*continued.*

(*a*) SAME PARTIES OR THEIR REPRESENTATIVES —*continued.*

Decree against manager of joint family —*continued.*

Civil Procedure Code, is not limited to the case of a suit under section 30. The members of a tarwad claim under a karnavan, suing as such, within the meaning of explanation 5 of section 13. VARANAKOT NARAYANAN NAMBURI *v.* VARANAKOT NARAYANAN NAMBURI . **I. L. R., 2 Mad., 328**

257. ——— *Karnavan of Malabar tarwad, Decree against.*—A decree against a person who happens to be the karnavan of a Malabar tarwad is not necessarily binding on the tarwad in the absence of fraud. ELAYACHANIDATHIL KOMBI ACHEN *v.* KENATUMKORA LAKSHMI AMMA **[I. L. R., 5 Mad., 201**

258. ——— *Decree against karnavan of Malabar tarwad.—Necessary parties to suits against property of Malabar families.—Malabar law.—Nambudri family, Status of.—Civil Procedure Code, 1877, s. 13, expl 5, s. 30.*—The plaintiff, a member of a Malabar Nambudri family, sued for certain land, claiming it as the property of his family, the Vadasheri illam. He had been dispossessed by the defendants under a decree declaring their title to the land against the plaintiff's elder brother, who claimed it on behalf of the Vadasheri illam. *Held* that the plaintiff was not estopped by the former decree from recovering the land. *Per* INNES, *J.*—The question whether a decree obtained against the karnavan of a Nayar tarwad or of a Nambudri illam in Malabar is binding on the family is purely one of procedure. The *dictum* in *Varanakot Narayanan Namburi* v. *Varanakot Narayanan Namburi, I. L. R., 2 Mad., 328,* that in the absence of fraud or collusion a decree against the karnavan, as such, is binding on the anandravans of the tarwad, is not warranted by any provision of the Code of Civil Procedure. Every member of the tarwad is entitled to be made a party, or to have notice under section 30 of the Code of Civil Procedure, in any suit the object of which is to affect the tarwad property. Explanation 5 of section 13 of the Code of Civil Procedure does not refer to *bonâ fide* defences, but to *bonâ fide* claims, and does not make a decree binding on a person not a party to it where the actual defendant was jointly interested with such person in the subject-matter of the suit and defended the suit *bonâ fide. Hazir Gazi* v. *Sonamonee Dassee, I. L. R., 6 Calc., 31,* approved. KUNNATHURILLATH VASUDEVAN NAMBUDRI *v.* NARAYANAN NAMBUDRI . **I. L. R., 6 Mad., 121**

259. ——— *Effect of decree on other members though not parties to the suit.*—In 1870 *A.* sued *B.* for a piece of land, and obtained a decree against him in the original suit and appeal. Subsequently, in 1875, *C.* and *D.*, the nephews of *B.*, brought a suit against *A.* and *B.* for their shares in the land, alleging that there was collusion between *A.* and *B.* in the previous suit. It was found that

RES JUDICATA—*continued.*

8. PARTIES—*continued.*

(*a*) SAME PARTIES OR THEIR REPRESENTATIVES —*continued.*

Decree against manager of joint family —*continued.*

C. and *D.* and their uncle *B.* had lived together as members of an undivided Hindu family at the time of the former suit, and that he (*B*) was the manager of the family and assisted by his nephews, *C.* and *D.*, in defending the former suit. *C.* and *D.* made no allegation in their plaint that they were minors at the time of the former suit, nor did they assign any reason for not asking to have been made co-defendants in it. Their allegation of collusion between *A.* and *B.* was not proved. *Held* that the plaintiff's suit, under those circumstances, was barred by the former suit under section 2 of Act VIII of 1859. *Jogendro Deb Furkut* v. *Funindro Deb Furkut, 11 B. L. R., 244;* and *Mayaram Sevaram* v. *Jayvant Pandurang, I. L. R. 5 Bom., 687, note,* referred to. NARAYAN GOP HABBU *v.* PANDURANG GANU

[I. L. R., 5 Bom., 685

260. ——— *Sale in execution of decree.—Mitakshara law.—Alienation, voluntary and involuntary, by the members of a family governed by the Mitakshara law.—A.*, a Hindu governed by the Mitakshara law, after the attachment of a property, part of his ancestral estate, to which he and his minor son *B.* were jointly entitled as members of a joint Hindu family, conveyed by a deed of gift the whole of his interest in the ancestral property, including the property under attachment, to *B* Five days after the execution of the deed of gift, the property was sold in execution for the decree of the attaching creditor *C.*, and was purchased by *C.* at such sale. Ten days after the sale, *A.* instituted proceedings under section 256 of Act VIII of 1859 to set it aside on the ground of irregularity. These proceedings were afterwards continued in the name of *A.*, but virtually on behalf of the minor *B.*, under the control and direction of the Collector, who had taken charge of his estate, and appointed a manager under Act XL of 1858. These proceedings terminated in 1874 by the application to set aside the sale being dismissed, and the sale was therefore confirmed, and *C.* took possession of the property. In 1877 a suit was instituted on behalf of *B.* by the manager appointed by the Collector against *C.* and *A.* to recover possession of the property, on the grounds —(1) that when it was sold it was not the property of *A*, the judgment-debtor; and (2) that the property of a joint Hindu family could not be sold or alienated by, or taken in execution of, a decree against a single member of that family. *Held* that the fact that the plaintiff, through his guardian, had actively intervened in the proceedings under section 256 of Act VIII of 1859, was no bar to the institution of the present suit on his behalf. COLLECTOR OF MONGHYR *v.* HURDAI NARAIN SHAHAI

[I. L. R., 5 Calc., 425

S. C RUDER PERKASH MISSER v. HURDAI NARAIN SAHU . . . . . 5 C. L. R., 112

RES JUDICATA—*continued.*

8 PARTIES—*continued.*

(*a*) SAME PARTIES OR THEIR REPRESENTATIVES —*continued.*

261. ——— **Decree against member of joint family as representing minor son.**—*Alienation made without consent of co-sharers.—Civil Procedure Code, 1877, s. 13.—"Same parties."* —*G.* sold an estate nominally to the minor son of *K.* but in reality to *K.* *K.* brought a suit in his minor son's name against *N.*, the mortgagee of such estate, to redeem the same. *N.* set up as a defence to such suit that such sale was invalid under Hindu law, as such estate was a share of certain undivided property of which he was a co-sharer, and had been made without his consent. It was finally decided in that suit that such estate was a share of such undivided property and not the separate property of *G.*, and that such sale was invalid, having been made without the consent of *N.*, a co-sharer of such undivided property. *G.* subsequently redeemed such estate, and having done so, sold it a second time to *K.* *N.* thereupon sued *K.* to set aside such sale on the same ground as that on which he had defended the former suit. *Held* that the issue in such suit whether such estate was a share of undivided property or the separate property of *G.* was *res judicata*, inasmuch as *K.*, though not in name, yet in fact, was a "party" to the former suit in which such issue was raised and finally decided. KHUB CHAND *v.* NARAIN SINGH

[I. L. R., 3 All., 812

262. ——— **Dismissal of former suit to have property declared joint.**—*Subsequent suit for partition.*—Where a plaintiff's claim to have a property declared ijmalee had been dismissed in a former suit, his suit for a partition of the same property was held to be barred against a defendant who had been a party to that suit, as well as against defendants who were not in possession. BESHARUTOOLLAH *v.* AJOO . . . . . 14 W. R., 195

263. ——— **Suit against defendants as principals.**—*Civil Procedure Code, 1859, s. 2. —Subsequent suit against them as agents.*—A previous suit in which the plaintiff elected to sue the defendants as principals, bars a second suit on the same contract in which the defendants are charged as responsible agents under a trade usuage. DEVRAV KRISHNA *v.* HALAMBHAI

[I. L. R., 1 Bom., 87

264. ——— **Suit not between same parties.**—*Held*, on the facts, suit not barred by section 2, Act VIII of 1859, not being between the same parties. UMES CHANDRA ROY *v.* NABIN CHANDRA MAZUMDAR . . . 5 B. L. R., 327, note

S. C. WOOMESH CHUNDER ROY *v.* NOBIN CHUNDER MOZOOMDAR . . 10 W. R., 457

ABDOOL GUFFOOR KHAN CHOWDHRY *v.* GOLAM NUJUF . . . . . 16 W. R., 298

265. ——— *Decision as to validity of will.*—*S.* died in 1865, leaving two sons, *N.* and *G.* *M.* took possession of the property of *S.* under a will alleged by her to have been executed by

RES JUDICATA—*continued.*

8. PARTIES—*continued.*

(*a*) SAME PARTIES OR THEIR REPRESENTATIVES —*continued.*

Suit not between same parties—*continued.*

S. In 1867 *G.* brought his suit, as one of the heirs of *S.*, to set aside the will, and made his brother *N.* a co-defendant. The Principal Sudder Ameen dismissed the suit, finding on the evidence that the will was genuine. In 1869 *N.* brought this suit for his share as heir of *S.* against *M.* The first Court found that the will was a forgery, and gave the plaintiff a decree. On appeal, the Judge held that *N.'s* claim was barred by the decision in the former suit brought by his brother, and reversed the decision of the first Court. *Held*, on special appeal, that it was not barred by the finding of the Court in *G.'s* suit, as *N.* was no party to that suit, and he could not in any manner have availed himself of a decree in that suit to enforce a claim to his share. NABIN CHANDRA MAZUMDAR *v.* MUKTA SUNDARI DEBI

[7 B. L. R., Ap., 38 : 15 W. R., 309

266. ———— *Former suits on ikrar between several parties.*—Five brothers, *A.*, *B.*, *C.*, *D.*, and *E.*, executed an ikrar, by which talook N. and others were to remain in their possession, and under the management of *A.* On refusal to give his brothers their shares of the profits, they sued separately and obtained decrees against him for the amount due to them. In a suit by *A.'s* son against *B.* for the sums which his father was compelled under the ikrar to pay his other brothers, on the allegation that *B.* alone was in possession of talook N. and appropriated the rents wrongfully,—*Held* that the suit was not barred by the former suits under the ikrar, except so far as *B.'s* share in talook *N.* was concerned. KHETTRO NATH DEY *v.* GOSSAIN DOSS DEY . . . **7 W. R., 188**

267. ———— Decree declaring impartibility.—*Subsequent suit for partition.*—The plaintiffs, mirasidars of a village, held on pungavaly tenure, sued their co-mirasidars, the owners of the remaining shares, and others, occupants of land in the village, for a partition of the common lands of the village and an allotment to the plaintiffs of specific parts thereof proportionate to the shares which they represented. In a former suit, to which all the present mirasidars were parties, either actually or as privies to those through whom they claim, it was decided that no right existed in any individual shareholder of the village to have allowed to him a distinct portion of the common lands in proportion to his share or shares. *Held* that the former decree declaring the impartibility of the common land of the village was conclusive in the present suit between the present shareholders upon the same question of right. SITARAMAIYAR *v.* ALAGIRY IYER . . **4 Mad., 285**

268. ———— Decree in suit to establish right.—*Subsequent suit for possession.*—*Civil Procedure Code, 1859, s. 2.*—*Suit between same parties.*—The plaintiff sued to recover possession of certain houses and grounds as belonging to his zemindari, setting forth that the premises in question had been

RES JUDICATA—*continued.*

8. PARTIES—*continued.*

(*a*) SAME PARTIES OR THEIR REPRESENTATIVES —*continued.*

Decree in suit to establish right—*continued.*

occupied by his paternal grandmother, on whose death the defendants had taken wrongful possession. The defendants claimed to be legally entitled to the premises in question, and contended that the plaintiff's suit was barred under section 2, Act VIII of 1859, by reason that the plaintiff had already, during his grandmother's lifetime, brought a suit against her and the defendant's father, as a co-defendant, to establish his right to the same premises, which suit had been dismissed. The defendants also pleaded limitation. It appeared that in the former suit the relief sought by the plaintiff was substantially to restrain his grandmother from acts of waste in alienating property which had belonged to her deceased husband by assigning it to her co-defendant; but that, as regards the property now claimed, although it was mentioned in the plaint, no charge had been made that she had assigned it, or intended to assign it, to her co-defendant, nor any allegation to show that the co-defendant had any interest in it. *Held*, reversing the decisions of the lower Courts, that, under the circumstances, the decision in the former suit was not a decision in a suit between the same parties, or parties under whom they claimed, and that the cause of action in the present suit was not determined in the former suit. *Held*, also, that the defendant's plea of limitation could not be determined without a finding as to whether the plaintiff's grandmother, who died within the period of limitation, had held the premises with the plaintiff's leave, or as a trespasser. ZAMINDAR OF PITTAPURAM *v.* PROPRIETORS OF KOLANKA

[I. L. R., 2 Mad., 23
L. R., 5 I. A., 200

S. C. RAMA RAO *v.* SURIYA RAO . **3 C. L. R., 265**

Reversing the decision of the High Court in RAMA RAO *v.* SURIYA RAO . . **I. L. R., 1 Mad., 84**

269. ———— Decree in suit by first mortgagee for sale of mortgaged property.—*Second mortgagee not made a party.*—*Subsequent suit by second mortgagee on mortgage.*—*Civil Procedure Code, 1882, s. 13.*—*Meaning of "between parties under whom they or any of them claim."*—Upon the death of *G.*, a Mahomedan, his estate was divisible into eight shares, two of which devolved upon his son, *A.*, one upon each of his five daughters, and one upon his widow, *B.* The name of *B.* only was recorded in the revenue registers in respect of the zemindari property left by *G.* In 1876 *A.* and *B.* gave to *X.* a deed of simple mortgage of 2½ biswas out of a 5-biswas share of a village included in the said property. In 1878 *A.* and *B.* gave to *S.* a deed of simple mortgage of the 5 biswas, which were described in the deed as the widow's "own" property. In 1882 *X.* obtained a decree upon his mortgage for the sale of the mortgaged property, and it was put up for sale and purchased by *X.* himself in January 1884. In

RES JUDICATA—*continued.*

8. PARTIES—*continued.*

(*a*) SAME PARTIES OR THEIR REPRESENTATIVES —*continued.*

Decree in suit by first mortgagee for sale of mortgaged property—*continued.*

February and November 1884 the daughters of *G.* obtained *ex parte* decrees against *A.* and *B.* in suits brought by them to recover their shares by inheritance in the 5 biswas. In 1885 *S.* brought a suit upon his mortgage of 1878, claiming the amount due thereon and the sale of the whole 5 biswas. To this suit he made defendants *A.* and *B.*, *G.'s* daughters, and *X.*, alleging that the decrees of February and November 1884 were fraudulently and collusively obtained; and as to the auction sale of January 1884, that the 2½ biswas were sold subject to his mortgage, he not having been made a party to the suit brought by *X.* upon the deed of 1876, and therefore not being bound by any of the proceedings taken therein or consequent thereto. On behalf of the daughters it was contended (*inter alia*) that the decrees obtained by them against *A.* and *B.* in February 1884 were conclusive, by way of *res judicata*, against the plaintiff, who, as mortgagee from *A.* and *B.*, claimed under a title derived from them. *Held* that, there being no evidence to show that the decrees of February and November 1884 were fraudulently and collusively obtained, the Court of first instance was right in exempting the shares of the daughters from the lien sought to be enforced by the plaintiff; and that, inasmuch as the deed of 1876 was prior in date to the plaintiff's deed of 1878, and there was no allegation of fraud or collusion in regard to it, the decree and sale in enforcement of the former deed would defeat the rights of the plaintiff under the latter. *Khub Chand* v. *Kalian Das, I. L. R., 1 All., 240*; and *Ali Hasan* v. *Dhirja, I. L. R., 4 All., 518*, referred to. *Per* MAHMOOD, *J.*—The decrees of February and November 1884 did not operate as *res judicata* against the plaintiff, inasmuch as a mortgagee cannot be bound by a decision relating to the mortgaged property in a suit instituted after his mortgage, and to which he was not a party. After a mortgage has been duly created, the mortgagor, in whom the equity of redemption is vested, no longer possesses any such estate as would entitle him to represent the rights and interests of the mortgagee in a subsequent litigation, so as to render the result of such litigation binding upon and conclusive against such mortgagee. The plaintiff in the present suit could not be treated as a party *claiming under* his mortgagors, within the meaning of section 13 of the Civil Procedure Code, and that section must be interpreted as if, after the words "under whom they or any of them claim," the words "by a title arising subsequently to the commencement of the former suit" had been inserted. *Duma Sahu* v. *Jeonarain Lall, 3 B. L. R., A. C., 407: 12 W. R., 362*; and *Bonomalee Nag* v. *Koylash Chunder Dey, I. L. R., 4 Calc., 692*, referred to. *Outram* v. *Morewood, 3 East., 346*; *Boykuntnath Chatterjee* v. *Ameeroonissa Khatoon, 2 W. R., 191*; *Katama Natchiar* v. *Moottoo Vijaya Raganadha, 9 Moore's I. A., 539*; and *Ram Coomar Sein* v. *Prosunno Coomar Sein, W. R., 1864, 375*, distinguished. The principles of the rule *res judicata*, as part of the law of civil procedure properly so called, and those of the rule of estoppel, as part of the law of evidence, explained and distinguished. SITA RAM v. AMIR BEGAM

[I. L. R., 8 All., 324

270. ——— Illegitimacy, Question of.—*Execution of decree.—Act XXIII of 1861, s. 11.*—The questions which, under section 11, Act XXIII of 1861, may be determined by a Court executing a decree, must be between parties to the suit in which the decree was passed, and must relate to the execution of the decree. A person who was not on the record when the decree was made does not constitute himself a party to the suit by applying for execution, and a question as to his legitimacy is, consequently, not one which the Court executing the decree is competent to entertain. A declaration by a Court in execution proceedings, that a person not a party to the suit applying for execution is legitimate, since it is made without jurisdiction, cannot, under section 2, Act VIII of 1859, be pleaded as a bar to a regular suit in which it is sought to establish the illegitimacy of the applicant. ABIDUNNISSA KHATUN v. AMIRUNNISSA KHATUN . . I. L. R., 2 Calc., 327

[L. R., 4 I. A., 66

271. ——— *Suits in right of inheritance.*—*M.*, in 1866, brought a suit against *A.*, her son *S.*, *B.*, and *C.*, who, like her, all claimed a right to inherit the estate of *K.*, deceased, for her share by inheritance in *K.'s* estate, alleging that she had been lawfully married to him. She only denied *A.'s* right to inherit, who claimed as *K.'s* adopted son; admitting the right of *S.*, who claimed as her lawful son by *K.*, and that of *B.* and *C.*, who claimed as wife and daughter respectively of *K. S.* supported his mother's claim. *A.*, *B.*, and *C.* denied that *M.* had been lawfully married to *K.*, and alleged that *S.* was the son of *M.*, not by *K.*, but by another person. It was decided in that suit that *M.* had been lawfully married to *K.*; that *S.* was the lawful son of *K.* by *M.*; and that *A.* was not the adopted son of *K.* In 1880 *S.* sued *A.* for possession of *C's* share in such estate, *C.* having died, claiming as *C.'s* step-brother and heir. *A.* set up as a defence that *M.* was not *K.'s* wife, nor was *S. K.'s* son. *Held* that, inasmuch as, although in the former suit *A.* and *S.* stood together in the same array, they were in fact opposed to each other, *S.* being on the side and supporting the case of his mother, and *A.* being the true defendant, such suit was one between the same parties as the second, and the matter of *S.'s* legitimacy having been raised and finally decided in the former suit by a competent Court, was *res judicata* and could not be again raised in the second suit. SHADAL KHAN *v.* AMIN-ULLA KHAN

[I. L. R., 4 All., 92

RES JUDICATA—*continued.*

8. PARTIES—*continued.*

(*a*) SAME PARTIES OR THEIR REPRESENTATIVES —*continued.*

272. ——— Party as representative. —*Civil Procedure Code, 1877, ss. 13, 244.*—In 1872 *A.* brought a suit on a mortgage against the mortgagor, a Hindu widow, who died pending the suit. *A.* then applied that the suit should be revived against *B.* as the representative of the defendant. *B.* denied that he was such representative, but the Judge refused to go into the question, made *B.* a party, and gave *A.* a decree for the sale of the mortgaged property. *B.* subsequently brought a suit to have it declared, *inter alia*, that the mortgage and decree only covered the widow's life-interest. *Held* that the suit was not barred either as *res judicata* or under the provisions of section 244 of the Code of Civil Procedure. KANAI LALL KHAN *v.* SASHI BHUSON BISWAS

[I. L. R., 6 Calc., 777; 8 C. L. R., 117

273. ——— *Mortgage.*— *Purchaser of mortgagor's interest.—Sale in execution of decree.—Omission to revive suit.*—A mortgagee brought a suit on his mortgage against his mortgagor and against *A.*, a person who had purchased the right, title, and interest of the mortgagor in execution of a money-decree obtained against him subsequently to the mortgage. Pending the mortgage-suit, and before decree, *A.* died, but the suit was not revived against his representatives. The usual mortgage-decree was passed in favour of the mortgagee, who, in execution thereof, sold a portion of the mortgaged property to *B.* In a suit brought by *B.* against the representatives of *A.* for the property purchased and for general relief,—*Held* that the decree in the mortgage-suit was not binding on the representatives of *A.*; nor, under the provisions of Act VIII of 1859, did the failure to revive such mortgage-suit prevent *B.* from bringing the second suit against *A.'s* representatives. BEPINBEHARI BUNDOPADHYA *v.* BROJONATH MOOKHOPADYA

[I. L. R., 8 Calc., 357

274. ——— *Suit for ejectment.—Lessor and lessee.*—An ejectment suit by *B.'s* tenant against the defendant having been dismissed, a second ejectment suit was subsequently, after *B.'s* death, brought in respect of the same land against the defendant by the successor in title of *B.* *Held* that, inasmuch as a lessor cannot be considered as claiming under his own lessee, the principle of *res judicata* did not apply. RAMBROMO CHUCKERBUTTY *v.* BUNSI KURMOKAR

[11 C. L. R., 122

275. ——— Former decree declaring status of occupiers of holding.—*Suit not between same parties.*—An attempt having formerly, on the cessation of the services rendered by some palki-bearers, been made to oust them from certain chakran lands which they had held for many years, andwhich they had claimed to hold rent-free for the future; and it having been held on that occasion that though theirs was not a rent-free tenure or an

RES JUDICATA—*continued.*

8. PARTIES—*continued.*

(*a*) SAME PARTIES OR THEIR REPRESENTATIVES —*continued.*

Former decree declaring status of occupiers of holding—*continued.*

uninterrupted tenure from the time of the decennial settlement, yet they had clearly acquired a right of occupancy,—*Held*, on a suit being brought by the zemindar against the same bearers for recovery of rent, that, although the former suit had not been brought by the zemindar personally, but by the persons to whom he had attempted to transfer the lands, yet the decision in that suit clearly established, as between the zemindar and the palki-bearers, a relation of landlord and tenant, which empowered him to recover arrears of rent from them. SUROOP SIRDAR *v.* BEER CHUNDER MANIKHYA

[25 W. R., 370

276. ——— Suits between representatives.—*Document found conclusive.*—Where *A.* sued *B.* for moneys alleged to be due under certain documents, and *B.* pleaded that the demands had been included in a settlement of accounts, embodied in a document which he set forth in his answer, and the suit was dismissed, on the ground that being included in the settlement the demands no longer existed as causes of action,—*Held* that *A.'s* representative was not estopped from disputing the document in a subsequent action brought by him against the representative of *B.* *Eastmore* v. *Laws, 5 Bing. N., C. 444*, concurred in. TIRUMALA RAU SAHIB *v.* PINGALA SUNKARA RAU . . 1 Mad., 312

277. ——— Purchaser from party to suit.—*Civil Procedure Code, 1882, s. 13.—Vendor and purchaser.—Purchase pendente lite.*—Certain persons, claiming by right of inheritance to *C.*, sued *B.*, *N*, *A.*, *K.*, and others for possession of certain immoveable property, and, on appeal to the High Court in August 1876, their claim was decreed in full. In the course of the litigation which ended in that decree, *Z.* purchased certain immoveable property from *B.*, *N.*, *A.*, and *K.* *Z.* was subsequently dispossessed of such property in execution of the decree of August 1876. He thereupon sued the holders of that decree for possession of the same, alleging that his vendors had inherited it from *D.*; that the figures of the total of *C.'s* property given in the plaint in the former suit were erroneous; that the property now in suit was not affected by that decree, and that he had been improperly dispossessed of it. It appeared that there was in fact a mistake in the total of the extent of *C.'s* property as stated in the plaint in the former suit. *Held* that the plaintiff having purchased *pendente lite* was bound by the decree of the High Court against the persons through whom he claimed; that the claim in the former suit having been decreed in full, the property now in suit was then decreed to the present defendants; and that the claim of the plaintiff to go behind that decree could not be entertained. HUKM SINGH *v.* ZAUKI LAL . . I. L. R., 6 All., 506

278. ——— Suit by son not claiming through his father.—*Gift to Hindu widow.*—

RES JUDICATA—*continued.*

8. PARTIES—*continued.*

(*a*) SAME PARTIES OR THEIR REPRESENTATIVES —*continued.*

Suit by son not claiming through his father—*continued.*

Separate property.—*C.*, a Hindu subject to the Mitakshara law, died leaving a widow, *R.*, but no issue. In his lifetime he had transferred to *R.* by gift mouzah R., a portion of his real estate. After his death, *J.* and *P.*, his brothers, sued *R.* for the possession of *C.'s* real estate, on the ground that it was ancestral property. This suit was dismissed, it being held by the Sudder Court that *C.'s* real estate was separate property, to which his widow would be entitled to succeed by inheritance. The Sudder Court determined that *R.* had acquired mouzah R. by gift from *C.*, and that *R.* took under the gift a life-interest in the property only. *J.* and *P.* having died, *R.* made a gift of mouzah R. to her agent as a reward for his faithful services. *N.*, the son of *J.*, sued as the heir of his uncle *C.*, to set aside this gift to the agent as illegal. *Held* that the decision in the former suit did not make the question as to the interest *R.* took under the gift from her husband *res judicata*, inasmuch as *N.* did not claim through his father when suing as heir to his uncle. RUDI NARAIN SINGH *v.* RUP KUAR

[I. L. R., 1 All., 734

279. ——— Representation of the estate of a Hindu talookdar by his widow in a suit for the succession.—*Act I of 1869.—Act XXIV of 1870, s. 25.*—Issues substantially the same as those raised in the present suit, relating to the succession to a talookdari estate, had been decided in a former suit, in which an order of Her Majesty in Council declared who had the right to succeed. *Held* that a claimant, whose interest was such as would vest in him only upon the death of the widow of the last talookdar, was bound by the order so made, on the ground that he was privy to the former suit, the whole estate, for the purpose of representing it, being vested in the widow, who was a party to that suit. *Katama Natchiar* v. *The Raja of Shivagunga, 9 Moore's I. A., 539*, referred to and followed. That order declared that a will made by the last talookdar, whereby a power to appoint a successor in the talookdari had been given to the widow, *had been revoked*, and determined the right to succeed as upon an intestacy. The person whom the widow had appointed by her will, now contending that he was not bound by the order, having been, when the former suit was instituted, a minor, without any duly appointed guardian, it was held that, whether he had, or had not, by acts after attaining full age (having been nominally a party), become estopped from setting up the above, he was, at all events, bound by the order; on the ground that the widow, holding an estate at least as large as that of the Hindu widow in her husband's property, was the full representative of the estate in the former suit; the appointment made by her being such as would operate only on her death. *Held* also that, although a manager of the estate had been appointed under the provisions of Act XXIV of 1870 (the Oudh Talookdars' Relief Act), but had not been made a party to the suit, this omission did not, under section 25, affect the *validity* of the decree between the parties. PERTABNARAIN SINGH *v.* TRILOKINATH SINGH

[I. L. R., 11 Calc., 186: L. R., 11 I. A., 197

280. ——— Benami proceedings.—*Decision in former suit.*—In execution of a decree of the Revenue Court in a suit brought by *K.* for arrears of rent of a certain putni, the putni was put up for sale and purchased in the name of *G.* The rent having again fallen into arrear, *K.* took proceedings against *G.* under Bengal Regulation VIII of 1819 for the sale of the putni, but the arrears having been paid the putni was not sold. In a suit for arrears of rent of the same putni subsequently brought by *K.* against *G.*, *P.*, and *B.* (the wife of *P.*) jointly, on the allegation that the putni had been purchased by *G.* benami for *P.* and *B.*,—*Held* that the suit was not barred by the former proceedings instituted by *K.* against *G.* under Regulation VIII of 1819. PROSONNO COOMAR PAL CHOWDRY *v.* KOYLASH CHUNDER PAL CHOWDHRY . B. L. R., Sup. Vol., 759: 2 Ind. Jur., N. S. 327: 8 W. R., 428

281. ——— *Suit for confirmation of possession and declaration of title.*—*A.* brought a suit for a debt against *B.*, obtained a decree, and attached certain land in execution. *C.* intervened, claiming the property as his; but, on the 28th March 1868 his claim was disallowed, on the ground that in two suits previously brought against *C.* and others for possession of the same property, on the 30th December 1863, by *X.* and *Y.*, whose interest had, pending the suit, been purchased by *B.*, it had been decreed that the land belonged to *B.* The decrees in these suits were dated 13th and 19th January 1864; they were in favour of *B.*, and ran in his name alone. *C.* had purchased a moiety of the property at an auction sale on the 7th March 1859; *X.* and *Y.* claimed under a pre-existing mortgage over the same property, the equity of redemption under which had been foreclosed. *C.* now brought a suit against *A.* and *B.* for confirmation of his possession and a declaration of his title to the property. He alleged that *B.* was his servant, and had purchased the interest of *X.* and *Y.* in the property benami for him; that he (*C.*) had made the purchase with his own money in the name of *B.*; that the suits originally brought by *X.* and *Y.* had really been compromised; that while the decrees of the 13th and 19th January 1864 were nominally in favour of *B.*, they were really in his (*C.'s*) favour; and that the suit brought by *X.* and *Y.* had been allowed to proceed in *B.'s* name, in order that *C.'s* title might be strengthened by a decree in his favour, *B.* being only nominally the decree-holder. *C.* also stated that, since

RES JUDICATA—*continued.*

8. PARTIES—*continued.*

(*a*) SAME PARTIES OR THEIR REPRESENTATIVES —*continued.*

Benami proceedings—*continued.*

his purchase on 7th March 1859, he had always been in possession, and he dated his cause of action from the 28th March 1868, when his claim to the property which had been attached by *A.* in his suit against *B.* was disallowed. The Subordinate Judge gave a decree in favour of the plaintiff *C. B.* alone appealed to the High Court. *Held* that *C.*, not having been disturbed in his possession, and seeking a declaration of his title only and no relief, should have stated clearly and precisely what that title was; that as against *A.*, who had not appealed, the decision of the Subordinate Judge was final; that as between *B.* and *C.* the matter was *res adjudicata;* that *C.* could not go behind the decrees of the 13th and 19th January 1864 which had been passed in favour of *B.*, and show that the purchase by *B.* and subsequent decrees were really benami for *C.*, and in his favour. BHAWABAL SINGH v. RAJENDRA PRATAP SAHOY

[5 B. L. R., 321 : 13 W. R., 157

282. ——— **Suit for share of estate of Mahomedan.**—*Lien for dower.*—A Mahomedan died, leaving among others a widow and a sister entitled to shares in his estate. The widow got possession of the whole. The sister died, and after her death her husband, on behalf of himself and grandson, sued the widow to obtain the shares to which the deceased sister was entitled, and obtained a decree for payment of the same, after satisfaction of the widow's lien for dower, in certain proportions to himself and grandson. The husband's interest in the decree was subsequently confiscated by Government for having taken part with the enemy in the Mutiny. He subsequently died leaving his grandson. The widow died during the Mutiny, and her brother was put into possession of the property by the Government as her heir. The grandson now sued the widow's brother to recover his own and his grandfather's share, alleging that the lien for dower had been satisfied. *Held*, the suit was not barred by Act VIII of 1859, section 2. MAHOMED AMEENOODEN KHAN v. MOZUFFER HOSSEIN KHAN

[5 B. L. R., 570 : 14 W. R., P. C., 5

(*b*) INTERVENORS.

283. ——— **Intervenor added in former suit.**—*Suit against other parties.*—A suit to recover possession of land, on the ground of purchase from the admitted owners, is not barred by Act VIII of 1859, section 2, simply because plaintiff's claim as against the same defendant was dismissed in a former suit in which he (defendant) appeared as an intervenor. TUKHEA v. DEO NARAIN SINGH

[24 W. R., 248

284. ——— *Reservation of intervenor's rights.—Civil Procedure Code, 1859, s. 2.*—In a former suit against a party and his vendor, in which an intervenor was made a defendant,

RES JUDICATA—*continued.*

8. PARTIES—*continued.*

(*b*) INTERVENORS—*continued.*

Intervenor added in former suit—*continued.*

plaintiffs obtained a decree with a reservation of intervenor's rights. The decree was not a *res adjudicata* in a subsequent suit by a purchaser from the intervenor against the said vendee, the reservation being a mere *obiter dictum.* BUSKH ALI v. NITTYANUND DOSS . . . . . 5 W. R., 227

285. ——— *Suit for rent.—Enjoyment of and receipt of rent, Proof of.*—Plaintiff sued for rent of land alleged to be a 3 annas 15 gundahs share held by him on a defined right. Defendant admitted the claim. An intervenor appeared, alleging that the land was situate in the 7 annas share of the talook, and that he had purchased 3 annas 15 gundahs of this share, for which a decree had been given to him, and that he held it as a joint coparcener. *Held* that as the decree did not state patently the subject-matter to be that of this suit, the principle laid down in the case of *Syud Ahmed Reza, 5th August 1863,* did not apply; and that as it did not clearly adjudicate against the plaintiff's right, the principle laid down in the case of *Tarinee* v. *Bamundoss Moakhef, 1 W. R., 331,* had no bearing. Accordingly the intervenor was bound to show actual and *bonâ fide* receipt of rent as required by section 77, Act X of 1859. GUGUN CHUNDER CHUCKERBUTTY v. AJMUL ALI . . . . . 11 W. R., 91

286. ——— *Civil Procedure Code, 1859, s. 2.—Suit for rent.—A.* sued *B.* and *C.* in the Civil Court to recover possession of certain lands, of which he alleged that they had dispossessed him, under a decree obtained by them in a suit in which he had previously sued *B.* in the Civil Court, before Act X of 1859 had been passed, for rent, in which suit *C.* had been added as a party, and had proved his title to the lands against *A. Held* that *A.'s* suit must fail, on the ground that it involved a material issue of fact which had already been determined by a Court of concurrent jurisdiction in the former suit, which was between the same parties, and which issue disposed of the present suit. CHOWDRABI NILKANTH PRASAD SINGH v. DIGNARAYAN SINGH

[1 B. L. R., A. C., 30 : 10 W. R., 75

287. ——— *Judgment in suit for rent.*—In a suit by plaintiff for arrears of rent against one set of tenants defendant intervened, claiming a moiety of the whole estate. His claim was dismissed in the lower Courts, and the case came up on special appeal. Meanwhile plaintiff brought suits against another set of tenants on the same estate, in which defendant again intervened on the same ground as before. *Held* that the decision in the former set of cases, unless and until set aside in special appeal, was binding on the intervenor, even though the estate was of such value that the Court which passed the decrees in the rent suits would not have jurisdiction to try the title which was in dispute. PRAN NATH SANDYAL v. RAM COOMAR SANDYAL . . . . . 2 C. L. R., 33

RES JUDICATA—*continued.*

8. PARTIES—*continued.*

(*b*) INTERVENORS—*continued.*

Intervenor added in former suit—*continued.*

288. ——————— *Civil Procedure Code, 1859, s. 2.—Suit for rent.*—The plaintiffs brought this suit to establish, as against the defendants, their title to certain land in the occupation of a tenant. In a previous suit instituted by one of the present defendants against the tenant for rent, one of the present plaintiffs (representing the right now claimed by all of them) intervened as a defendant, on the ground that he was the person entitled to the rent, and failed to establish his claim. *Held*, following the Full Bench case of *Hurri Sunker Mookerjee* v. *Muktaram Patro, 13 B. L. R., 238*, that the plaintiffs in this suit were barred by the judgment in the former suit. When once it is made clear that the self-same right and title is substantially in issue in two suits, the precise form in which either suit was brought, or the fact that the plaintiff in the one case was the defendant in the other, becomes immaterial. GOBIND CHUNDER KOONDOO *v.* TARUCK CHUNDER BOSE

[I. L. R., 3 Calc., 145 : 1 C. L. R., 35

289. ——————— *Rights under partition under Beng. Reg. XIX of 1806.—Suit for arrears of rent.—A.* sued *B.* to establish his rights of possession to certain lands allotted him under a butwara made in accordance with the provisions of Regulation XIX of 1806. In a previous suit by *B.* instituted after the butwara against a tenant for arrears of rent due for a portion of the lands now in dispute, *A.* intervened and was made a defendant on the sole ground that he was the person entitled to the rent, but failed to establish his claim. *Held*, following the Full Bench case of *Gobind Chunder Koondoo* v. *Tiruck Chunder Bose, I. L. R., 3 Calc., 145*, that *A.'s* present suit was barred by the judgment in the former suit. BEMOLASOONDURY CHOWDHRAIN *v.* PUNCHANUN CHOWDHRY .

[I. L. R., 3 Calc., 705

290. ——————— *Rights as between original defendant and intervenors.—Suit for possession.*—Where a plaintiff claimed certain property, and two persons intervened and were allowed to put in their claim to a portion of it, which claim, at the hearing, the intervenors, however, refrained from pressing, and the suit was decided in favour of the plaintiff, the original defendant alone appealing (unsuccessfully) against the decree,—*Held* that it was not open to the intervenors to institute any fresh proceedings to obtain the property against the original defendant, the decree in the suit in which they intervened being conclusive as between them and such defendant. *Sivagnana Tevar* v. *Periasami, I. L. R., 1 Mad., 312*, distinguished. SHEO CHURN SINGH *v.* FAKERA DOOBAY

[I. L. R., 6 Calc., 91 : 7 C. L. R., 69

The principle of this case was held applicable in UMBICA CHURN BHUTTACHARJEE *v.* PROSONNO COOMAR SEN . . . . 9 C. L. R., 365

RES JUDICATA—*continued.*

8. PARTIES—*continued.*

(*b*) INTERVENORS—*continued.*

Intervenor added in former suit—*continued.*

291. ——————— *Want of jurisdiction as to valuation of suit.—Subsequent suit between the same parties. Competent Court.—Rent suits.*—A judgment of a Court not competent to try the case in which the judgment is pleaded as *res judicata*, must, nevertheless, be held to be the judgment of a Court of competent jurisdiction within the rule as laid down in the maxim *Nemo debet bis vexari pro eâdem causâ*, and section 13 of Act X of 1877; more especially where the first suit is tried, decided, and affirmed on regular appeal by a Subordinate Judge who would have been competent to decide the suit (had it been brought before him) in which the judgment was pleaded. The rule of *res judicata* ought to be held to apply to judgments in rent suits, at least until interventions in such suits are authoritatively prohibited. RUN BAHADUR SINGH *v.* LUCHO KOER

[I. L. R., 6 Calc., 406 : 7 C. L. R., 251

Reversed on this point by the Privy Council in RUN BAHADUR SINGH v. LUCHO KOER

[I. L. R., 11 Calc., 301
L. R., 12 I. A., 27

See PURBHOO TEWAREE *v.* RAMJEEAWUN PATUCK . . 1 N. W., 65 : Ed. 1873, 119

292. ——————— *Rent suit.—Civil Procedure Code (Act X of 1877), s. 13.—A.* sued *B.* for rent in the Court of the Deputy Collector of Tipperah under the provisions of Act X of 1859. *C.* intervened, claiming that the land in respect of which the rent was claimed was his property, and the suit was dismissed. On appeal, the District Judge of Tipperah reversed this decision and decreed the claim, on the ground that *C.* had no right whatever to the land. In a subsequent suit brought by *C.* against *A.* and *B.* for possession of the same land,—*Held* that the previous decree of the District Judge did not constitute the plaintiff's claim a *res judicata*, and was no bar to the suit. *Dinanath Bose* v. *Kalikumar Roy, B. L. R., Sup. Vol., 364*, followed. MAHOMED AFSURUDDIN *v.* BEER CHUNDER MANIKYA . I. L. R., 8 Calc., 470 : 10 C. L. R., 416

293. ——————— *Suit for possession. — Co-defendants. — Civil Procedure Code (Act X of 1877), s. 13.—A.* leased lands to *B.*, who sued *C.* for possession of a certain mouzah, alleging it to be a portion of the lands leased. *A.* was made a defendant, and supported the case of the plaintiff, who obtained a decree. *C.* appealed, making *A.* and *B.* respondents, when the decree was reversed and the suit dismissed, on the ground that the mouzah sued for was the property of *C.*, and that ruling was upheld on special appeal to the High Court. Subsequently *A.* brought a suit against *C.* for the same mouzah, making *B.* a defendant. *Held* that the title to the mouzah was *res judicata* between *A.* and *C.*, and that the suit would not lie. *Gobind Chunder Koondoo* v. *Taruck Chunder*

RES JUDICATA—*continued.*

8. PARTIES—*continued.*

(*b*) INTERVENORS—*continued.*

Intervenor added in former suit—*continued.*

Bose, I. L. R., 3 Calc., 145, followed. BISSORUP GOSSAMY *v.* GORACHAND GOSSAMY [I. L. R., 9 Calc., 120

294. ——— *Rent suit.—Dismissal for default.—Questions of title.—Issues.—Code of Civil Procedure, 1882, s. 13.*—In a suit for arrears of rent and possession of certain property a person intervened and was made defendant on his alleging that he was entitled to an 8 annas share of the property in question, and that the plaintiffs were not entitled to any portion thereof. Issues were fixed on the questions of title, but the plaintiffs failed to adduce evidence and their suit was dismissed. They afterwards brought a suit for possession of the same property, on the same title, against the intervenor in the former suit. *Held* that the second suit was barred as *res judicata.* KARTICK CHANDRA PAL *v.* SRIDHAR MANDAL [I. L. R., 12 Calc., 563

(*c*) PARTY ERRONEOUSLY IN DECREE.

295. ——— **Party ordered to be struck out of suit.**—*Civil Procedure Code, 1859, s. 2.—Mistake in decree.*—Section 2, Act VIII of 1859, was held not to apply to a case where the present plaintiff's name was ordered by the High Court to be expunged from the list of defendants in a former suit, but, notwithstanding that order, her name by some mistake still appeared some two years afterwards in the decretal order, the onus being on the present defendant to show how that happened and that the former suit was decided in her presence. KALEE COOMAR DUTT ROY *v.* PRAN KISHOREE CHOWDHRAIN . . . . . 18 W. R., 29

(*d*) PRO FORMÂ DEFENDANTS.

296. ——— **Parties made defendants by way of caution.**—*Effect of former decree.*—A decree made in favour of a plaintiff in a suit is binding upon the defendants collectively and severally, notwithstanding any of them was made a defendant only ikhteatun, *i.e.,* by way of precaution. DEOKEE NUNDUN ROY *v.* KALEE PERSHAD [8 W. R., 366

297. ——— **Nominal party.**—*Suit against surety of defaulting tenant.*—A landlord sued his tenants and his tenants' surety in the Collector's Court for arrears of rent, the surety being merely treated as a nominal party, and the decree being given against the tenants. He afterwards sued the surety in the Civil Court on the bond given by him, and in the lower Court obtained a decree, not only for the arrears of rent, but also for the costs in the Act X suit. *Held,* on special appeal, that the suit was, as regards the arrears of rent, not barred by section 2, Act VIII of 1859, but that the costs in the Collector's Court could not be recovered. RAMTANU ACHARJI *v.* KOMAL LOCHAN ROY [3 B. L. R., Ap., 37

S. C. RAM TUNOO ACHARJEE *v.* RADHA GOBIND [11 W. R., 407

RES JUDICATA—*continued.*

8. PARTIES—*continued.*

(*d*) PRO FORMÂ DEFENDANTS—*continued.*

Nominal party—*continued.*

298. ——— **Party added as landlord in a suit between tenants.**—*Subsequent suit for possession by landlord.—Civil Procedure Code (Act XIV of 1882), s. 13.*—*A.* brought a suit against *B.,* claiming certain property as tenant of *C.,* who was also made a defendant in the suit; this suit was on the merits decided in favour of *B.* *C.* then brought a suit against *B.* for possession of the same property. *Held* that such suit was not barred by section 13 of the Civil Procedure Code. BROJO BEHARI MITTER *v.* KEDAR NATH MOZUMDAR [I. L. R., 12 Calc., 580

(*e*) CO-DEFENDANTS.

299. ——— **Decision in former suit, Effect of, as between co-defendants.**—A decision in a former suit cannot operate as an estoppel as between co-defendants in that suit, or parties claiming under them. MUDHOO MOKEE DABEE *v.* GUNGA GOVIND MUNDLE . W. R., 1864, 299

RAM CHAND SOMARDAR *v.* KALA CHAND CHUCKERBUTTY . . 1 W. R., 287

MADHOO PERSHAD *v.* LALLJEE SHAHOO [9 W. R., 557

KHELUT CHUNDER GHOSE *v.* KISHEN GOBIND DEB . . . . 16 W. R., 128

NOBIN CHUNDER DOSS *v.* NIM CHAND DOSS [17 W. R., 191

RAMESSUR GHOSE *v.* AZEEM JOARDAR [17 W. R., 373

AIN ALI *v.* JUGGUT CHUNDER ROY CHOWDHRY [25 W. R., 416

OBHOY CHURN NUNDEE *v.* BHOOBUN MOJOOMDAR . . . . 12 W. R., 524

KALLY PERSAD SEIN CHOWDHRY *v.* MOHESH CHUNDER BHUTTACHARJEE . 1 Hay, 430

300. ——— A suit which was brought by *A.* against *B.* and *C.* and dismissed, cannot be pleaded as *res judicata* in a subsequent suit brought by *B.* against *C.* HURO MONEE DEBIA *v.* TUMEEZOODEEN CHOWDHRY . 7 W. R., 181

301. ——— *Civil Procedure Code, 1882, s. 13.*—Two thirds of a village were sold by *T., P.,* and *B.* *B.* was the widow of *S.,* her name being recorded in respect of the property formerly recorded in his name, and what she sold was his one third share in the village, the other one third being sold by *T.* and *P.* The vendors having refused to give possession of the property, the purchasers sued them

RES JUDICATA—*continued.*

8. PARTIES—*continued.*

(*e*) CO-DEFENDANTS—*continued.*

Decision in former suit, Effect of, as between co-defendants—*continued.*

for possession of it and joined as defendants to the suit *C.*, *D.*, and *M.*, to whom belonged the remaining one third share in the village. These latter persons contended, *inter alia*, that the family was a joint one, and that *B.* was not competent to alienate her deceased husband's share in the village. The Court decided that the family was joint. After *B.'s* death her daughter *K.*, whose name had been recorded in place of her mother's, made a usufructuary mortgage of another village in which her deceased father had formerly owned a share. A suit was brought by certain persons who had purchased the right in the same village of the representatives in interest of *C.*, *D*, and *M.*, against *K.*, her mortgagee, and their vendors, to set aside the mortgage and recover the interest which they had purchased. They contended that the family was joint, and that the question whether it was joint or divided was *res judicata* by reason of the decision in the former litigation. *Held* that the question whether the family was joint or divided had not, in the former suit, been determined among the defendants *inter se*, but simply as against the plaintiff, and could only be *res judicata* against him or parties claiming under the same title; and the decree in that suit was therefore not binding against *K.* in the hands of the present plaintiffs, who were not the assignees of the plaintiff in the former suit, but of persons who were arrayed in it as defendants along with *B.*, *K.'s* mother, and on the same side. *Shadal Khan* v. *Amin-ullah Khan, I. L. R., 4 All., 92*, referred to by STRAIGHT, *J.*, and distinguished by TYRRELL, *J.* *Narain Kuar* v. *Durjan Kuar, I. L. R., 2 All., 738*, referred to by STRAIGHT, *J.* BHAGWANT SINGH *v.* TEJ KUAR . . **I. L. R., 8 All., 91**

302. ——— *Suit for pre-emption.*—*M.* sued *K.* and *J.* to enforce a right of pre-emption in respect of property which he alleged *K* had sold to *J.* *K.* denied that she had sold such property to *J.* *J.* set up as a defence that *M.* had waived his right of pre-emption. The suit was dismissed on the ground that the sale had never taken place. *Held* that the finding as to the alleged sale was one between the plaintiff and the defendants in the suit and not between the defendant-vendor and the defendant-vendee, who were not litigating, and would not bar adjudication of the matter in issue between them in a suit brought by the latter for the establishment of the sale. JUMNA SINGH *v.* KAMARUN-NISA . . . **I. L. R., 3 All., 152**

9. COMPETENT COURT.

(*a*) GENERAL CASES.

303. ——— **Court without jurisdiction.**—*Civil Procedure Code (Act X of 1877), s. 13.*—The decision of a Court, in order to be conclusive in another Court, must have been that of a Court which would have had jurisdiction to decide the question raised in the subsequent suit in which the decision is given in evidence as conclusive. The words "Court of competent jurisdiction," used in section 13 of the Code of Civil Procedure, include the meaning that the first Court must not have been precluded by the pecuniary limit of its jurisdiction from deciding the question raised in the other. The two Courts must exercise such concurrent jurisdiction in regard to the pecuniary limit of their powers that the subject-matter of the second suit would not have been beyond the powers of the Court which disposed of the prior one. The defence made to a suit on a bond for R12,000 and interest thereon, in a Court having no pecuniary limit of jurisdiction, was that in a prior suit for R1,665, balance of interest, brought in a Court with power to try suits not exceeding R5,000 in value, the principal sum due on that bond had been decided to be R4,790. *Held* that the issue as to the amount of principal due on the bond had not been heard and finally decided by a Court of competent jurisdiction within the meaning of section 13. MISIR RAGHO BARDIAL *v.* SHEO BAKSH SINGH

[I. L. R., 9 Calc., 439: 12 C. L. R., 520
L. R., 9 I. A., 197

304. ——— *Act VIII of 1859, s. 2.—Act X of 1877, s. 13.—Cross-appeal.—Practice.*—The decision in a suit in order to be final and conclusive, as *res judicata* upon an issue raised in another suit, must be the decision of a Court which would have had jurisdiction to decide the question raised in the subsequent suit, in which the prior decision is given in evidence as conclusive. This proposition, stated in the judgment in *Edun* v. *Bechun, 8 W. R., 175*, and affirmed by the Judicial Committee in *Misir Raghobardial* v. *Sheo Baksh Singh, I. L. R., 9 Calc., 439*, is applicable equally to cases under Act VIII of 1859, section 2 (as supplemented by the general law), and to cases under the more complete enactment in Act X of 1877, section 13, which is not to be construed as having altered the former law. A suit was brought in the Court of a Subordinate Judge by a Hindu against the widow of his deceased brother, claiming his property by right of survivorship, the issue being whether, at the death of the latter, the ownership of the brothers was joint or separate. An order under Act XXVII of 1860, granting a certificate to the widow, did not, on the above issue, operate as *res judicata* in the widow's favour, being a proceeding of representation, and not otherwise of title. *Held*, also, that a decision of the same issue, in a Munsif's Court in a rent suit brought by the widow, the surviving brother, on his application having been made a party defendant under section 73 of Act VIII of 1859, did not constitute *res judicata* in her favour. *Krishna Behari Roy* v. *Brajeswari Chowdhrani, L. R., 2 I. A., 283*, referred to and followed. *Held*, also, that the brother having appealed against a decree dismissing the suit as *res judicata* (the judgment which that decree followed having, nevertheless, found that the widow was dis-

RES JUDICATA—*continued.*

9. COMPETENT COURT—*continued.*

(*a*) GENERAL CASES—*continued.*

Court without jurisdiction—*continued.*

entitled by reason of the brothers having been, in fact, joint in estate), the widow could have supported the decree, without filing a cross-appeal as to that finding, on the ground that the decree had been rightly made (though not for the reason given) in her favour. RUN BAHADUR SINGH *v.* LUCHO KOER

[I. L. R., 11 Calc., 301
L. R., 12 I. A., 23

Reversing, as far as the question of *res judicata* was concerned, the decision of the High Court in RUN BAHADUR SINGH *v.* LUCHO KOER

[I. L. R., 6 Calc., 406: 7 C. L. R., 251

305. ——— Court without power to make final decision.—*Issue decided in a suit not subject to appeal.—Same issue raised in a subsequent suit subject to appeal.—Small Cause Court suit.—Civil Procedure Code (Act XIV of 1882), s. 13.—Meaning of the words "competent to try such subsequent suit."*—In 1879 the plaintiff brought a suit against the defendants to recover R119 which he alleged had been wrongfully exacted from him by the defendants as enhanced rent of certain land in his occupation. He claimed to be owner of the land subject to a quit-rent payable to the defendants. The defendants denied his ownership, and asserted their right to levy the enhanced rent. The lower Court held that the defendants were entitled to the enhanced rent, and dismissed the plaintiff's claim, and the decree was confirmed, on appeal, by the District Court. The plaintiff appealed to the High Court, which held that the plaintiff's claim being for an amount less than R500 and within the cognisance of a Court of Small Causes, no second appeal lay. In 1883 the plaintiff brought the present suit in the District Court to recover from the defendants the sum of R689 alleged to have been wrongfully exacted from him by the defendants as enhanced rent of the land in question. He made the same allegations as in the former suit. The District Judge dismissed the suit, holding it to be *res judicata*. The plaintiff appealed to the High Court. *Held* that, although the material question in both suits was the same,—*viz.*, as to the defendant's right to enhance the plaintiff's rent,—yet the decision of the District Court upon that point in the previous suit was not *res judicata* so as to prevent the question being again raised between the parties. From the decision in the former suit there was no appeal by reason of the suit being one for an amount less than R500. Had that suit been for a larger amount, the decision of the District Court would have been subject to an appeal to the High Court. It could not have been intended by the Legislature that a decision should acquire a conclusive importance from the fact of its being made in a suit for a small amount which it could not have had if the amount was larger. The former decision could not be appealed against to the High Court, and thus, though the District Court which gave that decision was in one sense "competent to try" the second suit, and did try it, yet it was

RES JUDICATA—*continued.*

9. COMPETENT COURT—*continued.*

(*a*) GENERAL CASES—*continued.*

Court without power to make final decision—*continued.*

not competent to try the second suit with final effect, as it had tried the earlier one. In section 13 of the Civil Procedure Code (Act XIV of 1882) the words "competent to try such subsequent suit or issue" must mean "competent to try the suit or issue with conclusive effect." The District Court could not in the present suit have tried with conclusive effect, and disposed of the issue tried in the first suit, and hence the prior decision was not *res judicata*. BHOLABHAI *v.* ADESANG. BHOLABHAI *v.* COLLECTOR OF KAIRA . . . . **I. L. R., 9 Bom., 75**

306. ——— Decision in superior Court of suit cognisable by inferior Court.—*Civil Procedure Code, 1877, s. 13.*—In a suit for possession of immoveable property before the Subordinate Judge, it was objected that the suit ought to have been instituted before the Munsif, the value of the property being less than R1,000. An issue having been framed on this point, other issues were also framed as to the sanity of the plaintiff, his having had possession of the property, and evidence upon all the issues was gone into. The Subordinate Judge dismissed the suit on the first issue, but expressed his opinion that the other issues ought also to have been decided against the plaintiff. In a subsequent suit by the plaintiff for the same relief in the Court of the Munsif,—*Held* that the questions depending on the issues raised, other than the issue as to the valuation of the suit, were not *res judicata*. RAM GOBIND JHA *v.* MUNGAR RAM CHOWDHRY

[13 C. L. R., 83

307. ——— Powers of Court deciding suit.—*Decision on question of title.—Civil Procedure Code (Act X of 1877), s. 13.*—When a question of title has to be, and is, decided by a Court of competent jurisdiction with reference to the value of the subject-matter in dispute, such decision, or the ultimate decision upon the appeal from such decision, is final, and the question of title becomes a *res judicata* as between the parties to the suit, although it may have the effect of determining the title to an estate or estates the value of which exceeds the jurisdiction of the Court in which the suit was instituted. *Per* WHITE, *J.*—In considering, on the hearing of an appeal, the competency of a Court for the purpose of deciding upon a question of *res judicata*, the powers of the Court in which the suit was instituted, and not those of the Court in which the suit was decided on appeal, must be looked to. TOPONIDHEE DHIRJ GIR GOSAIN *v.* SREEPUTTY SAHANEE

[I. L. R., 5 Calc., 832: 6 C. L. R., 305

308. ——— *Civil Procedure Code, 1882, s. 13.—Decree of competent Court.*—In 1875 *P.* sued in a Munsif's Court to eject a tenant from a house and to recover arrears of rent. *S.* intervened and claimed the house under a deed of gift. The value of the property comprised in the deed of

RES JUDICATA—*continued.*

9. COMPETENT COURT—*continued.*

(*a*) GENERAL CASES—*continued.*

Powers of Court deciding suit—*continued.*

gift exceeded the limit of the pecuniary jurisdiction of the Munsif's Court. The suit was dismissed, but on appeal the claim of *S.* under the deed of gift was adjudicated upon and rejected, and *P.* obtained a decree for the land. In 1882 *S.* sued *P.* to recover all the property comprised in the deed of gift: *Held* that *S.* was estopped by the decree in the former suit from claiming the house. It was contended by *P.* that the deed of gift was invalid: *Held* that, as to validity of the deed of gift, the decree of the Munsif's Court was not the decree of a competent Court within the meaning of section 13 of the Code of Civil Procedure, 1882, and, therefore, that *S.* was not estopped from showing that the deed was valid, and claiming the rest of the property comprised therein. PATHUMA *v.* SALIMAMMA

[I. L. R., 8 Mad., 83

309. ——— Jurisdiction of Court at time suit is brought.—*Decision of Munsif.—Civil Procedure Code, 1882, s. 13.*—In a suit for malikana the issue between the parties substantially raises the question of the proprietary right to the estate in respect of which the malikana is claimed; and when the question of the proprietary right has been decided in a previous suit between the same parties, a subsequent suit for malikana will be barred as *res judicata.* The fact that the previous suit had been brought in a Munsif's Court, whereas the present suit was brought before a Subordinate Judge, did not affect the question, inasmuch as the property was the same, and it was not shown that the present suit, if brought in 1860, would not have been within the jurisdiction of the Munsif, nor was it alleged that the suit in 1860 was beyond his jurisdiction. In section 13 of Act XIV of 1882 the words "in a Court of jurisdiction competent to try such subsequent suit" refer to the jurisdiction of the Court at the time the first suit is brought. Thus, when the first suit is within the jurisdiction of a Munsif, and the subsequent suit, by reason of an increase in value of the property, is beyond his jurisdiction, such subsequent suit would nevertheless be barred, inasmuch as if the subsequent suit had been brought at the time when the first suit was brought, the Munsif would have been competent to try it. GOPI NATH CHOBEY *v.* BHUGWAT PERSHAD . I. L. R., 10 Calc., 697

310. ——— Decision of Deputy Collector.—*Civil Procedure Code, 1882, s. 13.—Meaning of the words "Court of jurisdiction competent to try such subsequent suit."*—The words of section 13 of the Civil Procedure Code, "in a Court of jurisdiction competent to try such subsequent suit," refer to the jurisdiction of the Court at the time when the first suit was brought. Where, therefore, a suit was brought and decided in 1867 in the Court of a Deputy Collector, that Court being at the time of suit the only Court competent to try suits of the nature of the one brought, and subsequently a second suit, regarding the same subject and between some of the same parties and the representatives of others, was brought in 1881 in the Court of a Munsif, which latter suit, if it had been brought in 1867, would have been cognisable by a Deputy Collector alone,—*Held* that the decision of the Deputy Collector was a bar to the second suit under section 13 of the Civil Procedure Code. The principle in *Gopinath Chobey* v. *Bhaghwat Pershad, I. L. R., 10 Calc., 697,* approved. RUGHUNATH PANJAH *v.* ISSUR CHUNDER CHOWDHRY

[I. L. R., 11 Calc., 153

311. ——— Former judgment in Court without jurisdiction.—*Property situate out of jurisdiction.—Held* that the judgment of the Lucknow Civil Court, in a suit for property situate within the jurisdiction of that Court, was no bar to a subsequent suit in respect to property situate at Allahabad. There was no splitting of the claim, inasmuch as the former suit was for the entire property situate in Lucknow and Allahabad, though leave was not obtained to sue in the Lucknow Court. THAKOOR PERSHAD *v.* KALIKA PERSHAD

[2 Agra, 104

312. ——— Property situate out of jurisdiction.—*Suit for land.—A.* brought a suit in the Court of S. against *B.* for certain land as being an accretion to an estate in the district of S. *B.* claimed it as being part of his estate in the district of G., to which district he alleged the land had, in a former decision, been found to belong. The Court of S. held that the land was an accretion to *A.'s* estate in the district of S. In a subsequent suit brought by *B.* in the Court of G. against *A.* for the land to which the subject of the former suit had been found to be an accretion,—*Held* that the holding in the former suit necessarily decided that the land claimed by *B.* was in the district of S., and therefore that the Court of G., under Act VIII of 1859, section 14, had no jurisdiction. PAHALWAN SINGH *v.* MAHESSUR BUKSH SINGH

[12 B. L. R., P. C., 391 : 18 W. R., 182

313. ——— Decree in claim for rent.—*Subsequent suit to remove attachment.—Decision by Court without jurisdiction.*—Where a Court, without jurisdiction, decreed a claim by a landholder for arrears of enhanced rent, and the tenant subsequently sued to remove an attachment based on the decree, it was held that the decree could not be regarded as binding on the parties, and the second suit should have been tried and disposed of on its merits. KALKA PARSHAD *v.* KANHAYA SINGH

[7 N. W., 99

314. ——— Court of Rajah of Independent Tipperah.—The Court of the Rajah of Independent Tipperah was not a competent Court within the meaning of section 2, Act VIII of 1859. MAHOMED AHMED *v.* ALIBUR GAZEE . 10 W. R., 337

315. ——— *Civil Procedure Code, 1859, s. 2.—Competent Court.*—The Tipperah

RES JUDICATA—*continued.*

9. COMPETENT COURT—*continued.*

(*a*) GENERAL CASES—*continued.*

Court of Rajah of Independent Tipperah —*continued.*

Rajah's Court was a Court of competent jurisdiction within the meaning of section 2, Act VIII of 1859. A decision given there bars a fresh suit in respect of the same matter in a British Court. MODHOO BIBEE *v.* RAM MANICKO DEY . **6 W. R., Civ. Ref., 31**

316. ——— Agent to Governor General, Court of.—*Beng. Reg. XIII of 1833, s. 2.—Order of Agent previous to the Regulation.*—By Regulation XIII of 1833, section 2, the Courts of Dewanny Adawlut of Zillahs Ramghur and Jungle Mehals were abolished. By the 4th section the administration of civil and criminal justice was vested in an officer appointed by the Governor General in Council, to be denominated Agent to the Governor General. By the 5th section authority was conferred on the Governor General to determine in Council, *inter alia*, "to what extent the decision of the Agent in civil suits shall be final." In 1834, by an order of the Governor General, it was ordered that no appeal should lie from the orders of the Agent to the Sudder Court. *Held* that an order of an Agent within the districts to which the Regulation applied, made previous to the passing of the Regulation, declaring *A.* to be the rightful heir of *B.*, was not affected by the Regulation, and was not judicial in its nature; and that, therefore, in a subsequent suit relating to the inheritance to the same property, the heir of *A.* could not set up the order as conclusive. BINODE KOOMAREE *v.* PURDHAN GOPAL **[Marsh., 80: W. R., F. B., 26: 1 Hay, 148**

(*b*) SMALL CAUSE COURT CASES.

317. ——— Decree of Small Cause Court.—*Question of title.*—A decree passed in a suit in a Small Cause Court in which a question of title is incidentally dealt with, is not a bar to a suit for a general declaration of title. KHANDU VALAD KERU *v.* TATIA VALAD VITHOBA . **8 Bom., A. C., 23**

318. ——— *Suit for rent of the nature cognisable in a Small Cause Court.—Determination of title.*—The incidental determination of an issue of title in a suit for rent of the nature cognisable in a Court of Small Causes does not finally estop the parties to such suit from raising the same issue in a suit brought to try the title. INAYAT KHAN *v.* RAHMAT BIBI . **I. L. R., 2 All., 97**

CHUNDER NARAIN MOZOOMDAR *v.* PRITHANUND ASRUM . . . . **12 W. R., 290**

319. ——— *Civil Procedure Code, 1877, s. 13.—Question of title.—Per* INNES, *J.*—The decree of a Small Cause Court in a case where a question of title is raised incidentally is no bar to a suit upon the title under section 13, explanation II, of the Civil Procedure Code, because the Small Cause Court is not competent to pass a decree upon the title. MANAPPA MUDALI *v.* MCCARTHY **[I. L. R., 3 Mad., 192**

RES JUDICATA—*continued.*

9. COMPETENT COURT—*continued.*

(*b*) SMALL CAUSE COURT CASES—*continued.*

Decree of Small Cause Court—*continued.*

320. ——— *Decree for money due on bond.—Subsequent suit in which execution and bona fides of bond are contested.*—In a suit to enforce a lien created by a mortgage-bond on property which was sold by the mortgagor (*R.*) ten months later to the defendant, the lower Appellate Court held that the defendant, as standing in his vendor's shoes, was concluded by a judgment obtained in the Small Cause Court by the plaintiff against *R.* a month after the date of the bond. *Held* that, as the Small Cause Court could not have jurisdiction to decide as to the lien, its decree would only be relevant as showing that the defendants at the time owed the money to the plaintiff, and that it would be open to the defendant to question the execution and *bona fides* of the bond as affecting the property which he had taken by conveyance. POHOLI MULLICK *v.* FUKEER CHUNDER PATNAIK . . . **22 W. R., 349**

321. ——— *Suit for rent in Small Cause Court.—Question of title.*—The plaintiff, in a suit to establish her lakhiraj right to lakhiraj land, stated in her plaint that she was in possession of certain land by virtue of the will of her husband; that, while in possession of the land, a suit was brought against her in the Small Cause Court for rent by the defendants, who obtained a decree; and that there being no appeal against the decision, the lakhiraj rights in respect of the lands were consequently injured; she therefore brought the present suit. *Semble per* JACKSON, *J.*, dismissing the suit, that the plaintiff might, if a fresh suit for rent be brought, again raise the question of her lakhiraj title, because the Small Cause Court had no power to determine finally a question of right. PORAN SOOKH CHUNDER *v.* PARBUTTY DOSSEE **[I. L. R., 3 Calc., 612: 1 C. L. R., 404**

(*c*) REVENUE COURTS.

In early decisions it was held that a decision of a Revenue Court in a case under the Rent Act, 1859, was in some circumstances binding in a Civil Court. WOOMESH CHUNDER SOOTEE *v.* RAM CHUNDER MOWREE . . . . **4 W. R., Act X, 40**

OOMA CHURN DUTT *v.* BECKWITH **[5 W. R., Act X, 3**

EESHOOREE SINGH *v.* HUNTER . **2 N. W., 53**

322. ——— Decision of Revenue Court.—*Suit for rent.—Jurisdiction of Collector.*—The decision of the Collector in a suit for rent of certain land is conclusive in a subsequent suit between the same parties in a Civil Court for a declaration that the land is liable to pay rent. MOHESH CHUNDER BUNDOPADHYA *v.* JOYKISHEN MOOKERJEE **[15 B. L. R., 248, note: 22 W. R., 362**

323. ——— *Suit for resumption of invalid lakhiraj.—Act X of 1859, s. 28.—Beng. Reg. II of 1819, s. 30.*—That a ryot's holding

RES JUDICATA—*continued.*

9. COMPETENT COURT—*continued.*

(c) REVENUE COURTS—*continued.*

Decision of Revenue Court—*continued.*

was of a date prior to 1790 once decided in a zemindar's suit under section 28, Act X of 1859, must be considered as *res adjudicata* in a subsequent suit under section 30, Regulation II of 1819. KALLEE PERSHAD HOLDAR *v.* SOOBHOGEA DABEA [1 W. R., 218

Most of the later cases, however, decided that a decision of the Revenue Court was not conclusive on a matter of title in a subsequent suit in the Civil Court.

324. ——————— *Decision of Collector on question of possession.*—The decision of a Collector on a question of possession and of the right to receive the rent, does not bar an action in the Civil Courts to try the title of the parties. KALIDASS GHOSE *v.* CHANDRAMOHINI DASI [8 W. R., 68

325. ——————— *Suit for declaration of title after suit for rent in Revenue Court.*—*A.* suing *B.* for arrears of rent, on the allegation that *B.* held an outbundee jote from him on certain lands of plaintiff's jote jumma, obtained a decree for rent for one year, the period for which he sued. *B.* then brought an action in the Civil Court for a declaration of his right to the jote jumma in question, alleging that he held the land direct from the zemindar and was not *A.'s* ryot; *A.* pleading that the Civil Court had no jurisdiction after the Revenue Court had declared *B.* to be his ryot. *Held* that the Revenue Court's decree was not conclusive as to the question of title,—*i.e.*, as to whose right it was to have the particular jote jumma as his property. DHONAYE MUNDUL *v.* ARIF MUNDUL [9 W. R., 306

326. ——————— *Decree of Revenue Court for arrears of rent.*—*Suit for declaration of title as lakhirajdar.*—A decree of a Revenue Court awarding arrears of rent for a certain year under a kabuliat against a ryot does not bar the jurisdiction of the Civil Courts in a suit brought by him for a declaration of his title as lakhirajdar in the same land. TARA CHAND MYTEE *v.* NILAMBUR MUNDUL [3 W. R., 227

327. ——————— *Suit for possession after ejectment.*—*Jurisdiction of Collector.*—In a suit to recover possession on the ground of illegal ejectment, a Collector has no jurisdiction to inquire into any matter having reference to the rights of the parties so as to bar a subsequent suit for them. SHEEB CHUNDER MAHNEEAH *v.* BROJONATH ADITYA . . . . . 14 W. R., 301

328. ——————— *Suit in Revenue Court under s. 23, Act X of 1859.*—*Title.*—*Subsequent suit for possession.*—A decision in a suit to recover occupation where the plaintiff is found to have been illegally ejected under Act X of 1859, section 23, clause 6, does not bar a regular suit for possession by the defendant in the former suit grounding his claim on title, and in which the question of title is to be tried. SOORJEE KANTO ROY *v.* FORLONG [1 Ind. Jur., N. S., 382 : 6 W. R., Act X, 44

329. ——————— *Decision of Deputy Collector in suit for ejectment.*—Where a Deputy Collector declined jurisdiction in a suit for ejectment under section 28, Act X of 1859, and the appeal against this decision to the Judge was dismissed,—*Held* that that decision was no bar to a suit for ouster in the Civil Court, either in the way of *res judicata* or otherwise. BASER MAHOMED *v.* SUDDER GHAZEE . . . . . 7 W. R., 97

330. ——————— *Possessory suit under Rent Act.*—A possessory suit under clause 6 of section 23 of the Rent Act, 1859, by a ryot against his zemindar, did not bar a suit for confirmation of title by the intervenor in that suit. TARA CHAND GHOSE *v.* RADHAMONEE DOSSEE [7 W. R., 469

reversing on review . S. C. 5 W. R., Act X, 9

331. ——————— *Suit for rent.*—*Jurisdiction of Collector.*—In a suit for rent under Act X of 1859, the Collector had no jurisdiction to decide a question of mokurrari title otherwise than so far as it might be incidental to the determination of the amount of rent, if any, due; and his decision on such a question was therefore not binding in a subsequent suit to establish the mokurrari right. BABUR ALI *v.* DOWLUT ALI . 15 B. L. R., 242 : 19 W. R., 217

DOSS MONEE DOSSEE *v.* HURONATH ROY [4 W. R., 2

NEYPAL SINGH *v.* GUYADUT . 3 Agra, 311

332. ——————— *Decision of Collector on reference from Deputy Collector.*—*Held* that reference to the Collector in a suit pending before the Deputy Collector was irregular, and his opinion and order on such reference had no weight at all, and could not amount to a decision which, not having been appealed against, would operate as a bar to the adjudication on the point referred. SAHIB SINGH *v.* PUT RAM . . 1 Agra, Rev., 17

333. ——————— *Same parties in different character.*—The decision in a suit under Act X of 1859 against the defendants as the plaintiff's tenants did not bar a suit brought in the Civil Court against the same defendants as the plaintiff's vendees, the parties being accidentally the same persons, but legally different persons, with different rights and interests. GOLAM AHMED *v.* SHAM SOONDUR ROY [5 W. R., Act X, 9

334. ——————— *Suit to assess or resume invalid lakhiraj land.*—*Jurisdiction of Collector.*—*Act X of 1859, s. 28.*—A suit by a zemindar to assess or resume land alleged to be invalid lakhiraj,

RES JUDICATA—*continued.*

9. COMPETENT COURT—*continued.*

(*c*) REVENUE COURTS—*continued.*

Decision of Revenue Court—*continued.*

under section 28 of Act X of 1859, had to be brought in the Revenue Courts. GUNGA HURRY DHOBEY *v.* TRIPP . . . . . **1 W. R., 31**

In such a suit a Collector had no jurisdiction to try whether a title under a grant made prior to the 1st of December 1790 was valid or not. MOOROOBBEE SAHOO *v.* LATOO COOMAR . **W. R., F. B., 70**

335. ——————— *Act X of 1859, s. 28.—Jurisdiction of Collector.*—If it was established, in a suit under section 28, Act X of 1859, that the defendant's lakhiraj tenure was created prior to 1790, it was immaterial whether it was within plaintiff's talook or not. Therefore the finding upon the question of parcel or no parcel by a Deputy Collector in such a suit was not binding on the Civil Court in any suit which might thereafter be brought to resume the land as invalid lakhiraj created prior to 1790, or in any other suit. RAMNEEDHY BOYDE *v.* NEAMUT **[Marsh., 355 : 2 Hay, 437**

336. ——————— *Suit for rent.—Act X of 1859.—Beng. Act VIII of 1869.—Jurisdiction of Collector.—Held* (JACKSON, *J.*, dissenting) that a judgment by a Collector, in a suit under X of 1859, declaring the plaintiff entitled to assess rent upon land alleged by the defendant to be lakhiraj, is not conclusive in a subsequent suit between the same parties for arrears of rent under Bengal Act VIII of 1869. *Per* JACKSON, *J.*—A decision in a previous and similar suit upon an issue raised substantially in the same manner by parties in a Revenue Court is binding upon them as evidence in a subsequent suit, which, but for the passing of Bengal Act VIII of 1869, would also have been brought in a Revenue Court. HURRI SUNKUR MOOKERJEE *v.* MUKTARAM PATRO **[15 B. L. R., F. B., 238 : 24 W. R., 154**

337. ——— **Decision in rent suit.**—*Beng. Act VIII of 1869.—Jurisdiction of Civil Court.*—The decision of the Civil Court in a suit for rent under Bengal Act VIII of 1869 was binding in a suit between the same parties for a declaration that the land, the rent of which was the subject of the former suit, is lakhiraj. MOHIMA CHUNDER MOZOOMDAR *v.* ASRADHA DASSIA **[15 B. L. R., 251, note : 21 W. R., 207**

338. ——————— *Question of title in Civil Court in rent suits since the passing of Beng. Act VIII of 1869.*—The old Privy Council and Full Bench Rulings, that a Revenue Court's decision on title in a rent suit under Act X of 1859 is not conclusive, went upon a Collector's incompetency to determine a question of title, but do not now apply to the decision of a competent Civil Court hearing a rent suit under the Rent Act, 1869. RAM DOSS NUSHKUR *v.* RASH MONEE DOSSEE **[25 W. R., 189**

RES JUDICATA—*continued.*

9. COMPETENT COURT—*continued.*

(*c*) REVENUE COURTS—*continued.*

339. ——— **Decision in suit declaring title.**—*Subsequent suit for rent.*—A decree of a Civil Court in a suit concerning the title is not of itself in all cases a bar to a suit against a tenant for rent by the person against whom such decree has been obtained. When the decree clearly adjudicates against the plaintiff's right, and the Collector sees that it relates to the property in question and is in force, the Collector should give effect to the decree as a bar to the plaintiff's suit for rent, notwithstanding that the plaintiff may have an actual receipt of rent prior to the institution of the suit. TARINEE *v.* BAMUNDOSS MOAKHEF . . **1 W. R., 331**

340. ——— **Decision as to validity of pottah.**—*Decision of Revenue Court. - Title.—Collateral issue.*—The trial and determination by the Revenue Court of the amount of rent which the plaintiff is entitled to under a mokurrari pottah, in which the genuineness of the pottah only comes collaterally in issue in determining the amount of rent, was not a bar to a subsequent suit in the Civil Court to try the validity of the pottah. JANESWAR DAS *v.* GULZARI LAL **[5 B. L. R., 666, note : 11 W. R., 216**

TEKAITNE GOWRA KUMARI *v.* BENGAL COAL COMPANY **[5 B. L. R., 667, note : 13 W. R., 129**

Affirmed by the Privy Council in TEKAETNE GOURA COOMAREE *v.* SAROO COOMAREE **[19 W. R., P. C., 252**

341. ——————— *Decision of Revenue Court.—Suit for ejectment.*—A Collector's judgment as to the genuineness of a pottah could not be pleaded as an estoppel in the Civil Court in an action for ejectment on account of trespass. ARADHUN DEY *v.* GOLAM HOSSEIN . **8 W. R., 487**

342. ——————— *Civil Procedure Code, 1859, s. 2.—Suit for declaration of title.—Order of Collector under Act X of 1859, s. 23.*—In a suit for declaration of title to land from which a ryot had been ejected at the suit of his zemindar by the order of a Collector under section 23, Act X of 1859, and wherein the genuineness of the pottah upon which the suit was brought was at issue, the order of the Collector could not be pleaded in bar. BHAIRO SINGH *v.* UDIKARAN SINGH **[3 B. L. R., Ap., 139**

S. C. BHYRO SINGH *v.* OODEE KURN SINGH **[12 W. R., 284**

343. ——————— *Suit to declare pottah forged.*—The proceedings in a suit under Act X of 1859, in which the Collector did not finally adjudicate upon the genuineness of a pottah, although he accepted it as genuine, were no bar to a subsequent suit in the Civil Court for a declaration that the pottah was a forgery. PITAMBUR SHAHA *v.* RAMJOY GHOSE . . . . **7 W. R., 92**

SHIB PERSHAD PANAH *v.* MUDDUN MOHUN DOSS **[15 W. R., 415**

RES JUDICATA—*continued.*

9. COMPETENT COURT—*continued.*

(c) REVENUE COURTS—*continued.*

344. ——— Decision as to validity of kabuliat.—*Court of competent jurisdiction.—Question of title, Decision of, by Revenue Court.*—Where, for the purposes of a rent suit, a Revenue Court found that a kabuliat propounded by the plaintiff was a genuine document, such finding was no bar to a Civil Court trying the question of right between the parties, and for that purpose trying the validity and genuineness of the kabuliat. BOISTUB CHURN SEN *v.* TRAHEE RAM SEIN . . **15 W. R., 32**

345. ——— Decision as to validity of bond.—*Court of competent jurisdiction.—Concurrent jurisdiction.—Civil Procedure Code, 1859, s. 2.*—*A.* brought a suit against *B.* in the Collector's Court for rent. In answer, *B.* set up a bond, by the terms of which *A.*, in consideration of a loan of R10,000, stipulated that *B.* should apply a certain portion of the annual rent to the reduction of the loan, and the payment of the interest thereon. *A.* alleged that the bond was false. The Collector, in an issue directed by the High Court, decided that it was genuine, and this decision was affirmed on appeal. *B.* afterwards sued *A.* in the Civil Court upon the bond *Held per* PEACOCK, *C. J.*, and PHEAR, *J.* (CAMPBELL, *J.*, *dissentiente*), that the Collector's decision as to the genuineness of the bond did not operate as an estoppel. The two Courts were not Courts of concurrent jurisdiction. *Per* PEACOCK, *C. J.*—*Quære*,—Is a judgment of a Court of concurrent jurisdiction between the same parties on the same point conclusive between the parties in another Court in the country? EDUN *v.* BECHUN
[2 Ind. Jur., N. S., 264: 8 W. R., 175

346. ——— Decision as to genuineness of document.—*Decision by Deputy Collector.—Jurisdiction of the Revenue Courts.*—*A.*, a ryot, brought a suit in the Court of the Deputy Collector against *B.*, his zemindar, for recovery of possession of a piece of land, on the ground that he was the holder of a mirasi pottah, and that he had been illegally ejected by *B.* The Deputy Collector held that the mirasi pottah was genuine, and that *B.* had illegally ejected *A.* He passed a decree in favour of *A.*, in execution of which *A.* obtained possession of the land in dispute. In a suit brought by *B.* against the heirs of *A.* in the Civil Court for recovery of possession of the said piece of land, on the ground that the mirasi pottah was a spurious document, and that no mirasi pottah had been granted to *A.*,—*Held* (JACKSON, *J.*, doubting) that the decision of the Deputy Collector was not conclusive between the parties CHUNDER COOMAR MUNDUL *v.* NUNNEE KHANUM
[11 B. L. R., F. B., 434: 19 W. R., 322

UNNODA PERSHAD MOOKERJEE *v.* SOORENDRONATH PAL CHOWDHRY . **20 W. R., 105**

GUNGA GOBIND ROY *v.* KALA CHAND SURMA GANGOOLY . . . **20 W. R., 455**

Contra, HURO LALL SAHA *v.* TIRTHANUND THAKOOR
[11 B. L. R., 437, note: 13 W. R., 417

RES JUDICATA—*continued.*

9. COMPETENT COURT—*continued.*

(c) REVENUE COURTS—*continued.*

347. ——— Decision as to validity of document.—*Civil Procedure Code, 1859, Former suit in Revenue Court.*—In a suit by a tenant to recover possession of land from which he had been dispossessed by defendant under colour of a sub-lease alleged to have been extorted by force, it appeared that plaintiff had, on this very cause of action, sued the defendant in the Court of the Collector, who had found the sub-lease to be good and valid, and had dismissed the suit. *Held* that the suit, having once been dismissed by a Court of competent jurisdiction, could not again be entertained by the Civil Court. HOLLOWAY *v.* ASMAN ROY
[10 W. R., 325

348. ——— Order of Revenue Court for ejectment.—*Suit for possession.—Act X of 1859, s 25.*—The defendant had obtained an order under section 25, Act X of 1859, to eject the plaintiff, who now sued in the Civil Court for recovery of possession. *Held* that section 2, Act VIII of 1859, did not bar the suit. AMANAT ALI CHOWDHRY *v.* MUSSEN ALI
[2 B. L. R., Ap., 36: 11 W. R., 145

349. ——— *Suit for ejectment.—Order on application under Act X of 1859, s. 25.*—A suit for ejectment from land assigned for building purposes under a contract was not barred under section 2, Act VIII of 1859, by reason of a previous order for ejectment obtained on an application under section 25, Act X of 1859, such an application not being a suit. RAM NARAIN MITTER *v.* NOBIN CHUNDER MOOKDAFARASH . . **18 W. R., 208**

350. ——— Suit for ejectment, Dismissal of.—*Subsequent suit for ejectment.*—A suit for ejectment, on the ground that the defendant had entered the plaintiff's land wrongfully and forcibly, having been dismissed by the Court, which found that the defendant was not a trespasser but a tenant,—*Held* that a subsequent suit by the same plaintiff, on the allegation that the defendant was a trespasser, though lately a tenant, was not prohibited by section 2, Act VIII of 1859 The suit, however, was dismissed on other grounds. HEERA RAWUT *v.* RACHA RAWUT
[22 W. R., 115

351. ——— Refusal of Collector in suit under s. 25, Act X of 1859.—*Subsequent suit for ejectment*—A Collector's refusal to give assistance under section 25, Act X of 1859, was not a determination by a Court of competent civil jurisdiction in a former suit within the meaning of section 2, Act VIII of 1859. GOCOOL CHUNDER *v.* ALI MAHOMED . . . . . **10 W. R., 6**

See MUDUN MOHUN ROY *v.* GOURMONEE GOOPTO
[B. L. R., Sup. Vol., 31: W. R., F. B., 126

352. ——— Order by Revenue Courts for registration of name.—*Suit for declaration of title.*—In a suit for declaration of title, the mere fact that the Revenue Courts decreed the registration

RES JUDICATA—*continued.*

9. COMPETENT COURT—*continued.*

(c) REVENUE COURTS—*continued.*

Order by Revenue Courts for registration of name—*continued.*

of the plaintiff's vendor's name as a joint sharer of the estate, and that no steps were taken during twelve years to set aside that decree, was held not to operate as an estoppel. NITTANUND ROY *v.* BYDONATH MOHAPATHUR . . **W. R., 1864, 350**

353. ——————— *Proceedings under s. 27, Act X of 1859.*—Two purchasers of holdings in the defendant's zemindari at a sale for arrears of revenue applied to the Collector to have the transfer registered in the zemindar's sherista, under Act X of 1859, section 27. Their application was refused, and then they brought a suit in the Civil Court to set aside the Collector's order and register their names. *Held* that proceedings authorised to be taken in the Collector's Court under section 27, Act X of 1859, were not proceedings in a suit; and consequently that such proceedings were no bar to a suit in the Civil Court under section 2, Act VIII of 1859. CHANDRA NARAYAN GHOSE *v.* KASINATH ROY CHOWDHRY . **4 B. L. R., F. B., 43**

S. C. CHUNDER NARAIN GHOSE *v.* KASHEENATH ROY CHOWDHRY . **12 W. R., F. B., 30**

354. ——— ——— **Orders of Collector amending Collectorate record, and refusing partition.**—*Adjudication of rights.*—Two applications before a Collector, the one by defendants, asking an amendment of the Collectorate record by expunging therefrom plaintiff's names, as being out of possession, and which, after evidence taken, was ordered to be done, and the other by plaintiffs, praying a partition under Act XIX of 1863, which was refused, on the ground that they had not established their possession, were held not to be such an adjudication of rights as to be a bar to a suit by the plaintiffs for establishment of right to and possession of the land referred to in such application. KISHUN SAHAI *v.* RAGHOO SINGH . . . . **2 N. W., 64**

355. ——— **Order by settlement officer.**—*Civil Procedure Code, 1882, s. 13.—Act XIX of 1873, ss. 56, 62, 64, 241 (g).—Held* that an order by a settlement officer directing that certain persons should be recorded as the sub-proprietors of certain land, as they claimed to be, and not as lessees, as certain persons asserted that they were, did not operate as *res judicata* in a suit by the latter persons against the former for a declaration that the former were not sub-proprietors of the land, but lessees thereof, the settlement officer not being competent, under Act XIX of 1873 (N.-W. P. Land-Revenue Act), to try such a question of right. TOTA RAM *v.* HAR KISHAN . . . **I. L. R., 7 All., 224**

356. ——— **Decision of Collector in measurement proceedings.**—*Beng. Act VIII of 1869, s. 18.—Jurisdiction of Collector.*—If a Collector professing to proceed under the provisions of section 38, Bengal Act VIII of 1869, does not ascertain the existing rates of rent, but proceeds to assess

RES JUDICATA—*continued.*

9. COMPETENT COURT—*continued.*

(c) REVENUE COURTS—*continued.*

Decision of Collector in measurement proceedings—*continued.*

the rents,—in other words, to determine what rates are in his opinion fair and equitable,—he exceeds his jurisdiction and his proceedings are null and void. But if he has properly exercised the jurisdiction conferred on him by that section, his proceedings are conclusive between the parties in a subsequent suit for rent. MERJAH JANAND *v.* KRISHTO CHUNDER *alias* KINOO LAHARY

[I. L. R., 10 Calc., 507

357. ——— **Decision as to surety in rent suit.**—*Jurisdiction of Revenue Court.—Suit against sureties of lessee.—Competent Court, Decision by.*—Where a person became security for the due payment of rent by a third party, and on default of such payment the creditor sued both the principal debtor and the surety in the Revenue Courts for the amount owing, and such suit as against the surety was an appeal thrown out by the High Court on the ground that the Revenue Courts had no jurisdiction to entertain it, and the creditor then sued the surety in the Civil Courts,—*Held* that the proceedings instituted in the Revenue Courts were no bar to the entertainment of this suit. GUNESH KOOER *v.* OOMDUT-OON-NISSA BEGUM . . **6 N. W., 77**

358. ——— **Dismissal of suit for rent.**—*Subsequent suit for possession with mesne profits.*—The dismissal of a suit for rent is no bar to suit for title and possession with mesne profits. GOUR HURRER DOSS *v.* MUTTEEOOLAH . **1 W. R., 99**

359. ——— **Dismissal of suit in Revenue Court for want of jurisdiction.**—The dismissal of a suit for rent in the Revenue Court for want of jurisdiction (the plaintiff not having proved that he was *de facto* landlord in possession) was held not to bar a suit in the Civil Court for declaration of right to the same rent. DHURONY MOJOOMDAR *v.* BISSAMBHUR MOOKERJEE . **2 W. R., Act X, 103**

BHIKAREE PANDAH *v.* AJOODHYA PERSHAD **[3 W. R., 176**

360. ——— **Decree for rent at enhanced rate.**—*Suit for declaration of right to same land.*—A decree in a suit for a kabuliat at an enhanced rate was no bar, under section 2, Act VIII of 1859, to a suit for a declaration of the rights of the present plaintiff to hold the land in lieu of maintenance on payment of a quit-rent, which could not be tried by a Collector. KRISTO CHUNDER MURDRAJ *v.* POOROSUTTUM DOSS . . **15 W. R., 424**

361. ——— **Decision as to liability for rent.**—*Subsequent suit for declaration of title.*—The decision of a Revenue Court that a party was liable for rent to another as his tenant did not bar that party suing in a Civil Court to obtain a declaration of title on his general civil rights, either as proprietor by purchase or as mokurruridar. JUDDOONATH SEIN *v.* RAM COOMAR CHATTERJEE **[9 W. R., 359**

RES JUDICATA—*continued.*

9. COMPETENT COURT—*continued.*

(c) REVENUE COURTS—*continued.*

Decision as to liability for rent—*continued.*

ISHAN CHUNDER ROY CHOWDHRY *v.* BHYRUB CHUNDER DOSS . . . **21 W. R., 25**

362. ——— Decision as to tenancy agreement.—A Deputy Collector having in a suit for rent given plaintiff (*M.*) a decree, determining adversely to defendant (*K*) an issue which he had raised as to an arrangement of tenancy,—*Held* that *K.* could not succeed as plaintiff in a new suit in the same Court in which he set up the same arrangement and asked to have it declared as that under which he held the land from *M.* KALEE DASS GHOSAL *v.* MUDDOOSOODUN ROY . **10 W. R., 465**

363. ——— Suit in Revenue Court on a lease.—*Subsequent suit for same sum as damages.*—When a suit for rent due on a certain stipulation in a putni lease was dismissed in the Revenue Courts,—*Held* that another suit could not be brought in the Civil Court as for damages laid at the amount of rent which would have been realised. GOPALKISTO MOOKERJEE *v.* MUDHOOSOODUN PAUL CHOWDHRY . . **W. R., 1864, Act X, 82**

364. ——— Suit in Revenue Court to set aside attachment.—*Subsequent suit in Civil Court to assess rent on same land.*—A suit was brought in the Revenue Court to set aside an attachment for rent, on the ground that such attachment was for rent at a higher rate than was due. The landholder claimed the higher rate under an alleged assessment of a Butwara Ameen. The Collector made a decree setting aside the attachment, on the ground that the landholder failed to prove that the higher amount was due. *Held* that the landholder could not maintain a suit in the Civil Court to assess the land at the higher rate claimed for the year for which the attachment had issued, on the ground of prior service of notice of demand of the higher rate, under Bengal Regulation V of 1812, that question having been already adjudicated upon by a Court of competent jurisdiction. REAZOONNISSA KHANUM *v.* DOYANAUTH JHÁ . . . **Marsh., 638**

365. ——— Decision of Revenue Court as to possession.—*Former suit by lessee against zemindar.*—*Held* that a decree of the Revenue Court, in a suit for possession brought by one lessee against the zemindar, was no bar to a suit in the Civil Court brought by another lessee to obtain possession against both the zemindar and the first lessee. RUN SINGH *v.* MAHOMED ABID **[2 Agra, 127**

366. ——— Dismissal of suit for ejectment.—*Suit for removal of trees.—Jurisdiction of Revenue Court.—Act X of 1859, s. 23.*—The dismissal of a previous suit brought by plaintiff for ejectment of defendant, his cultivator, on account of breach of contract under clause 5, section 23, Act X of 1859, as being barred by limitation, was held not to operate as a bar to a suit for removal and possession of certain

RES JUDICATA—*continued.*

9. COMPETENT COURT—*continued.*

(c) REVENUE COURTS—*continued.*

Dismissal of suit for ejectment—*continued.*

trees, and avoidance of sale-deed executed by cultivator, which was of a different nature from the one dismissed, and did not come within the suits defined in section 23, Act X of 1859, and therefore was not cognisable by the Revenue Court. JOGUL KISHORE *v.* CHUTTER SINGH . . **1 Agra, 27**

367. ——— Refusal of application for ejectment.—*Civil Procedure Code, 1882, s. 13.—Landholder and tenant.—Application for tenant's ejectment for building on land.—Suit for demolition of building.*—A decision of a Revenue Court disallowing an application to eject a tenant, because he has built on his land, does not, under section 13 of the Civil Procedure Code, bar a suit in the Civil Court to have the building demolished. AMRIT LAL *v.* BALBIR . . . . **I. L. R., 6 All., 68**

368. ——— Decision ordering ejectment.—*Jurisdiction of Revenue Court.—N.-W. P. Rent Act (XVIII of 1873), s. 93.—Landlord and tenant.—Determination of title.*—The decision of a Revenue Court, in a suit by a landholder against a tenant under section 93 (*b*) of Act XVIII of 1873 for the ejectment of the tenant on the ground of misconduct in constructing a well, that the tenant could not be ejected from his holding without compensation being given to him for his outlay in constructing it, is not a determination of the landholder's right to demolish the well as having been constructed by a person not having a right to construct it; and consequently such a decision is not a bar to a suit by the landholder in the Civil Court for the demolition of the well as having been so constructed. RAJ BAHADUR *v.* BIRMHA SINGH **[I. L. R., 3 All., 85**

369. ——— Decision as to existence of relation of landlord and tenant.—*Civil Procedure Code, 1877, s. 13.—Suit for arrears of rent.—Determination of title.—Act XVIII of 1873 (N.-W. P. Rent Act), ss. 93, 95, 148.*—The question whether the parties to a suit in a Court of Revenue for arrears of rent stand in the relation of landlord and tenant, is one which it is necessary for such Court to try incidentally for the purpose of disposing of such suit, but not one which such Court has special jurisdiction to determine, and its determination of that question is not that of a competent Court. Consequently, where a Court of Revenue determines in such a suit that the parties do not stand in such relation, such determination does not bar the party alleging that the parties do stand in such relation from suing in the Civil Court to establish such relation. GOPAL *v.* UCHABAL **[I. L. R., 3 All., 51**

370. ——— Decree of Revenue Court in suit as to rate of rent.—*Suit for arrears of rent.*—A Revenue Court cannot entertain a suit to determine the rate of rent payable by an ex-proprietary tenant but an application only. *Held*, there

RES JUDICATA—*continued.*

9. COMPETENT COURT—*continued.*

(c) REVENUE COURTS—*continued.*

Decree of Revenue Court in suit as to rate of rent—*continued.*

fore, where a landholder sued an ex-proprietary tenant for arrears of rent at a certain rate, and obtained an *ex parte* decree for arrears of rent at that rate, and again sued the tenant for arrears of rent at the same rate, that the Revenue Court had not jurisdiction to determine the rate of rent in the first suit, and that, therefore, the tenant was not precluded from setting up as a defence to the second suit that it was not maintainable, as the rate of rent had not been fixed. PHULAHRA *v.* JEOLAL SINGH

[I. L. R., 6 All., 52

371. ——— **Determination of question of title.**—*Act XIX of 1863, ss. 8, 9.*—Where *M.*, the recorded proprietor of an estate, applied to have his share of such estate separated, and an objection was made to such separation by *H.*, another recorded proprietor of the estate, which raised the question of *M's* proprietary right to a portion of his share, and the Collector proceeded under section 8, Act XIX of 1863, to inquire into the merits of such objection, and decided that *M's* interest in such portion of his share was that of a mortgagee and not a proprietor, and *M.* did not appeal against such decision and it became final,—*Held*, in a suit in the Civil Court by *M.* against *H.* in which he claimed a declaration of his proprietary right to such portion, that a fresh adjudication of his right was barred. HAR SAHAI MAL *v.* MAHARAJ SINGH . I. L. R., 2 All., 294

372. ——— *Partition.—Appeal.—Act XIX of 1873 (N.-W. P. Land Revenue Act), ss. 113, 114.*—Where, in proceedings for partition under Act XIX of 1873, a question of title to land is raised between the parties to the partition, and there is an adjudication of such question, such adjudication will operate as a bar to a suit between the same parties in the Civil Courts to contest the title to such land, notwithstanding that in some respects such adjudication may have been irregular or defective. *Har Sahai Mal* v. *Maharaj Singh, I. L. R., 2 All., 294;* and S. A. No 129 of 1881, decided the 27th July 1881, followed *Held* in this case, on consideration of the partition proceedings, that the question of title raised therein had been adjudicated on, and therefore the rule mentioned above applied. BATESHAR NATH *v.* FAIZ-UL-HASAN

[I. L. R., 5 All., 280

373. ——— *Determination of proprietary right.—N.-W. P. Land Revenue Act (Act XIX of 1873), ss. 113, 114.*—In the case of an objection to a partition raising a question of title, it is only when the Collector or Assistant Collector records a proceeding declaring the rights of the parties, after an adjudication of the objection on its merits, that his order becomes an order under section 113 of Act XIX of 1873, within the meaning of section 114 of that Act. Where, therefore, an Assistant Collector made an order disallowing an objection to a partition raising a question of title, on the ground that such question had been determined against the objector in a suit for profits between the parties,—*Held* that such order was not a decision of a Court of Civil Judicature within the meaning of section 114 of Act XIX of 1873, but that it could be contested by a suit in the Civil Court. *Ramshur Rai* v. *Subhoo Rai, 1 N W., Ed 1873, 134; Bukhta* v. *Ganga, 3 Agra, 161;* and *Harsahai Mal* v. *Maharaj Singh, I L. R., 2 All., 294,* distinguished. ASHGAR ALI SHAH *v.* JHANDA MAL . . . I. L R., 2 All., 839

RES JUDICATA—*continued.*

9. COMPETENT COURT—*continued.*

(c) REVENUE COURTS—*continued.*

Determination of question of title—*continued.*

374. ——— *Estoppel.—Suit for a declaration of proprietary right.*—In 1864 the defendants served a notice upon the plaintiff demanding rent for land in his possession for which the plaintiff had not paid them rent previously. The plaintiff thereupon instituted a suit in the Revenue Court contesting his liability to pay rent for such land on the ground that he was the proprietor thereof. A decree was made in that suit on the 16th August 1865, directing the plaintiff to execute a kabuliat to pay the defendants rent for such land at a certain rate. The plaintiff did not appeal from that decree, but from its date until August 1877 paid the defendants rent for such land. On the 8th August 1877 the plaintiff instituted the present suit against the defendants in the Civil Court, in which he claimed a declaration of his proprietary right to such land, and to be maintained in possession thereof as proprietor, free from the liability to pay rent, and to have the decree of the Revenue Court dated the 16th August 1865 declared null and inoperative. *Held* that the plaintiff's suit in the Revenue Court not being one which that Court was competent to entertain, the decision in that suit could not be held final on the question of title raised in the present suit; and that there was nothing in the conduct of the plaintiff which estopped him from instituting the present suit. DEBI PRASAD *v.* JAFAR ALI . I. L. R., 3 All., 40

375. ——— *Jurisdiction of Revenue Courts.—Landlord and tenant—N.-W. P. Rent Act (XVIII of 1873), ss. 36-39.*—The question of title raised in a suit for a declaration that the defendant holds an estate paying revenue to Government as a manager subject to ejectment at will, and for ejectment, is not concluded by the orders of the Revenue Courts establishing the relationship of landlord and tenant between the parties, on an application having been made by the defendant under section 39 of Act XVIII of 1873, upon a notice having been served upon him by the plaintiff under section 36 of that Act, objecting to his ejectment. MUHAMMAD ABU JAFAR *v.* WALI MUHAMMAD

[I. L. R., 3 All., 81

See CHOTU *v.* JITAN . I. L. R., 3 All., 63

376. ——— *Landholder and tenant.—Decision of Revenue Court on an ap-*

RES JUDICATA—*continued.*

9. COMPETENT COURT—*continued.*

(c) REVENUE COURTS—*continued.*

Determination of question of title—*continued.*

plication under s. 39 of Act XVIII of 1873.—The plaintiffs in this suit, landholders, had caused a notice of ejectment to be served on the defendants, their tenants under a lease, on the ground that the tenancy had expired. The defendants applied to the Revenue Court, under section 39 of Act XVIII of 1873, contesting their liability to be ejected, on the ground that the lease was a perpetual lease. The Revenue Court held, with reference to the word "istemrari" contained in the lease, that the lease was perpetual, and defendants were not liable to be ejected. The plaintiffs thereupon sued in the Civil Court for the cancelment of the word "istemarari" in the lease, on the ground that it had been inserted fraudulently. *Held*, on appeal from the decree of the lower Appellate Court dismissing the suit as barred by the decision of the Revenue Court, that it was not so barred, the matter in dispute being peculiarly within the jurisdiction of the Civil Court, and not one which a Revenue Court was competent finally to determine on an application under section 39 of Act XVIII of 1873. HUSAIN SHAH *v.* GOPAL RAI **[I. L. R., 2 All., 428**

377. ——— *Civil Procedure Code, 1877, s. 13.—N.-W. P. Rent Act (XVIII of 1873), s. 39.*—*S.* caused a notice of ejectment to be served upon *K.* in respect of certain land, alleging that he held the same by virtue of a lease which had expired. *K.* contested his liability to be ejected under section 39 of Act XVIII of 1873, denying that he held the land by virtue of such lease, and alleging that he had a right of occupancy. The Revenue Court decided that *K.* held the land under a right of occupancy, and not under such lease. *S.* thereupon sued *K.* in the Civil Court, claiming possession of such land, on the allegation that *K.* was a trespasser wrongfully retaining possession thereof after the expiration of his lease. *Held* that the decision of the Revenue Court did not render the matter in issue *res judicata.* The provisions of section 13 of Act X of 1877 do not apply to applications such as those under section 39 of Act XVIII of 1873. SUKHDAIK MISR *v.* KARIM CHAUDHRI . **I. L. R., 3 All., 521**

378. ——— *Jurisdiction of Civil Court.—Act XVIII of 1873 (N.-W. P. Rent Act), ss. 36-39.*—The defendants, claiming to be occupancy tenants of certain land, and alleging that the plaintiff was their sub-tenant, caused a notice of ejectment to be served on the plaintiff under sections 36-39 of Act XVIII of 1873. The plaintiff thereupon, under the provisions of section 39 of that Act, preferred an application contesing his liability to be ejected, alleging that he had a right of occupancy in such land jointly with the defendants and was not their sub-tenant. The Assistant Collector trying the case finally decided that the plaintiff was the sub-tenant of the defendants, and the plaintiff was ejected. The plaintiff then sued the defendants in the Civil Court for a declaration of his right as an occupancy tenant to such land and possession of the same. *Held* that the decision of the Assistant Collector as to the respective rights of the parties could only be regarded as incidental and ancillary to the main point to be determined by him,—*viz.*, whether, assuming the relation of landlord and tenant to exist between the parties, the plaintiff was liable to be ejected; and such decision was not a bar to a fresh determination of such rights in the Civil Court BIRBAL *v.* TIKA RAM . . **I. L. R., 4 All., 11**

379. ——— **Decision as to liability to ejectment.**—*Landholder and tenant.—Ejectment of tenant.—Suit by tenant for declaration of right.—Jurisdiction.—Act XVIII of 1873 (N.-W. P. Rent Act), s. 93 (b).*—An occupancy tenant, who had been ejected under sections 34 and 93 (*b*) of the N.-W. P. Rent Act, on the ground that he had committed an act mentioned in those sections which rendered him liable to ejectment, sued in the Civil Court for a declaration of his right of occupancy, and to have the decree of the Revenue Court directing his ejectment declared of no effect, on the ground that his act was not one of those rendering him liable to ejectment, being authorised by local custom. *Held* that the question of the plaintiff's liability to ejectment on account of the act in question, being a matter the cognisance of which was limited to the Revenue Courts, and the decision of the Revenue Court against him having become final, the plaintiff's suit was barred by section 13 of the Civil Procedure Code. *Raj Bahadur* v. *Birmha Singh, I. L. R., 3 All., 85,* distinguished. RADHA PRASAD SINGH *v.* SALIK RAI . . **I. L. R., 5 All., 245**

380. ——— *Act XVIII of 1873, s. 95.—Determination of title under cl. (n).*—*S.* applied to the Revenue Court, under clause (*n*) of section 95 of Act XVIII of 1873, for the recovery of the occupancy of certain land, alleging that the occupancy of such land had devolved upon her by inheritance, and that the landholder had wrongfuly dispossessed her. The landholder set up as a defence to this application that *S* was not entitled to the occupancy of the land by inheritance, but that she was a trespasser. The Revenue Court determined that *S.* was entitled to the occupancy of the land by inheritance, and granted her application. The landholder then sued *S.* in the Civil Court for the possession of the land. *Held, per* PEARSON, *J.* and TURNER, *J.*, that the question of *S.'s* title to the occupancy of the land was, with reference to the decision of the Revenue Court, *res judicata*, and could not again be raised in the Civil Court. *Per* SPANKIE, *J.*, and OLDFIELD, *J*, *contra.* SHIMBHU NARAIN SINGH *v.* BACHCHA . . . **I. L. R., 2 All., 200**

381. ——— **Decision as to liability to ejectment.**—*N.-W. P. Rent Act, 1881, ss. 36, 40, 95.*—The plaintiffs, who claimed to be tenants of

RES JUDICATA—*continued.*

9. COMPETENT COURT—*continued.*

(c) REVENUE COURTS—*continued.*

Decision as to liability to ejectment— *continued.*

certain land under a lease from the zemindar, alleging that the defendant was their sub-tenant, under section 36 of the N.-W. P. Rent Act, 1881, caused a notice of ejectment to be served upon the latter under the provisions of that Act. The defendant did not make an application under that Act contesting his liability to be ejected, and the plaintiffs applied under sections 40 and 95 (*f*) of that Act for assistance to eject him. The Revenue Court trying this application rejected it, on the ground that the defendant was not a sub-tenant of the plaintiffs, but a co-sharer in their tenancy. The plaintiffs thereupon sued the defendant in the Civil Court for a declaration that the latter was not a partner with them in the lease, and for possession of the land by his ejectment therefrom. *Held* that the relief sought in the suit by the plaintiffs was not one which a Revenue Court could give under any of the clauses of section 95 of the Rent Act, which presupposes an admitted relation of landholder and tenant; and therefore the determination by the Revenue Court of the plaintiffs' application for ejectment of the defendant was not the decision of a Court competent to try the suit, and was no bar to its maintenance in a Civil Court, within the principle of section 13 of the Civil Procedure Code. LODHI SINGH *v.* ISHRI SINGH

[I. L. R., 6 All., 295

382. ——————— *Resumption of rent-free grant.—Suit for declaration that land is "garden land" and for possession.—Act XII of 1881, ss. 10, 30, 95 (a), (c), (n).*—A zemindar applied to the Revenue Court under section 30 of the N.-W. P. Rent Act, and obtained an order for the resumption of certain plots of land, on the finding that they were resumable rent-free grants. The occupiers of the land were ejected, and the zemindar obtained possession. Subsequently the occupiers brought a suit in the Civil Court to obtain a declaration that they held the plots in question, under a license from the zemindar's predecessor in title, as orchard land, without payment of any rent or other allowance to the landlord, and that they were entitled to retain the land on this footing, so long as it should continue to be occupied with trees. They sought to recover possession of the soil and timber, asking also for "a determination of the nature of their tenure" therein. *Held* that the cognisance of the suit by the Civil Court was not barred by the provisions of section 13 of the Civil Procedure Code, inasmuch as the jurisdiction of the Civil Court to entertain it was not ousted by section 95 of the Rent Act, since the "matter" presented by the plaintiffs was not one "on which an application of the nature mentioned in that section" could by them have been made to a Court of Revenue, clauses (*a*), (*c*), and (*n*) of the section not being applicable to the case. AJUDHIA PRASAD *v.* SHEODIN

[I. L. R., 6 All., 403

RES JUDICATA—*continued.*

9. COMPETENT COURT—*continued.*

(c) REVENUE COURTS—*continued.*

383. ——————— **Decision of Collector under Mad. Reg. V of 1822 when unappealed.**—A case decided by a Collector under Regulation V of 1822, from whose decision no appeal was made, was held to be *res judicata*, and could not be reopened before a Small Cause Court Judge. UPPALAPATI GANAKAYA GARU *v.* BALAVI RAMUDU

[2 Mad., 475

But *see* ADMULAM PILLAI *v.* KOVIL CHINNA PILLAI . . . . . 2 Mad., 22

384. ——————— **Decision as to rate of rent.**—*Decision on agreement set up by tenant.*—In a suit brought in a Revenue Court by a landlord against his tenant to enforce acceptance of a pottah at certain rates, for a certain year, the tenant pleaded that by virtue of a special agreement he was entitled to hold at favourable rates, but failed to establish this plea, and a decree was passed in favour of the landlord. The tenant then sued in the Civil Court to establish his right to compel the landlord to grant him a pottah at favourable rates for the next year, by virtue of the special agreement put forward by him in the suit in the Revenue Court. *Held* that the decision of the Revenue Court was no bar to the suit. HARIKA RAMAYYAR *v.* SINDU TIRTASAMI

[I. L. R., 7 Mad., 61

385. ——————— **Decision as to right to possession.**—*Dismissal of application by Collector to raise attachment.*—*S.*, the mortgagee of a talookdari village, obtained a decree upon his mortgage against his mortgagor, the talookdar of the village, under which *S.* attached the village. The Collector of the district in which the attached village was situated thereupon came in under section 246 of the Civil Procedure Code, 1859, and sought to raise the attachment, but, as he failed to appear when the matter came on for adjudication, his application was dismissed. The village was then sold under the decree and was purchased by *S.*, the mortgagee. Upon *S.* seeking to obtain possession of the village, he was resisted by the Collector, whereupon *S* (after proceedings ineffectually taken by him under section 269 of the Code) filed a suit against the Collector praying to be put in possession of the village, *Held* by the Appellate Court (affirming the decision of TUCKER, *J.*) that the right of *S.* to be put in possession of the village was, as between him and the Collector, *res judicata* by reason of the dismissal of the Collector's application under section 246 of the Code (to set aside which dismissal the Collector had not filed a suit within the year allowed for that purpose), and that *S.* ought therefore to have been at once put in possession of the village without further proof of his title. COLLECTOR OF AHMEDABAD *v.* SAMALDAS BECHARDAS . . 9 Bom., 205

386. ——————— **Order of Mamlatdar under Bom. Act V of 1864.**—*Effect of order on mortgagee.*—A mortgagee is not affected by the order of a Mamlatdar made under Bombay Act V of 1864 on the application of the mortgagor for

RES JUDICATA—*continued.*

9. COMPETENT COURT—*continued.*

(*c*) REVENUE COURTS—*continued.*

Order of Mamlatdar under Bom. Act V of 1864—*continued.*

possession subsequent to the date of the mortgage. KRISHNAJI NARAYAN *v.* GOVIND BHASKAR [9 Bom., 275

(*d*) CRIMINAL COURTS.

387. ——— Decision of Criminal Court.—*Civil Procedure Code, 1877, s. 13.—Suit by Hindu father for compensation for the loss of his daughter's services in consequence of her abduction.—Compensation for costs of prosecuting abductor.*—A Hindu sued for compensation for the loss of his daughter's services in consequence of her abduction by the defendant, and for the costs incurred by him in prosecuting the defendant criminally for such abduction. The defendant was convicted on such prosecution. *Held* that the decision of the Criminal Court did not operate under section 13 of Act X of 1877 to bar the determination in such suit of the question whether the defendant had or had not abducted the plaintiff's daughter. RAM LAL *v.* TULA RAM . . . I. L. R., 4 All., 97

388. ——— Conviction in criminal case.—*Subsequent civil suit for damages.*—The conviction in a criminal case is not conclusive evidence in a civil suit for damages in respect to the same act. BISHONATH NEOGY *v.* HURO GOBIND NEOGY . . . . . 5 W. R., 27

389. ——— Decision as to validity of document in criminal case.—*Subsequent suit in Civil Court.*—A Civil Court is not bound by a Magistrate's view of the genuineness of a document. NITTYANUND SURMAH *v.* KASHEENATH NYALUNKAR . . . . . 5 W. R., 26

JUGGUT MISSER *v.* BABOO LALL [5 W. R., Cr., 50

OOMANATH ROY CHOWDHRY *v.* RAGHOONATH MITTER . [Marsh., 43: W. R., F. B., 10: 1 Hay, 75

10. REFUSAL OF RELIEF.

390. ——— Refusal to give relief not claimed in plaint.—*Subsequent suit for possession of the land not claimed.—Civil Procedure Code, 1859, s. 2.—A. B.* instituted a suit against *V. B.* to recover possession of one half of a field. *S. N.* and *B. N.*, on their application, were made plaintiffs in that suit, but no alteration in the amount either of stamp or claim was made in the plaint. The Principal Sudder Ameen awarded to *A. B.* one fourth of the field, and to *S. N.* and *B. N.* conjointly he awarded one fourth, but as to the remaining one half he passed no decree, as it had not been claimed in the plaint. *S. N.* and *B. N.* thereupon filed a fresh suit to recover possession of their remaining one fourth of the field, and the Principal Sudder Ameen

RES JUDICATA—*continued.*

10. REFUSAL OF RELIEF—*continued.*

Refusal to give relief not claimed in plaint—*continued.*

passed a decree in their favour. This decree was confirmed by the Joint Judge. *Held* that the decrees of the lower Courts were erroneous, and that the claim of the plaintiffs was barred by the provisions of section 2 of the Civil Procedure Code, but leave was granted to them to apply to the Court below for a review of the decree passed in the former suit. VYASRAV BALAJI *v.* SUBHAJI NARAYAN [5 Bom., A. C., 173

391. ——— Plaint in former suit, Description of property in.—*Variance between body of plaint and schedule.*—The father of the appellant obtained a decree against *G.'s* widow and his reversionary heirs, who had intervened in the suit, for possession of property mortgaged by the widow. In the schedule annexed to the plaint the mortgaged property was described as "Mouzah B., usli with dakhili,"—that is, Mouzah B. K. and Mouzah M. B.,—but in the body of the plaint it was described simply as "Mouzah B." On the death of plaintiff in that suit, the reversionary heirs of *G.* sued the appellant for an adjudication of their right to 16 annas of Mouzah M. B., and it was found that Mouzahs B. K. and M. B. were not usli with dakhili but distinct mouzahs, and that the mortgage-deed did not include Mouzah M. B. *Held*, affirming the judgment of the High Court, that in the first suit the Court was called on to adjudicate upon the property as described in the body of the plaint, and not as described in the schedule annexed thereto, and that the question in the latter suit was therefore not *res judicata.* HET NARAIN SINGH *v.* RAM PERSHAD SINGH . 7 C. L. R., P. C., 404

392. ——— Refusal to decide question of title.—*Reference of party to another suit.*—In a suit between *A.* and *B.* a question of title was raised and decided in *B.'s* favour in the Court of first instance, but on appeal the Judge refused to go into it, saying that *B.* might bring a fresh suit. *Held* that a subsequent suit by *B* raising the same question was not barred as *res judicata. Watson* v. *Collector of Rajshahye, 3 B. L. R., P. C., 48; 12 W. R., P. C., 43,* cited and distinguished. EMAMOODEEN SHOWDAGHUR *v.* FUTTEH ALI . . 3 C. L. R., 447

393 ——— Suit to determine issue left untried by Judge.—*Fresh suit.*—A fresh suit will not lie to determine an issue left untried by the Judge. The plaintiff's remedy, where such is the case, should be by special appeal to the High Court. JUGGESSUR NUNDEE *v.* CHUNDER GOBIND SINGH [9 W. R., 524

394. ——— Issue advisedly left undecided in former suit.—In 1878 *A.*, as the auction-purchaser of a talook, sued 35 persons for possession of a part of this talook. In this suit the issues raised were—(1) whether *A.* had purchased the whole talook, or an 8-anna share of the right, title, and interest of the judgment-debtors therein; (2) as to the correctness of the boundaries of the talook as given in the

RES JUDICATA—*continued.*

10. REFUSAL OF RELIEF—*continued.*

Issue advisedly left undecided in former suit—*continued.*

plaint. The Court held that *A.* had purchased the right, title, and interest of the judgment-debtors in the talook, and as it appeared that some of the defendants were not judgment-debtors, and as it did not appear what portions of the talook were held by the several defendants, the lower Appellate Court dismissed the suit, with liberty to the plaintiff to bring a fresh suit within the proper time. In 1880 *A.* brought a fresh suit against 16 of the same defendants and 19 others for possession of a portion of the same talook The issues raised were—(1) whether the suit was barred under section 13 of the Code; (2) whether *A.* had purchased the whole or a portion of the talook; (3) whether the defendants were in possession of all the disputed land, and, if not, what portions of the talook were held by the several defendants; (4) as to the correctness of the boundaries of the talook. The Munsif held that the suit was not barred, and on the merits gave *A.* a decree. The Subordinate Judge held that the suit was barred, and refused to go into the merits. *Held* that the question whether *A.* had purchased the whole or only a portion of the talook was *res judicata*, but that the question as to what lands *A.* was entitled to by virtue of his purchase having been left undecided in the former suit, *A.* was entitled to a decision on that point. RAM CHARAN BUHARDAR *v.* REAZUDDIN . **I. L. R., 10 Calc., 856**

395. ———— Judgment in former suit appealed from.—*Stay of execution pending appeal.—Review.—Held* that a former judgment by a Court of competent jurisdiction upon the same cause of action was conclusive between the same parties in a subsequent suit brought in another Court, notwithstanding the pendency of an appeal against it; but that the Judge passing a decree in the subsequent suit might, upon application made to him, and security being given, stay the execution of it until the appeal in the former suit was decided, and might, if the decree in the former suit was reversed, entertain an application for the review of his own decision in the subsequent suit. BULKIRAM NATHURAM *v.* GUJARAT MERCANTILE ASSOCIATION . **4 Bom., A. C., 81**

396. ———— Affirming judgment in special appeal.—*Affirmation in general terms by rejecting appeal.*—In a special appeal the general affirmation of a judgment can only refer to the points raised by the appellant, the rejection of the appeal not necessarily affirming the other findings of fact or law incidentally arrived at by the lower Appellate Court. AHMED HOSSEIN *v.* BANDEE . . **15 W. R., 91**

397. ———— Decision on issue not afterwards appealed from.—*Preliminary issue.*—The decision of an Appellate Court, on a preliminary issue of fact, which was not at the time appealed against, and which on a subsequent special appeal was not altered or noticed by the Special Appellate Court, is conclusive between the parties, and the issue determined cannot be reopened on a second special appeal. SUBHANJI BIN BAHIBJI *v.* BHAVANRAV BIN ANANDRAV . . . . . **1 Bom., 173**

RES JUDICATA—*continued.*

10. REFUSAL OF RELIEF—*continued.*

398. ———— Point decided by lower Court, but not dealt with on appeal.—*Issue as to enhancement of rent.—Subsequent suit for enhancement.*—In a suit for enhancement of rent, the Munsif found that the service of notice was sufficient, but that the rent could not be enhanced. On appeal, the District Judge found that the service was insufficient, and dismissed the suit, expressly declining to consider the question whether the rent was enhanceable. In a subsequent suit for enhancement by the same plaintiff against the same defendant, the Munsif found that no sufficient ground for enhancement had been made out, and dismissed the suit. On appeal, the District Judge agreed with the Munsif on this point, and held also that the decision of the Munsif in the first suit, that the rent could not be enhanced, was *res judicata. Held* that where the decision of a lower Court is appealed to a superior tribunal, which for any reason does not think fit to decide the matter, the question is left open, and is not *res judicata.* CHUNDER COOMAR MITTER *v.* SIB SUNDARI DASSEE

[I. L. R., 8 Calc., 631: 11 C. L. R., 22

399. ———— Effect of appealing against a judgment.—*Civil Procedure Codes (Act VIII of 1859, s. 2; Act X of 1877, s. 13, expl. 4).—Title.—Trespass.—Damages.*—When the judgment of a Court of first instance upon a particular issue is appealed against, that judgment ceases to be *res judicata*, and becomes *res sub judice;* and if the Appellate Court declines to decide that issue, and disposes of the case on other grounds, the judgment of the first Court upon that issue is no more a bar to a future suit than it would be if that judgment had been reversed by the Court of Appeal. NILVARU *v.* NILVARU . . . **I. L. R., 6 Bom., 110**

400. ———— Effect of judgment pending appeal.—*Dismissal of appeal for want of prosecution.*—The plaintiff sued to recover two villages from the defendants, claiming title from *C.*, the purchaser. The first defendant alleged that her husband, not *C.*, was the purchaser. This question was determined in a former suit, in which the present first defendant was plaintiff, and the present plaintiff defendant, in favour of the present plaintiff, by the Civil Judge, and the decision was confirmed on appeal by the Sudder Court. An appeal to Her Majesty in Council was dismissed for want of prosecution. *Held* that the matter in issue was *res judicata. Quære,*—Whether the former judgment could be deemed conclusive whilst an appeal was pending. KARKARLAPUDI SUBIYANARAYANARAZU GARU *v.* CHELLAMKURI CHELLAMMA . . **5 Mad., 176**

401. ———— Decision on a point of law subsequently disapproved of by a Full Bench.—*Suit as to same subject-matter.*—Where a Division Bench of the High Court decided, as a point of law, that a property had not passed under a certain deed of sale, and subsequently the decision on that point of law was in another case disapproved of by a Full Bench, the decision of the Division Bench

RES JUDICATA—*continued.*

10 REFUSAL OF RELIEF—*continued.*

Decision on a point of law subsequently disapproved of by a Full Bench—*continued*

(where the same plaintiff has again sued to recover the same property, relying on the same deed of sale) is no less a *res judicata* because it may have been founded on an erroneous view of the law, or a view of the law which a Full Bench has subsequently disapproved. GOWRI KOER *v* AUDH KOER
[I. L. R., 10 Calc., 1087

11. PRIVATE RIGHTS.

402. ——— Prescriptive right.—*Civil Procedure Code (Act X of 1877), s 13, expl. 5.*—Explanation 5 of section 13 of Act X of 1877 only applies to cases where several different persons claim an easement or other right under one common title, —as, for instance, where the inhabitants of a village claim by custom a right of pasturage over the same tract of land, or to take water from the same spring or well. Where, therefore, *A.*, in defending a suit brought against him by *B.* to have it declared that he had a right to build a wall across a drain, set up a prescriptive right to use the drain, and it was decided that no such prescriptive right existed in *A*, and subsequently *C* brought a suit against *B.*, claiming to use the same drain as an easement, and asking for the removal of the wall in question in the former suit, and *B.* set up the judgment in the suit between himself and *A.* as a bar to the suit,—*Held* that the right claimed by *C.*, not being one which he and other inhabitants of the neighbourhood claimed under one common title, but a prescriptive right which he claimed individually *in respect of his own house and premises*, and depending upon the length of time he had used the right, was a separate claim, and that the judgment in the suit between *B.* and *A.* did not operate as a bar to his suit. KALISHUNKUR DOSS *v.* GOPAL CHUNDER DUTT
[I. L. R., 6 Calc., 49 : 6 C. L. R., 543

403. ——— *Right to use of water.*—*Decision in former suit.*—A decision in a former case, in which a mere question as to the use of the water in a water-course arose, cannot operate as *res judicata* in a subsequent case, in which the subject-matter is whether the defendants have the right of throwing up an embankment and obstructing the water-way. MUNMOHUN SINGH *v.* AMRITNATH CHOWDHRY . . W. R., 1864, 167

404. ——— *Civil Procedure Code, 1859, s. 2—Suit on same cause of action—Suit to obtain right of way.*—Where a suit for right of way was once thrown out on the specific ground that, according to plaintiff's own statement, the road in suit was a public one, and that the Court had no jurisdiction,—*Held* that, as the real cause of action—namely, the obstruction of the road—was not decided in the first trial, section 2 of the Code of Civil Procedure did not bar a second suit for the removal of the obstruction. NUREEM MUNDLE *v.* BORAMDY SIRDAR . . . 25 W. R., 208

RES JUDICATA—*continued.*

11. PRIVATE RIGHTS—*continued.*

405. ——— Right to fees for hereditary services.—*Decision in former suit.*—In an action to recover fees claimed for services as an hereditary family and village priest, it appeared that a deceased brother of the plaintiff had recovered judgment against one of the defendants and others in an action for similar fees. *Held* that the former judgment was not conclusive in favour of the plaintiff, nor as against a brother of one of the original defendants. KRISHNAMBHAT BIN SHIVRAMBHAT *v.* LAKSHUMANBHAT BIN GANESHBHAT . 1 Bom., 141

406. ——— Right to receive honours as priest of temple.—*Right decided in former suit.*—Plaintiff sued to establish his right to receive certain honours in a temple as appertaining to his office of officiating priest of the temple, and to recover damages for the invasion of his right. In a former suit between the predecessor and the plaintiff and the first defendant, the claim to sit at the right side of the idol at festivals was admitted, but the right to receive a cake on the same occasion was disallowed. *Held* that the claim of the plaintiff, so far as it sought to establish the plaintiff's right, was *res judicata.* ARCHAKAM SRINIVASA DIKSHATULU *v.* UDAYAGIRY ANANTHA CHARLU . 4 Mad., 349

407. ——— Right to water for irrigation.—*Civil Procedure Code, 1882, s. 13, expl. 5*—In 1881 *A.* sued *B.*, *C.*, and others for damages for the loss of his crops by the diversion of a water-channel by the defendants. *A.* claimed a right common to himself and other ryots of his village to use the water during the day-time under an arrangement by which *B*, *C.*, and the other defendants in the suit were entitled to use the water during the night-time. In 1882 *A* and four other ryots, not parties to the former suit, sued *B*, *C*, and thirteen others, not parties to the former suit, for a decree declaring that the plaintiffs were entitled to the exclusive use of the water in the channel by day. The lower Courts held that the suit was barred by section 13 of the Code of Civil Procedure. *Held* that, as between the plaintiffs other than *A* and the defendants, and as between *A* and the defendants other than *B.* and *C*, the suit was not barred by section 13 of the Code of Civil Procedure. THANAROTI *v* MUNIAPPA . . I. L. R., 8 Mad., 496

RESOLUTIONS OF CORPORATION, LIBEL CONTAINED IN—

See INJUNCTION—SPECIAL CASES—PUBLIC OFFICERS WITH STATUTORY POWERS
[I. L. R., 1 Bom., 132

RESPONDENT NOT APPEARING IN LOWER COURT, RIGHT OF APPEAL OF—

See PRACTICE—CIVIL CASES—APPEAL
[I. L. R., 3 Calc., 228

RESPONDENTS.

See PARTIES—ADDING PARTIES TO SUITS —RESPONDENTS.

RESPONDENTS—*continued.*

See PARTIES—SUBSTITUTION OF PARTIES—RESPONDENTS.

——— **in same interest.**

See PRIVY COUNCIL, PRACTICE OF—COSTS. [11 B. L. R., 158

——— **Objections by—**

See CASES UNDER APPEAL—OBJECTIONS BY RESPONDENT.

See CASES UNDER APPELLATE COURT—OBJECTION TAKEN FOR FIRST TIME ON APPEAL.

RESTITUTION OF CONJUGAL RIGHTS.

See BURMA CIVIL COURTS ACT, 1875, s. 49 . . I. L. R., 13 Calc., 232

See CIVIL PROCEDURE CODE, 1882, ss. 259, 260 (1859, s. 200). [I. L. R., 1 All., 501
1 Ind. Jur., N. S., 101: 5 W. R., Mis., 29
8 W. R., P. C., 3: 11 Moore's I. A., 551

See HINDU LAW—MARRIAGE—RESTRAINT ON, OR DISSOLUTION OF, MARRIAGE. [I. L. R., 3 Calc., 305

See MAHOMEDAN LAW—DOWER. [I. L. R., 1 All., 483
I. L. R., 2 All., 831
I. L. R., 8 All., 149

See MARRIAGE . I. L. R., 12 Calc., 706

See VALUATION OF SUIT—SUITS. [I. L. R., 13 Calc., 232

1. ——— **Right of suit.**—*Jurisdiction of Civil Court.—Suit by husband against wife for restitution of conjugal rights.*—A suit by husband against wife for restitution of conjugal rights will lie in the Civil Courts. JHOTUN BEEBEE *v.* AMEER CHAND . . . 1 Ind. Jur., N. S., 317

S. C. CHOTUN BEBEE *v.* AMEER CHUND [6 W. R., 105

2. ——— *Suit to recover possession of wife.—Held* that a suit by a husband to recover possession of the person of his wife will lie. HUR SOOKHA *v.* POORUN . . 2 Agra, 115

Contra, MELARAM NUDIAL *v.* THANOORAM BAMUN . . . . . 9 W. R., 552

3. ——— *Ecclesiastical law—Parsis.*—A suit for the restitution of conjugal rights, which is strictly an ecclesiastical proceeding, cannot consistently with the principles and rules of ecclesiastical law be applied to parties who profess the Parsi religion. ARDASEV CURSETJEE *v.* PEROZEBOYE . 6 Moore's I. A., 348: 4 W. R., P. C., 91

4. ——— *Suit for restitution by Mahomedan before payment of dower.*—A suit will not lie by a Mahomedan to enforce the return of his wife to his house, even after consummation with consent, until her dower (prompt) has been paid. ABDOOL SHUKKOAR *v.* RAHEEM-OON-NISSA [6 N. W., 94

5. ——— *Suit by Mahomedan husband against wife.—Procedure.—Beng. Reg. IV of 1793, s. 15.*—A Mahomedan husband may institute a suit in the Civil Courts of India to enforce his marital rights by compelling his wife against her will to return to cohabitation with him, and such suit must, under the imperative words of section 15, Regulation IV of 1793, and the nature of the thing, be determined according to the principles of Mahomedan law. JUDOONATH BOSE *v.* SHUMSOONISSA BEGUM. BUZLOOR RUHEEM *v.* SHUMSOONISSA BEGUM [8 W. R., P. C., 3: 11 Moore's I. A., 551

6. ——— *Hindu husband convert to Christianity.*—A Hindu husband who has been repudiated by his wife on his conversion to Christianity cannot sue for the restitution of conjugal society. MUCHOO *v.* ARZOON SAHOO [5 W. R., 235

7. ——— *Mahomedan converted to Christianity.—Semble,*—That where persons of Mahomedan faith are married according to the Mahomedan law, and either party becomes a convert to Christianity, a claim for restitution of conjugal rights cannot be supported. ZUBURDUST KHAN *v.* HIS WIFE . . . . 2 N. W., 370

8. ——— **Right to decree.**—*Marriage complete except one ceremony which would have altered status of woman as to caste.*—Where a man who had been married to a woman, but had failed to go through the second ceremony, without which, according to the customs of his caste, the woman would have been defiled had he obtained possession of her, and had actually married a second wife, and left the first woman to believe that she was at liberty to contract another marriage, which she did, brought a suit against her for restitution of conjugal rights,—*Held* that though, after a first marriage, a man's right to the person of his wife was complete, yet where, as in the present case, there were other ceremonies which were usual but had been neglected, and the claimant had not shown cause for his neglect, he was not entitled to a decree. BOOLCHAND KOLLTA *v.* JANOKEE [25 W. R., 386

9. ——— *Custom as to child-wife living apart from husband till puberty.*—Where it was the universal custom of the community to which the plaintiff belonged that a child-wife should remain away from her husband until a certain event had occurred, a Court was held to have been justified, while such contingency had not happened, in refusing to order such a wife to go to her husband, although the marriage was valid. SUNTOSH RAM DOSS *v.* GERU PATTUCK . . . . 23 W. R., 22

10. ——— *Agreement to separate, Suit to set aside.—Consent of wife.*—Where a husband and wife (Hindus) thirteen years previously had agreed to separate, the husband having treated

RESTITUTION OF CONJUGAL RIGHTS.—Right to decree—*continued.*

his wife with cruelty, and kept his sister-in-law as his mistress, and was still so keeping her at the date of the institution of the suit, and further, had not contributed to the maintenance of his wife during the period of the separation,—*Held* that the husband was not entitled, without his wife's consent, to have that agreement set aside, or to insist upon restitution of conjugal rights. MOOLA *v.* NUNDY

[4 N. W., 109

11. ——————— *Husband and wife.—Suit by a husband.—Marriage during wife's infancy.—Non-consummation of marriage.—Specific performance of contract of marriage made in infancy.—Hindu law.—Poverty of husband.*—*A.*, a Hindu aged nineteen years, was married by one of the approved forms of marriage to *B.*, then of the age of eleven years, with the consent of *B.'s* guardians. After the marriage *B.* lived at the house of her step-father, where *A.* visited from time to time. The marriage was not consummated. Eleven years after the marriage,—*viz.*, in 1884,—the husband called upon the wife to go to his house and live with him, and she refused. He thereupon brought the present suit, praying for restitution of conjugal rights, and that the defendant might be ordered to take up her residence with him. *Held* that the suit was not maintainable. DADAJI BHIKAJI *v.* RUKHMABAI

[I. L. R., 9 Bom., 529

Held on appeal, reversing the decree, that the suit was maintainable, and that the case should be remanded for a decision on the merits. DADAJI BHIKAJI *v.* RUKHMABAI . I. L. R., 10 Bom., 301

12. ——————— *Husband and wife.—Hindu law.—Suit by Hindu husband out of caste at time of suit.—Decree for restitution conditional on plaintiff's obtaining restoration to caste.*—In a suit by a Hindu, a Sunar by caste, against his wife for restitution of conjugal rights, it was found that the plaintiff, in consequence of having left his wife and cohabited with a Mahomedan woman (whom, however, he had left at the time of suit), had been turned out of caste, but that the misconduct of which he had been guilty was not of such a character as to render him liable to perpetual excommunication, and, upon making certain amends, he could obtain restoration to his caste. *Held* that, while the plaintiff was entitled to come into Court for the relief prayed, unless, in the circumstances above stated, the marriage had, under the Hindu law, been dissolved, the Court was bound, when asked to employ coercive process to compel a wife to return to her husband, not to disregard any reasonable objection she might raise to such process being granted, either on the ground that she had been subjected before to personal injury or cruelty at the hands of her husband, or that she went in fear of one or the other, or that the husband was actually living in adultery with another woman, or that, if she resumed cohabitation or association with him, he being outcasted, she would herself incur the risk of being put out of caste. *Held*, therefore, that in decreeing a claim of this description, a Court was entitled, if it saw good reason to do so, while recognising the civil rights of a husband to his wife, to put such conditions upon the enforcement of his rights by legal process as the circumstances of the case might fairly demand; and that, applying this principle to the present case, the defendant might reasonably ask the Court, before compelling her return to her husband, to make it a condition that he should first obtain his restoration to caste. *Held* also that, under the Hindu law, the fact that a husband had had adulterous intercourse with another woman, which had ceased at the time of suit, was not an answer to a claim by him for restitution of conjugal rights. PAIGI *v.* SHEONARAIN

[I. L. R., 8 All., 78

13. ——— Ground for suit.—*Mahomedan law.—Dower.—Lien of wife for dower.*—In a suit brought by a husband for restitution of conjugal rights, the parties being Sunni Mahomedans governed by the Hanafi law, the defendant pleaded that the suit was not maintainable, as the plaintiff had not paid her dower-debt. The plaintiff thereupon deposited the whole of the dower-debt in Court. It appeared that the defendant's dower had been fixed without any specification as to whether it was to be wholly or partly prompt. It also appeared that she had attained majority before the marriage, and that she had cohabited with the plaintiff for three months after marriage, and there was no evidence that she had ever demanded payment of her dower before the suit was filed, or that she had refused cohabitation on the ground of non-payment. Besides the plea already mentioned, she also relied upon allegations of divorce and cruelty, but these allegations were found to be untrue. The lower Appellate Court dismissed the suit, holding that inasmuch as the plaintiff had not paid the dower-debt at the time when he brought his suit, he had no cause of action under the provisions of the Mahomedan law. *Held* by the Full Bench that the lower Appellate Court's view of the Mahomedan law relating to conjugal rights and the husband's obligation to pay dower was erroneous; and that the plaintiff, under the circumstances of the case, had a right to maintain the suit. ABDUL KADIR *v.* SALIMA . . I. L. R., 8 All., 149

14. ——————— *Hindu law.—Defence to suit.—Cruelty of husband.*—A suit for restitution of conjugal rights may be maintained by a Hindu: but *quære*, if the same state of circumstances which would justify such a suit, or which would be an answer to such a suit in the case of a European, would be equally so in the case of a Hindu. Where cruelty on the part of the husband has been condoned by the wife, a much smaller measure of offence would be sufficient to neutralise the condonation than would have justified the wife, in the first instance, in separating from her husband. But the act or acts constituting the offence must be of such a nature as to give the wife just reason to suppose that the husband is about to renew his former course of conduct, and consequently to entertain well-founded apprehension for her personal safety. JOGENDRONUNDINI DOSSEE *v.* HURRY DOSS GHOSE

[I. L. R., 5 Calc., 500: 5 C. L. R., 65

RESTITUTION OF CONJUGAL RIGHTS—*continued.*

15. ——— **Defence to suit.**—*Cruelty of husband.*—If the wife raise a defence of cruelty, she must prove violence of such a character as to endanger, or cause a reasonable apprehension of danger, to her personal health or safety. The *ratio decidendi* in such a case considered and laid down. JUDOONATH BOSE *v.* SHUMSOONNISSA BEGUM. BUZLOOR RUHEEM *v.* SHUMSOONNISSA BEGUM
[8 W. R., P. C., 3: 11 Moore's I. A., 551

16. ——— *Husband and wife.—Cruelty.—Action for harbouring wife.—Civil Procedure Code, 1859, s. 200.*—In a suit by a Hindu husband against his wife for the restitution of conjugal rights, the criterion of legal cruelty, justifying the wife's desertion, is the same in this country as in England,—*viz.*, whether there has been actual violence of such a character as to endanger personal health or safety, or whether there is the reasonable apprehension of it. Every person who receives a married woman into his house, and suffers her to continue there after he has received notice from the husband not to harbour her, is liable to an action for damages or injunction, unless the husband has by his cruelty or misconduct forfeited his marital rights, or has turned his wife out of doors, or has, by some insult or ill-treatment, compelled her to leave him. YAMUNABAI *v.* NARAYAN MORESHWAR PENDSE
[I. L. R., 1 Bom., 164

17. ——— *Suit by husband.—Leprosy.*—To a suit brought by a Hindu husband against his wife for the restitution of conjugal rights, the fact that he is at the time of such suit suffering from a loathsome disease, such as leprosy, is a good defence. BAI PREMKUVAR *v.* BHIKA KALLIANJI . . . . . 5 Bom., A. C., 209

18. ——— *Divorce.—Hindu law.—Custom.*—Where a Hindu sued his wife for restitution of conjugal rights and the defendant pleaded divorce, it was held that though the Hindu law does not contemplate divorce, still in those districts where it is recognised as an established custom it would have the force of law. KUDOMEE DOSSEE *v.* JOTEERAM KOLITA . I. L. R., 3 Calc., 305

19. ——— **Declaration of nullity of marriage.**—*Divorce Act, s. 53.*—It is competent to the Court in a suit for restitution of conjugal rights to make a declaration of nullity of marriage if the respondent shows himself entitled to such relief. LOPEZ *v.* LOPEZ . . I. L. R., 12 Calc., 706

20. ——— **Presumption of validity of marriage.**—*Consent of lawful guardian.—Non-performance of ceremonies.*—The ceremony of nandimukh or bridhishradh is not an essential of Hindu marriage, nor would the want of consent by the lawful guardian necessarily invalidate such marriage. In a suit for restitution of conjugal rights, the fact of the celebration of marriage having been established, the presumption, in the absence of anything to the contrary, is that all the necessary ceremonies have been complied with. BRINDABUN CHUNDRA KURMOKAR *v.* CHUNDRA KURMOKAR
[I. L. R., 12 Calc., 140

RESTITUTION OF CONJUGAL RIGHTS—*continued.*

21. ——— **Form of decree.**—*Order for restitution.—Order for recovery of wife's person.*—A Civil Court cannot pass a decree for the recovery of the person of a wife, the proper order being for the restitution of conjugal rights. MELARAM NUDIAL *v.* THANGORAM BAMUN . 9 W. R., 552

22. ——— *Declaratory order.—Order for delivery of wife to husband.—Held* (by JACKSON, *J.*, and MACPHERSON, *J.*) that the decree in a suit for restitution of conjugal rights ought to be declaratory only, and to be enforced in case of disobedience by attachment. *Held* (by SETON-KARR, *J.*) that the wife may be ordered to be delivered over to her husband. JHOTUN BEBEE *v.* AMEER CHAND . . 1 Ind. Jur., N. S., 317

CHOTUN BEBEE *v.* AMEER CHAND
[6 W. R., 105

23. ——— *Order enjoining wife to return to husband.—Order to abstain from preventing her return.*—In a suit for restitution of conjugal rights brought against a wife and certain persons said to be detaining her from her husband, the proper form of decree is one enjoining the wife to return to her husband, and the other co-defendants to abstain from preventing her return. JAFFREE KHANUM *v.* IMDAD HOSSEIN . . 2 N. W., 314

KUROONAMOYEE DEBEE *v.* GUNGADHUR SURMAH
[20 W. R., 50

LALL NATH MISSER *v.* SHEOBURN PANDEY
[20 W. R., 92

24. ——— *Order for bodily delivery of wife to husband.—Quære,*—Whether the Court can enforce its order on a wife to return to her husband by giving her over bodily into her husband's hands. JUDOONATH BOSE *v.* SHUMSOONNISSA BEGUM. BUZLOOR RUHEEM *v.* SHUMSOONNISSA BEGUM
[8 W. R., P. C., 3: 11 Moore's I. A., 551

25. ——— *Execution of decree.—Order for return of wife, and against interference to prevent return.—Held* that a decree for restitution of conjugal rights should be passed in the form that the husband is entitled to conjugal rights, that his wife do return to live with him, and that her parents do not interfere in any manner to prevent her so doing. RAM TAHUL *v.* MADHO
[2 Agra, 111

KOOBUR KHANSAMA *v.* JAN KHANSAMA
[8 W. R., 467

26. ——— *Order for return of wife.—Procedure on failure to comply with order.*—In suits for restitution of conjugal rights the decree should be in the form that the wife do return to her husband, with which decretal order if she fails to comply she may be dealt with under the provisions of the Code of Civil Procedure relating to attachment and imprisonment for non-performance of the act decreed, for a wife cannot be delivered in execution as a chattel. TOOFEAH *v.* JUSSOUDA . 2 Agra, 337

RESTITUTION OF CONJUGAL RIGHTS.—Form of decree—*continued.*

IMAMUN *v.* MAHOMED MAJEEDOOLLAH [3 Agra, 88

27. ——— *Civil Procedure Code (VIII of 1859), s. 200.—Per* MARKBY, *J.*—In a suit by a husband for restitution of conjugal rights, a decree that "the case be decreed awarding the plaintiff to take defendant as his married wife," is not a proper form of decree. The decree may order the wife to return to her husband's protection, but such a decree is not one which can be enforced in the manner provided by section 200, Act VIII of 1859, as being an order "for the performance of a particular act." GATHA RAM MISTREE *v.* MOOHITA KOCHIN ATTEAH DOMOONEE [14 B. L. R., 298: 23 W. R., 179

28. ——— Execution of decree.—*Civil Procedure Code, 1859, s. 200.—Semble,*—That a decree for restitution of conjugal rights between Mahomedans or Hindus may be enforced under section 200 of Act VIII of 1859. YAMUNABAI *v.* NARAYAN MORESHWAR PENDSE [I. L. R., 1 Bom., 164

29. ——— *Decree under Parsi Marriage and Divorce Act (XV of 1865), s. 36.—Enforcing decree.—Civil Procedure Code, 1859, s. 200.*—A decree for restitution of conjugal rights under the Parsi Marriage and Divorce Act is enforceable only in the manner provided in section 36 of the Act; such provision is in substitution of, and not in addition to, the ordinary remedies provided by section 200 of the Code of Civil Procedure. ARDESAR JAHANGIR FRAMJI *v.* AVABAI [9 Bom., 290

RESTORATION OF PROPERTY BY CRIMINAL COURT.

See CASES UNDER STOLEN PROPERTY, DISPOSAL OF, BY THE COURT. [I. L. R., 1 Bom., 630

RESTORATION OF CASE STRUCK OUT BY MISTAKE AS COMPROMISED.

See CIVIL PROCEDURE CODE, 1882, ss. 98, 99 (1859, s. 110) . 9 W. R., 283

RESUMPTION.

Col.
1. RIGHT TO RESUME 5102
2. PROCEDURE 5105
3. EFFECT OF RESUMPTION . . . 5107
4. MISCELLANEOUS CASES . . . 5111

See CASES UNDER GHATWALI TENURE.

See CASES UNDER GRANT—RESUMPTION OR REVOCATION OF GRANT.

See CASES UNDER ONUS PROBANDI—RESUMPTION AND ASSESSMENT.

See CASES UNDER SETTLEMENT.

——— of ferry, Suit for compensation for loss by—

See JURISDICTION OF CIVIL COURT—FERRIES . B. L. R., Sup. Vol., 630

RESUMPTION—*continued.*

——— of invalid lakhiraj.

See LANDLORD AND TENANT—CONSTITUTION OF RELATION—GENERALLY. [8 B. L. R., Ap., 82, 83, note; 85, note; 87, note; 89, note

——— of jaghir by East India Company.

See ACT OF STATE . 12 B. L. R., 120

——— of rent-free tenure.

See GRANT—POWER TO GRANT. [B. L. R., Sup. Vol., 75, 774

1. RIGHT TO RESUME.

1. ——— Right to resume mokurrari tenure.—*Death of grantor without heirs.*—A mokurrari tenure granted in perpetuity cannot be resumed by the grantor even if the grantee dies without heirs. HIMMUT BAHADOOR *v.* SOONEET KOER . . . . . 15 W. R., 549

2. ——— *Grant in lieu of maintenance.—Limitation.*—Although a grant of a mokurrari lease in lieu of maintenance may be resumable by the grantor and his heirs, yet, if the grantor or any of his successors receives distinct notice of a claim on the part of the grantee to hold in perpetuity and not subject to resumption, and allows twelve years to go by without contesting such claim, the (such grantor or successor) will be barred for the time of his own enjoyment. PETAMBAR BABOO *v.* NILMONY SINGH DEO [I. L. R., 3 Calc., 793

3. ——— *Grant in lieu of maintenance.—Hindu law.—Alienation.—Impartible estate.*—The mere fact of the impartibility of an estate, or rather the mere fact that the succession to a zemindari is governed by the law of primogeniture, does not deprive the zemindar of his ordinary right to alienate it, or any portion of it, during his lifetime. Accordingly, an ordinary mokurrari lease, granted by a zemindar of lands forming portion of a zemindari the succession to which is governed by the law of primogeniture, is valid, and the lands comprised in it cannot be resumed on the death of the grantor by his successor. But a mokurrari khorposh, or allowance for maintenance, or an estate for life in lieu of maintenance, granted by the owner of a zemindari impartible by special custom but otherwise subject to Bengal law, to a member of his family, is resumable by his successor on the death of the grantor. UDDOY ADITTYA DEB *v.* JADUBLAL ADITTYA DEB [I. L. R., 5 Calc., 113: 4 C. L. R., 181

See WOODOYADITTO DEB *v.* MUKOOND NARAIN ADITTO . . . . . 22 W. R., 225

4. ——— Right to resume julkurs in navigable rivers.—*Beng. Reg. II of 1819.*—A suit for resumption of julkurs in navigable rivers not forming part of settled estates is cognisable only in the ordinary Courts, (1) because of the total absence

RESUMPTION—*continued.*

1. RIGHT TO RESUME—*continued.*

Right to resume julkurs in navigable rivers—*continued.*

of the word "julkur" in any of the Resumption Regulations, either before or after Regulation II of 1810; and (2) by reason of the difference in the nature of the claims between one to take possession of julkur and one to resume lands. COLLECTOR OF MALDAH *v.* SUDUROODDEEN . . . . **1 W. R., 116**

5. ——— **Right to resume jaghir.**—*Alienation by grantee.*—A zemindar cannot sue to resume a jaghir on the ground of its alienation by the grantee, so long as there are heirs male of the grantee existent. RAMESWAR NATH SING *v.* HARALAL SING . . . **1 B. L. R., A. C., 170**

6. ——— **Right to resume permanent tenure.**—*Forfeiture of tenure.—Non-payment of Government revenue.*—Where an ancient and permanent tenure is held by several persons in separate shares, and some of the sharers make default in the payment of their quota of the Government assessment, the portion of the tenure held by the sharers who paid their shares of the assessment cannot be resumed or forfeited by the Government. In such a case the onus lies on the Government to make out by clear evidence under what special contract, or agreement, or regulation it forfeits the entire tenure. BREIT *v.* ELLAIYA

[12 W. R., P. C., 33: 13 Moore's I. A., 104

affirming the decision of the High Court in ELLAIYA *v.* COLLECTOR OF SALEM . **3 Mad., 59**

7. ——— **Right to resume village.**—*Village entered as jaghir in accounts of permanent settlement.—Zemindar, Right of.*—Where a village, part of a zemindari, has been entered as a jaghir in the accounts of the permanent settlement, the zemindar cannot resume the village, and is entitled in respect thereof only to the usual kuttubandi. HARISCHANDANA DEVA *v.* RAMANNA CHANDRI . **1 Mad., 355**

8. ——— **Right to resume Neemuk Sayer mehals.**—*Beng. Regs. VIII and XXVII of 1793.—Right of Government as Sovereign.*—The resumption by Government of Neemuk Sayer mehals (saltpetre-duty estates) upheld, the sanads of the Subadar of Behar, the ruling power previous to the Company's accession to the Dewanny, purporting to grant the Government as mokurrari istemrari at a permanent fixed rent, being declared forgeries. *Quære,*—Whether the Neemuk Sayer mehals being a sayer right was not wholly abolished by Bengal Regulation XXVII of 1793, and the Bengal Government in its Sovereign character had not an absolute right to resume. The settlement by the Government with a proprietor of the soil under the decennial settlement, made perpetual by Bengal Regulation VIII of 1793, relates to land revenue only, and not to sayer duties claimed by a party not a land proprietor. GOVERNMENT OF BENGAL *v.* JAFUR HOSSEIN KHAN

[5 Moore's I. A., 467

RESUMPTION—*continued.*

1. RIGHT TO RESUME—*continued.*

9. ——— **Right to resume subordinate tenure by istemrardar.**—*Customary right.*—A custom was alleged entitling a Patwi Thakur, or chief belonging to the Rathor clan of Rajputs, who was the istemrardar of an ancient and impartible talook in Ajmere, to resume land formerly part of it, but granted some generations back as a subordinate, estate to a collateral relation of the chief. The ground of the resumption claimed was that the last successor to the estate so granted had died without issue and without adopting. *Held* that the Commissioner's judgment, which was that a right of resumption exerciseable merely on the above ground had not been established, was correct, being supported to some extent certainly by answers received by the Chief Commissioner on inquiry from the neighbouring durbars of Rajputana chiefs, and, on the whole, by the balance of the evidence. RAO BAHADUR SINGH *v.* JOWAHIR KUAR

[I. L. R., 10 Calc., 887: L. R., 11 I. A., 75

10. ——— **Right of maafedar.**—*Recognition of right to resume.—Limitation.—Cause of action.*—*Held* that mere recognition of right to resume contained in the wajib-ul-urz, where the grant existed many years previous to the date of that document, does not re-grant to a maafedar so as to give plaintiff a new starting-point from which his right to resume should date. DAYUM KHAN *v.* TUNSOOKH RAI

[2 Agra, 189

11. ——— **Right of manager of religous endowment.**—*Beng. Reg. XIX of 1793.*—The manager of a religious endowment consisting of the profits of a number of villages after paying revenue, was not a zemindar under Regulation XIX of 1793, and could not sue for resumption of invalid lakhiraj land. NOBIN CHUNDER ROY CHOWDHRY *v.* PEAREE KHANUM . . . . **3 W. R., 143**

12. ——— **Right of talookdars.**—*Limit of area in suit for resumption.*—Talookdars had no legal right to sue for resumption of areas containing more than 100 bighas of land. GOPAL CHUNDER ROY *v.* OODHUB CHUNDER MULLICK

[W. R., 1864, 156

13. ——— **Right of Government as agent for zemindar.**—*Limit of area in suit for resumption.*—The Government, when acting as agent of a zemindar, could only sue to resume invalid lakhiraj lands under 100 bighas. RAM LOCHUN SIRCAR *v.* DENONATH PAUL . . . **2 W. R., 279**

14. ——— **Right of zemindar.**—*Presumption.—Land held under different sanads.—Limit of area in suit for resumption.*—When land beyond 100 bighas in extent is admittedly held by a lakhirajdar, the presumption is that it is held under one grant, and that it is resumable by Government, and not by the zemindar. To rebut the presumption, the zemindar must show that the land, though beyond 100 bighas in extent, is held under different sanads. JOGENDRO NARAIN ROY *v.* HURRY DOSS ROY

[W. R., 1864, 145

RESUMPTION—*continued.*

1. RIGHT TO RESUME—*continued.*

Right of zemindar—*continued.*

15. ——————— *Right of zemindar to assess and resume invalid lakhiraj tenures.—Limit of area in suit for resumption.*—When a zemindar engaged to pay a certain amount of revenue on certain lakhiraj lands, on condition of Government stopping resumption proceedings in respect to such lands, he had a right under that engagement to resume invalid rent-free tenures below 100 bighas in extent, whatever had been the nature of agreement with Government in previous years, but he had no right to resume lands of greater extent than 100 bighas covered by one sanad. BEER CHUNDER JOOBRAJ *v.* UMAKANT SEIN . **W. R., 1864, 232**

See BEERCHUNDER JOOBRAJ *v.* SHIBJOY THAKOOR . . . . **W. R., 1864, 8**

16. ——————— *Beng. Reg. II of 1809, s. 30.—Limit of area in suit for resumption.*—To bar a zemindar's right to resume, as invalid lakhiraj under section 30, Regulation II of 1809, lands in excess of 100 bighas, it must be shown that the lands are held under a sanad in excess of 100 bighas, or under different sanads, each in excess of 100 bighas. MAHOMED MUNSOOR *v.* UMBICA CHURN ROY **[W. R., 1864, 132**

17. ——————— *Beng. Reg. XIX of 1793.—Limit of area in suit for resumption.*—A zemindar is not precluded by Regulation XIX of 1793 from suing for the resumption of invalid lakhiraj lands exceeding 100 bighas held under several sanads, provided none of them singly is a grant for more than 100 bighas. The release of lands covered by one such sanad from the claim of Government to resume, on the ground that they were under 50 bighas, does not bar the zemindar's right to resume them. ELIAS *v.* MAHOMED PEEZEER **[W. R., 1864, 217**

18. ——————— *Beng. Reg. X of 1793, s. 19.—Limitation in suit for resumption.*—A zemindar suing for resumption of alleged invalid lakhiraj land under section 19, Regulation X of 1793, was not limited to time, provided he could prove that, at some time subsequent to the decennial settlement, the land sought to be resumed was part of his mâl estate, and had paid rent. GOPAL CHUNDER SHAHA *v.* BHABO TARINEE DOSSEE . **7 W. R., 240**

2. PROCEDURE.

19. ——— **Assessment of resumed lands.**—*Beng. Reg. XIX of 1793.—Beng. Reg. II of 1819, s. 30.—Suit for rent.*—Unless the holder of a resumption-decree took steps under Regulation XIX of 1793 to have the revenue fixed by the Collector, and the defendant consented to pay the revenue required of him, he had no *locus standi* on holding the lands to bring suits for rent. The rule to be followed in determining in what manner and under what Regulation the assessment of resumed lakhiraj land should be conducted was, first to ascertain whether the existence of the lakhiraj prior to 1791 had been decided

RESUMPTION—*continued.*

2. PROCEDURE—*continued.*

Assessment of resumed lands—*continued.*

by the decree for resumption. It could not be presumed that every case instituted under section 30, Regulation II of 1819, dealt with an estate which was held lakhiraj prior to 1791. POGOSE *v.* EKRAM HOSSEIN **[15 W. R., 483**

20. ——— **Question of validity of grant.**—*Limitation.—Existence of tenure before 1790.*—In a suit for resumption, where the defendant pleads a lakhiraj tenure before 1790, the validity of the grant is not open to the Judge's consideration, but only whether the tenure was in existence before 1790, and if so to apply the law of limitation. SAGORE MONEE DOSSEE *v.* BIPRO DOSS DEY . **1 W. R., 249**

21. ——— **Limitation.**—*Beng. Reg. II of 1819, s. 30.—Lakhiraj.—Beng. Reg. XIX of 1793, s. 10.*—A suit for resumption under section 30, Regulation II of 1819, must be assumed to refer only to lakhiraj created prior to the 1st of December 1790, and therefore was not exempt from limitation under section 10, Regulation XIX of 1793. HEERA MONEE DABEE *v.* KOONJ BEHARY HOLDAR **[B. L. R., Sup. Vol., Ap., 8: 2 W. R., 207**

22. ——————— *Beng. Reg. XIX of 1793, s. 10.—Beng. Reg II of 1819, s. 30*—Regulation II of 1819, section 30, did not apply to a suit in a Civil Court for resumption under section 10 of Regulation XIX of 1793. The decisions in *Sonatun Ghose* v. *Abdool Farar, B. L. R., Sup. Vol., 109;* and *Heera Monee Dabee* v. *Koonj Behary Holdar, B. L. R., Sup. Vol., Ap., 8,* upheld. HARIHAR MUKHOPADHYA *v.* MADAB CHANDRA BABU. NABA KRISHNA MOOKERJEE *v.* KAILAS CHANDRA BHUTTACHARJEE **[8 B. L. R., 566: 20 W. R., 459 14 Moore's I. A., 152**

SONATUN GHOSE *v.* ABDOOL FARAR **[B. L. R., Sup. Vol., 109: 2 W. R., 91**

23. ——— **Notice to parties.**—*Party not in possession.*—In resumption proceedings it is not necessary to give notice to a party not in possession or to make him a formal party to the suit. RAM CHUNDER SHAHA *v.* COLLECTOR OF MYMENSINGH . . . . . **22 W. R., 48**

24. ——————— *Beng. Reg. II of 1819, s. 16.—Omission to give notice.*—Where the resumption officer, as directed by section 15, Regulation II of 1819, supplied the defendant in a resumption suit with a copy of his reasons for considering the lands in question liable to resumption, and subsequently, in the absence of the defendant, declared the lands liable to assessment,—*Held* that, as defendant failed to appear either in person or by agent, it was impossible for the resumption officer to give him the warning mentioned in section 16 of the same law, and the legality of the proceedings was not affected by the omission. BURODA KANT ROY *v.* COMMISSIONER OF THE SOONDURBUNS . . **13 W. R., 180**

RESUMPTION—*continued.*

2. PROCEDURE—*continued.*

25. ——— **Right to intervene in suit.** —*Beng. Regs. II of 1819 and III of 1828.—Decree of Special Commissioners.*—In a suit by Government under Regulation II of 1819 to resume invalid lakhiraj land held by a mohunt, as the interests of the zemindar, who claimed a portion of the lands sought to be assessed, as forming part of his permanently-assessed estate, were liable to be affected by the decision of the Collector,—*Held* that he had a right to intervene and become a party to the suit, and to prefer an appeal from the decree. The decree of the Special Commissioners, under Regulation III of 1828, was final, if no appeal or petition of review was presented within a reasonably sufficient period. MOHESHUR SINGH *v.* GOVERNMENT OF INDIA **[3 W. R., P. C., 45 : 7 Moore's I. A., 283**

3. EFFECT OF RESUMPTION.

26. ——— **Finality of proceedings.**—*Injury to parties.—Diluvion.*—Resumption proceedings are final and not liable to question by the Civil Courts. But when proceedings take place in the nature of extensive settlements with other parties after intermediate and temporary settlements, and acts are done wholly without jurisdiction, or lands are taken not included in the original decree, there should be a remedy to parties deeming themselves to have been wronged thereby. If lands adjudged to Government in a resumption suit diluviate and re-form on the same site, Government does not thereby lose its rights to them, nor is it obliged to institute wholly new proceedings. Diluvion does not create any new right. COLLECTOR OF DACCA *v.* KISHEN KISHORE CHATTERJEE. JUGO BUNDHOO BOSE *v.* COLLECTOR OF DACCA . . . . **W. R., 1864, 273**

27. ——— **Finality of resumption-decree.**—*Settlement proceedings.—Jurisdiction of Civil Court.*—The ruling of the late Sudder Court as to the final and conclusive character of a resumption-decree was held not to apply to what was subsequently done administratively by a settlement officer, the proper distinction being that the decree of the resumption Court as to the liability of the resumed mehal to be assessed with a Government demand is final; but the subsequent dealing by the settlement officer with alleged proprietary right and claim to land not mentioned in the decree, is open to the jurisdiction of the Civil Court. MAHOMED GAZEE CHOWDHRY *v.* LALL BEBEE . . **10 W. R., 103**

RAM CHUNDER SHAHA *v.* COLLECTOR OF MYMENSINGH . . . . **22 W. R., 48**

28. ——— **Effect on contract between zemindar and tenant.**—*Resumption of lakhiraj tenure by Government.—Under-tenants, Rights of.*—The mere resumption of a lakhiraj tenure by Government does not dissolve the contract between the zemindar and tenant. The tenant has the option to determine his tenancy, or he may consent that the amount of revenue which the landlord must pay to Government, or a portion of it, shall be added to his original jumma. FARZHARA BANU *v.* AZIZUNNISSA BIBI **[R. L. R., Sup. Vol., 175 : 3 W. R., 72**

RESUMPTION—*continued.*

3. EFFECT OF RESUMPTION—*continued.*

29. ——— **Effect on tenant.**—*Illegal assessment of revenue.—Mad. Reg. XXVII of 1802.* —In a suit against a Collector for an illegal seizure and subsequent usurpation of plaintiff's shares in an Agraharam village for non-payment of tirvai due from other tenants of the village, and to recover the increased tirvai imposed by the Collector,—*Held* that the plaintiff's right to enjoy his share of the village lands under the original pottah was not legally determined by resumption; and that, continuing liable only to the fixed rent, the plaintiff was entitled to the return of the amount paid under compulsion, in excess of such rent, at the date of the suit. Madras Reglation XXVII of 1802 considered. ELLAIYA *v.* COLLECTOR OF SALEM . . . **3 Mad., 59**

Affirmed by the Privy Council on appeal in BRETT *v.* ELLAIYA **[13 Moore's I. A., 104 : 12 W. R., P. C., 33**

30. ——— **Effect on howladar.**—*Rights of howladars.*—The resumption by Government of a parent estate did not nullify the existing rights of a howladar within the estate, or deprive him of the benefit of the presumption arising under section 16 of Act X of 1859. MOTHOORA NATH GUNGOPADHYA *v.* SHEETA MONEE . . . **9 W. R., 354**

31. ——— **Effect on sub-tenure.**—*Sub-tenures before decennial settlement.*—A sub-tenure created before and in existence at the time of the decennial settlement cannot be invalidated by any subsequent settlement of the mehal in which it is situated. Resumption of lakhiraj land under the revenue law does not destroy any such sub-tenure in the estate resumed. ABDOOL ALI *v.* RAMGUTTY **[12 W. R., 128**

32. ——— **Effect on lakhirajdars.**—*Rights of lakhirajdar.—Settlement.—Cause of action.* —A resumption-decree does not destroy the proprietary right of the lakhirajdars, which continues unless and until they are dispossessed in due course of law. By obtaining a permanent settlement they acquire no new right; a cause of action accruing to them if ousted before settlement. THAKOOR DASS ROY CHOWDHRY *v.* NUBEEN KISHEN GHOSE **[15 W. R., 552**

33. ——— **Effect on charitable trust.** —*Omission of mention of existence of charitable trust or endowment.*—The resumption of lands by Government, and the making a fresh settlement of the resumed lands without any allusion to their being held in trust for charitable purposes prior to the resumption proceedings, are not conclusive proof that there was no such trust. The only question decided by the Government in resuming was that those who claimed the land as lakhiraj had not been able to prove that the land was held under any such religious or charitable trust as would debar Government from resuming. LEELANUND SINGH BAHADOOR *v.* ISHUREE NUNDUN DUTT JHA **8 W. R., 316**

RESUMPTION—*continued.*

3. EFFECT OF RESUMPTION—*continued.*

34. ——— Effect on rights acquired previous to resumption.—*Liability of purchaser of rent-free holding to pay rent or revenue.*—Where the plaintiff's ancestor purchased a certain quantity of land from a rent-free holder of the mouzah, who on the resumption of the maafee tenure by Government was admitted to a proprietary settlement of the mouzah and acquired a good prescriptive title,—*Held* that the resumption by the Government did not affect the right which the plaintiff's ancestor had previously acquired in the land, and the land not having been assessed with revenue by the Government, the plaintiff could not be treated as a mere cultivator, and liable to pay either rent or revenue. AHMED *v.* GUNAISH PERSHAD . . **2 Agra, 9**

35. ——— Effect on right of collection or profits.—*Maafee lands.*—Where maafee lands are, after resumption and assessment, left in the possession of the ex-maafeedars, the persons entitled to collection or profits are, in the absence of any stipulation to the contrary, the ex-maafeedars, and not the lumbardar of the village. DAL CHUND *v.* SEETA KOONWAR . . . **2 Agra, 152**

36. ——— Liability to pay rent.—*Resumption and assessment by settlement officer.*—Where land is resumed and assessed by a settlement officer, the tenant is bound to pay rent at the rate assessed by the settlement officer. WOOMANATH ROY CHOWDRY *v.* DEBNATH ROY CHOWDRY **[14 W. R., 471**

D'SILVA *v.* RAJ COOMAR DUTT . **16 W. R., 153**

37. ——— Effect on mortgagee under zur-i-peshgi lease.—*Omission to call in advance.—Acquiescence in liability of profits for revenue.*—When property granted in a zur-i-peshgi lease was originally rent-free, but subsequently resumed and assessed by Government, the mortgagee was held bound either to make a fresh agreement to take the profits, minus the Government revenue, as his security, or to call in his money. His not adopting either course for a long period was construed into assent on his part to receive the profits, minus the Government revenue, as security. JOY PROKASH NARAIN *v.* RADHA KISHEN . . **W. R., 1864, 227**

38. ——— Effect of resumption and settlement of lakhiraj on the holder of a mokurrari lease from the lakhirajdar.—*Lakhiraj tenure.—Settlement of invalid lakhiraj.*—Assessment of revenue by Government on invalid lakhiraj land afer resumption does not confer a new estate on the lakhirajdar, and does not cancel or extinguish a mokurrari lease granted by the lakhirajdar previous to the settlement, and during the time he was in possession of the land as lakhiraj. PRATAB NARAYAN MOOKERJEE *v.* MADHU SUDAN MOOKERJEE . . **8 B. L. R., 197 : 16 W. R., 35**

39. ——— Effect of resumption on mortgages created by inamdar.—*Inam lands.*—An inamdar, having granted several mortgages upon his inam lands, died. The right to hold the

RESUMPTION—*continued.*

3. EFFECT OF RESUMPTION—*continued.*

Effect of resumption on mortgages created by inamdar—*continued.*

lands rent-free was ruled by Government to have ceased upon the death, but the inam was continued to his representatives subject to the payment of assessment, under the Government circular of 1854. *Held* that the original estate in the lands was not destroyed; that no new title in the inamdar's representatives was created; and that the lands continued chargeable in their hands with any valid specific liens created upon them by the inamdar. VISHNU TRIMBAK *v.* TATIA *alias* VASUDEV PANT **[1 Bom., 22**

40. ——— Effect on inamdar.—*Inam.—Landlord and tenant.*—On the resumption of an inam, the inamdar's right to exemption from the payment of the Government assessment ceases, and the inamdar becomes liable to pay such assessment; but all his other rights remain unaffected, and therefore those who were his tenants before the resumption do not thereby cease to be so, and can be ejected if they are not permanent tenants, or are not otherwise entitled to remain in possession. GANGABHAI *v.* KALAPA DARI MUKRYA **[I. L. R., 9 Bom., 419**

41. ——— Resumption of saranjam by British Government, Effect of, on position and rights of the saranjamdar.—*Occupancy rights of a saranjamdar—Inam, Resumption of.—Public and private property of an absolute chief.—Landlord and tenant.—Tenancy created by chief prior to resumption of land by Government.—Effect of resumption on rights of landlord.—Adverse possession.—Recognition of tenant by Government officers, as occupant paying assessment, does not prejudice landlord's rights.*—*A.*, the Chief of Kagvad, let certain land to the defendant for a term of twelve years by a lease dated 12th June 1857. *A.* died in the same year without male issue, and his saranjam was resumed by the British Government. In 1858 the Collector treated the defendant as occupant of the land in question for the purposes of assessment, and again in 1860 entered his name as occupant in the Government books. In January 1868 the widow of *A.* adopted the plaintiff as his son. In 1881 the plaintiff sued the defendant to recover possession of the land let to the defendant in 1857. The defendant contended that the land was not the private land of *A.*, but belonged to the State of Kagvad, which was resumed on his death by the Government; and that the plaintiff's claim was barred by the law of limitation. The Subordinate Judge allowed the plaintiff's claim, holding that the land was the private property of *A.*, and that the claim was not barred. The District Judge, on appeal, held that the land was not the private property of the Chief, but was the property of the State, and that, on the resumption of the State by the British Government, the defendant's lease came to an end, and the relation of landlord and tenant, previously existing between the Chief and the defendant, ceased. He also held that the plaintiff's claim was barred by

RESUMPTION—*continued.*

3. EFFECT OF RESUMPTION—*continued.*

Resumption of saranjam by British Government, Effect of, on position and rights of the saranjamdar—*continued.*

limitation, and reversed the decree of the Subordinate Judge. On appeal to the High Court,—*Held* that no distinction could be drawn between the public and private property of an absolute chief, which *A.* was. That, in the absence of a contrary intention, the resumption by the British Government of a saranjam or inam leaves the occupancy rights of the saranjamdar or inamdar untouched; that a saranjamdar or inamdar may acquire occupancy rights during the continuance of the saranjam or inam. *Held*, also, that the fact that the revenue officers placed the defendant's name in the Government books as the occupant paying assessment, did not make the defendant's possession adverse, and could not prejudice the plaintiff's rights as landlord. GANPATRAV TRIMBAK PATWARDHAN *v.* GANESH BAJI BHAT . . I. L. R., 10 Bom., 112

4. MISCELLANEOUS CASES.

42. ——— **Illegal resumption by Government.**—*Liability to account.*—The Government having seized certain chur lands and dispossessed the proprietor in possession, and having entirely failed to establish any claim for assessment or resumption during the period of attachment following the dispossession of the proprietor,—*Held* that the Government must be regarded as a wrong-doer for the whole period, and must account to the proprietor for all the collections made by its officers up to the time of the restitution. SURNOMOYEE *v.* COLLECTOR OF RUNGPORE . W. R., F. B., 4: Marsh., 13 [1 Hay, 37

43. ——— **Right of mortgagee or transferee of maafee land on resumption.**—*Right to question bonâ fide character of proceedings.*—Where a mortgagee of maafee land was no party to resumption proceedings under Act X of 1859, section 28, and the land was resumed with the mortgagor's consent,—*Held*, the mortgagee or transferee from him was entitled to question the *bonâ fide* character of the resumption proceedings. TOOLUN *v.* OOMAN SHUNKER . . . 2 Agra, 117

44. ——— **Purchases before resumption.**—*Jaghir.*—Where the evidence showed that certain arms and stores seized had been purchased by the jaghirdar before the resumption, and there was no authority or evidence to show that those who held by jaidad were not entitled to things so purchased,—*Held* that the representatives of the jaghirdar were entitled to recover the value of the arms and stores so seized. FORESTER *v.* SECRETARY OF STATE [12 B. L. R., 120: 18 W. R., 349 L. R., I. A., Sup. Vol., 10

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See CASES UNDER CRIMINAL PROCEDURE CODE, 1882, s. 437.

See CASES UNDER REVISION—CRIMINAL CASES—RE-TRIAL.

"RETURN."

See MAHOMEDAN LAW—INHERITANCE. [I. L. R., 3 Calc., 702 I. L. R., 11 Calc., 14

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See CASES UNDER JURISDICTION OF CIVIL COURT—REVENUE.

See CASES UNDER SALE FOR ARREARS OF REVENUE.

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See SALE IN EXECUTION OF DECREE—PURCHASERS, TITLE OF—CERTIFICATES OF SALE . . I. L. R., 2 Calc., 141

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——— **Suit for contribution for payment of—**

See CASES UNDER CONTRIBUTION, SUITS FOR—VOLUNTARY PAYMENTS.

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS, N.-W. PROVINCES. [I. L. R., 1 All., 26

REVENUE COMMISSIONERS, SANCTION OF, TO GRAZE CATTLE.

See BOMBAY ACT I OF 1865, s. 32. [I. L. R., 2 Bom., 110

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See CASES UNDER JURISDICTION OF CIVIL COURT—REVENUE COURTS—ORDERS OF REVENUE COURTS.

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See CASES UNDER DECLARATORY DECREE, SUIT FOR—REVERSIONERS.

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See CASES UNDER HINDU LAW—ALIENATION—ALIENATION BY WIDOW.

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5 B. L. R., Ap., 29

1. ORDERS SUBJECT TO REVIEW.

1. ——— **Decrees.**—*Civil Procedure Code, 1859, s. 376.—Orders, Review of.*—Section 376 of the Code of Civil Procedure authorised reviews of judgment in respect to decrees of Court, and also in respect to orders which are not decrees. DEEN DYAL PURAMANICK *v.* RAM COOMAR CHOWDHRY
[10 W. R., 345

2. ——— **Order relating to execution of decree.**—A Judge has power to review an order

REVIEW—*continued.*

1. ORDERS SUBJECT TO REVIEW—*continued.*

Order relating to execution of decree—*continued.*

relating to the execution of a decree. (*Dissentiente*, MORGAN, *J.*) HARADHUN MOOKERJEE *v.* CHUNDER MOHUN ROY . **Marsh., 205 : W. R., F. B., 66 [1 Hay, 577**

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3. ——— Order in proceedings under Act XXVII of 1860.—A review of judgment is admissible in proceedings under Act XXVII of 1860, although no express provisions for reviews are contained in the Act. IN THE MATTER OF THE PETITION OF POONA KOOER **[I. L. R., 1 Calc., 101 : 24 W. R., 376**

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4. ——— Order under Administrator General's Act, II of 1874, s. 63.—*Civil Procedure Code, 1877, s. 623.*—The order passed under section 63 of Act II of 1874 (section 60 of Act XXIV of 1867) can be reviewed under section 623 of Act X of 1877. SMITH *v.* SECRETARY OF STATE. IN THE MATTER OF ACT II OF 1874 . **I. L. R., 3 Calc., 340**

5. ——— Order rejecting application for registration.—*Civil Procedure Code, 1859, s. 376.—Registration Act, 1871, s. 76.—Act XXIII of 1861, s. 38.*—Section 38, Act XXIII of 1861, which enacted that "the procedure prescribed by Act VIII of 1859 shall be followed as far as it can be in all miscellaneous cases and proceedings which, after the passing of the Act, shall be instituted in any Court," rendered the whole procedure of Act VIII of 1859, including the power of admitting a review, applicable to a proceeding to compel registration under the Registration Act. An order rejecting an application for registration under section 76 of the Registration Act of 1871, being, in respect of the Court pronouncing it, a final order of adjudication between the parties, is so far in the nature of a "decree" within the meaning of Act VIII of 1859, as to fall within the operation of the sections of that Act which provide for the admission of a review. IN THE MATTER OF THE PETITION OF ABDOOLLAH. REASUT HOSSEIN *v.* ABDOOLLAH **[I. L. R., 2 Calc., 131 : 26 W. R., 50 L. R., 3 I. A., 221**

reversing the decision of the High Court in IN THE MATTER OF THE PETITION OF ABDOOLLAH **[10 B. L. R., 394 : 19 W. R., 303**

6. ——— Order admitting appeal to Privy Council.—An appeal to the Privy Council being once admitted, whether properly or erroneously, the High Court has no further jurisdiction to review its order and declare the appeal rejected. AMEERUNISSA BEGUM *v.* INDURJEET KOONWUR **[6 W. R., Mis., 97**

IN RE WOOMATARA DEBEA . **6 W. R., Mis., 120**

7. ——— Order refusing to admit special appeal.—*Act VIII of 1859, ss. 376 and 378.—Power of High Court to grant a review.—Notice of application for review.*—An order refusing to admit a special appeal is open to review, and the application for review may be made without notice to the other side. JOY COOMAR DUTTA JHA *v.* ESHAREE NUND DUTTA JHA . **10 B. L. R., 155 : 18 W. R., 475**

See IN RE BARMUTOLLAH **[10 B. L. R., 156, note**

where, however, under the circumstances, the Court refused the application.

S. C. BURRAMOOLLAH *v.* NIL CHAND DUTT **[17 W. R., 484**

8. ——— Judgment passed on compromise.—No review can be admitted of a judgment passed on a compromise. PURMESSUREE NARAIN SINGH *v.* ROMEEZOODDEEN AHMED . **5 W. R., 226**

9. ——— Order refusing leave to sue as a pauper.—*Suit in formâ pauperis.—Court of original jurisdiction.*—A Court of original jurisdiction has power to entertain an application to review an order refusing a petition for leave to sue *in formâ pauperis.* IN THE MATTER OF THE PETITION OF UMASUNDARI DEBI . . **5 B. L. R., Ap., 29**

See MAHOMED GAZEE CHOWDHRY *v.* DULLAB BIBEE **[5 B. L. R., 318, note : 11 W. R., 22**

10. ——— *Civil Procedure Code (Act X of 1877), ss. 409, 413, 541, 623, 625.*—An order made under section 409 of the Civil Procedure Code (Act X of 1877) refusing leave to sue as a pauper is subject to review under section 623. The provisions of section 413 do not affect the right of a person, against whom such order has been made, to obtain a review. A petitioner applying for such review must file a copy of the order of which he seeks a review, together with a memorandum of objections (sections 541 and 625). ADARJI EDULJI *v.* MÁNIKJI EDULJI . **I. L. R., 4 Bom., 414**

11. ——— Order disallowing claim to attached property.—*Civil Procedure Code, 1859, s. 246.*—A Court has power to grant a review of an order which it has passed under section 246, Civil Procedure Code, 1859, disallowing a claim made to property attached in execution of a decree. The order granting the review is final under section 378. COCHRANE *v.* HEERA LAL SEAL . . **7 W. R., 79**

12. ——— Order for probate.—*Probate and testamentary matters.*—When once probate in solemn form has been granted, no one who has been

REVIEW—*continued.*

1. ORDERS SUBJECT TO REVIEW—*continued.*

Order for probate—*continued.*

cited or has taken part in the proceedings, or who was cognisant of them, can afterwards seek to have it cancelled. *Quære,*—Whether a review may not be granted. IN THE MATTER OF PITAMBER GIRDHAR [I. L. R., 5 Bom., 638

13. ——— Order on reference from Small Cause Court.—An application for a review of judgment by the High Court on a reference from a Small Cause Court was not admissible under the Code of 1859. DOYLE *v.* KHOSAL MUNDLE [3 W. R., S. C. C. Ref., 8

14. ——— *Civil Procedure Code (Act XIV of 1882), ss. 617, 619, and 623.—Judgment on reference from Subordinate Judge with Small Cause Court powers.*—The High Court has no power to review a judgment passed by it on a reference from a Subordinate Judge with Small Cause Court powers. Clause (*c*) of section 623 of the Code of Civil Procedure (XIV of 1882) allows of a review of judgment on a reference only from a Court of Small Causes. The judgment of the High Court in such a case is not a decree or order within the meaning of clause (*b*) of the section, but is simply a statement of the grounds in conformity with which the lower Court is to dispose of the case, as provided by section 619. RAMCHANDRA BABAJI *v.* SITARAM VINAYAK . . . I. L. R., 10 Bom., 68

15. ——— Order in rent suit.—*Beng. Rent Act, VIII of 1869.—Orders in rent suits previous to passing of Act.*—Orders in rent suits were not subject to review until the passing of Bengal Act VIII of 1869, which made the Civil Procedure Code applicable to such suits. MAHOMED TUCKEE *v.* AHMUDEE BEGUM . . . . 3 N. W., 22

MONEEKURNIKA CHOWDHRAIN *v.* COLLECTOR OF MYMENSINGH . . . 16 W. R., 159

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Though it was held in some cases that the admission of a review in such a case was not illegal HURCHUND SINGH *v.* ROOPA KOOER . 4 N. W., 171

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SOOBUL CHUNDER GOOHO *v.* TUMEEZOODDEEN CHOWDHRY . . . 14 W. R., 414

16. ——— *Order on appeal from Collector under Mad. Act VIII of 1865.—Civil Procedure Code, ss. 376, 378.*—A Civil Court, in hearing an appeal from the decision of a Collector under Madras Act VIII of 1865, must be guided by the Civil Procedure Code, and the judgment of the Civil Court may be reviewed under section 376 of the Code. The order granting a review is final. SUBRAMANIYA PILLAY *v.* PERUMAL CHETTY . 4 Mad., 251

REVIEW—*continued.*

1. ORDERS SUBJECT TO REVIEW—*continued.*

17. ——— Ex parte decree.—*Civil Procedure Code, s. 623.*—It is competent to a party against whom an *ex parte* decree has been made to apply for review of judgment. MUTTO *v.* ILAHI BEGAM . . . . I. L. R., 6 All., 65

PORESH NATH MUNDUL *v.* KHETTROMONEE DEBIA . . . . 20 W. R., 284

ALI AZIM *v.* RAM MANICK ROY [12 W. R., 195

Contra, MOTEE CHAND *v.* RADHAMADHUB CHAND [2 W. R., Mis., 34

18. ——— *Civil Procedure Code, 1882, s. 623.—Application of section.*—Section 623 of the Civil Procedure Code applies to all cases, whether they are disposed of in the presence of the parties or *ex parte* in the absence of the defendants. HARI HUR PERSHAD NARAIN SINGH *v.* BUDDU PERSHAD . . . 13 C. L. R., 254

19. ——— Order dismissing suit for default of prosecution.—*Civil Procedure Code, 1859, ss. 119, 376.—Re-admission of suit.*—The plaintiff's suit was dismissed "in default of prosecution," on the ground that he had failed to deposit tulubana, although time had been allowed him for that purpose. He was represented by a pleader at the adjourned hearing. He subsequently applied for the re-admission of the suit on the ground that he had been prevented by illness from depositing the money. *Held* that the application should not have been treated as one under section 119, Civil Procedure Code, but might fairly be regarded as an application for review of judgment under section 376, and in that view the misconstruction by the Munsif of the nature of the application was not a sufficient reason for depriving the plaintiff of the relief which he not inequitably obtained by the order passed in it; and the Court of first instance was directed to call on the plaintiff to pay the fee payable on his application for a review of judgment, and in the event of his complying with the requisition, to give effect to the Munsif's order for re-admission of the suit. RAM SUNDAR SINGH *v.* RAM BANDHAN SINGH . . 7 N. W., 126

See also MAHOMED AZEEMOOLLAH *v.* ALI BUKSH [5 N. W., 74

20. ——— Order for dismissal for default of appearance on order for local investigation.—A case was remanded on appeal (in the presence of both parties) for a local investigation. A reasonable time was given, after the records had come, to the parties to appear and conduct their case. The petitioner not having appeared, the lower Court treated it as a case of default, whereupon the petitioner made an application under section 376, Act VIII of 1859. *Held* that an application for a review was not the proper course in such a case. IN RE KALEE MOHUN DOSS . . . 17 W. R., 70

2. POWER TO REVIEW.

21. ——— Power where appeal is admitted by superior Court.—*Civil Procedure*

REVIEW—*continued.*

2. POWER TO REVIEW—*continued.*

Power where appeal is admitted by superior Court—*continued.*

Code, 1859.—Under the Code of 1859, a Judge was not competent to hear a review in a case in which a special appeal had been admitted by the higher Court. SHEONATH SINGH *v.* RAM THUL RAE [1 N. W., Pt. II, 39: Ed. 1873, 97

JUGGURNATH SINGH *v.* AFZUL KHAN [17 W. R., 130

LALLMUN *v.* MANICK CHUND . 1 Agra, 133

LUCAS *v.* STEPHEN . . . 9 W. R., 301

NARAYAN BIN SIDOJI *v.* DAVUDBHAI VALAD FATEBHAI . . . . 9 Bom., 238

22. ——— **Power after admission and hearing of special appeal.**—*Civil Procedure Code, 1859, s. 376*—A Judge is right in refusing to entertain an application for review where a special appeal has been admitted, tried, and disposed of. The words of section 376, Act VIII of 1859, "special appeal shall have been admitted," referred to cases which had advanced beyond the inchoate stage of appeals, and in which it had been shown *primâ facie* that there were errors in law. RAJ DHAREE LALL *v.* MOHADEO SINGH . . . 11 W. R., 511

23. ——— *Correction of clerical error.*—A lower Appellate Court has a right to grant a review of its own judgment for the purpose of correcting a clerical error, even after a special appeal from its decision has been heard and determined by the High Court. A lower Appellate Court has no jurisdiction to review its own judgment so as to modify its substance,—as, for example, to alter an award of costs after a special appeal from its decision has been heard and determined by the High Court. OOMANUND ROY *v.* SUTTISH CHUNDER ROY . . . . . 9 W. R., 471

24. ——— **Power of lower Appellate Court after dismissal of special appeal.**—*24 & 25 Vict., c. 104, s. 15*—Upon the dismissal of a special appeal by the High Court, the appellant in special appeal applied to the High Court for a review of judgment upon the ground of discovery of fresh evidence. This application was rejected, on the ground that the Court could not take cognisance of the merits of a case in special appeal, and therefore could not admit a review upon fresh evidence. The special appellant then applied to the lower Appellate Court for a review of its judgment on the ground of discovery of fresh evidence. This application was admitted, and a review of the judgment was allowed. On application to the High Court under section 15 of the Charter Act,—*Held* the lower Appellate Court had no jurisdiction to admit the application for review. IN THE MATTER OF THE PETITION OF JADUNATH MOOKERJEE [6 B. L. R., 333

S. C. JODOONATH MOOKERJEE *v.* PUNCHANUN MOOKERJEE . . . 14 W. R., 438

See also IN RE GUNGA BISHEN SAHU [6 B. L. R., 334, note

REVIEW—*continued.*

2. POWER TO REVIEW—*continued.*

Power of lower Appellate Court after dismissal of special appeal—*continued.*

BROJONATH KOONDOO CHOWDHRY *v.* JUMEEROONISSA BIBEE . . . 7 W. R., 218

25. ——— **Power where one of several defendants has appealed.**—*Application for review on behalf of other defendants.*—The preferring of an appeal against a decision by one defendant does not deprive another defendant of his right to apply for a review of the same decision with reference to section 376, Act VIII of 1859. BUNKOO LALL SINGH *v.* BASOOMUNISSA BIBEE . 7 W. R., 166

26. ——— **Power to proceed with review where appeal is subsequently brought.**—*Act VIII of 1859, ss 375 and 376.*—A Judge is bound to proceed with an application for a review of his judgment, even though a petition of appeal has been filed subsequently to the application for review. BHARAT CHANDRA MAZUMDAR *v.* RAMGUNGA SEN [B. L. R., Sup. Vol., 362: 5 W. R., 59

27. ——— **Power of inferior mofussil Courts to review judgments.**—*Review before Civil Procedure Code, 1859.—Beng. Reg. XXVI of 1814.*—Whereas by the law in force previous to the Code of Civil Procedure the subordinate Courts could not review their judgment without the permission of a superior Court, the Code removed that inability, and the removal extended to suits past and pending, as well as future. A party petitioning, after the Code of Civil Procedure came into force, for the review of a judgment in appeal passed in 1849, is entitled to be governed by the terms of the old law (Regulation XXVI of 1814), which allows a review in respect to a decree from which "no further appeal" may have been admitted by a superior Court; and a "further appeal" included both a second or special appeal and a summary appeal. JOOGUL KISHORE SINGH *v.* OOGUR NARAIN SINGH . . 8 W. R., 483

28. ——— The inferior Courts in the mofussil have no jurisdiction to review their own judgments, except under the circumstances and with the limitations set forth in the Code of Civil Procedure. BURRA FUKEER DOSS BERA *v.* FUKEER DOSS BERA . . . . . 20 W. R., 180

29. ——— **Power of Insolvent Court.**—*Insolvent Court, Bombay—Jurisdiction.*—The Court for the Relief of Insolvent Debtors at Bombay has jurisdiction to review its own orders. IN THE MATTER OF THUCKER BHAGVANDAS [I. L. R., 4 Bom., 489

30. ——— **Power of Judge of mofussil Small Cause Court.**—*Mofussil Small Cause Court's Act (XI of 1865), s. 21.—Code of Civil Procedure (Act X of 1877), s. 63, and chap. xlvii, sch. ii*—The Judge of a mofussil Small Cause Court may grant an application for a review of judgment under the Code of Civil Procedure. ISAN CHUNDER BANERJEE *v.* LUCHUN GOPE. KEMP *v.* PREM NARAYAN SING [I. L. R., 5 Calc., 699: 5 C. L. R., 539

REVIEW—*continued.*

2. POWER TO REVIEW—*continued.*

31. ——— **Power to grant second review.**—*Civil Provedure Code, 1859.*—A Court has no jurisdiction to grant a second review of judgment on the application of the same party under the Code of Civil Procedure, 1859. VENCAMA SHETTY *v.* PAMOO SHETTY . . . **5 Mad., 323**

32. ——— *First review not appealed from nor shown to be erroneous.*—A second review of judgment was refused as not contemplated either by the law itself or the Full Bench ruling of 12th February 1866, the first review being neither appealed against nor shown to be wrong. TARANATH ROY *v.* RAJ BULLUB BHUNJE . **7 W. R., 464**

NASIRUDDIN KHAN *v.* INDRONARAYAN CHOWDHRY
[B. L. R., Sup. Vol., 367 : 5 W. R., 93
1 Ind. Jur., N. S., 147

33. ——— **Admission of review after prior order rejecting it.**—*Act VIII of 1859, ss. 376, 377, 378, and 380.—Order rejecting review.*—An order rejecting a review is not conclusive, and the Court may, in the exerise of its discretion, admit a review even after a prior order rejecting it. SETON-KARR, *J.*, differed. NASIRUDDIN KHAN *v.* INDRONARAYAN CHOWDHRY . **B. L. R., Sup. Vol., 367 :**
[1 Ind. Jur., N. S., 147 : 5 W. R., 93

KASHEENATH ROY *v.* LUCKHEENARAIN CHATTERJEE . . . . . **W. R., 1864, 91**

FUKHEEROODDEEN *v.* KALACHAND SIRDAR
[1 W. R., 287

NEEDOO MONEE DOSSEE *v.* SARODA MONEE DOSSEE
DOORGANATH SHOOR *v.* SOOKHMOY BISWAS
[2 W. R., 61, 62

RASH BEHAREE SINGH *v.* KOONJ BEHAREE SINGH
[W. R., 1864, Mis., 31

ASUDOODDEEN HYDER *v.* ABDOOL KUREEM
[6 W. R., 110

3. FORM OF, AND PROCEDURE ON, APPLICATION.

34. ——— **Form of application.**—Applications for review of judgment should set forth concisely the grounds of objection to the decision of which a review is sought, without argument or narrative, and such grounds should be numbered consecutively. MAHADAJI RAMCHANDRA MULE *v.* VITHAL VISHVANATH . . . . . **1 Bom., 185**

35. ——— **To what Court to be made.**—*Review of judgment of Sudder Court rejecting special appeal.*—An application for a review, on the ground of the discovery of new evidence, of a judgment of the late Sudder Court rejecting a special appeal, ought not to be made to the High Court, but to the Court of original jurisdiction. RAO BANEERAM *v.* NEWAZ BIBEE . . . **8 W. R., 511**

36. ——— **Application for review by minor.**—*Civil Procedure Code, 1859, ss. 376, 377.*—

REVIEW—*continued.*

3. FORM OF, AND PROCEDURE ON, APPLICATION—*continued.*

Application for review by minor—*continued.*

An infant is as much bound by a judgment in his own action as if of full age, and if an application for review is made on his behalf, it must be subject to the conditions of the 376th and 377th sections of the Code of Civil Procedure. MODHOO SOODUN SINGH *v.* PRITHEE BULLUB PAUL . . **16 W. R., 231**

37. ——— **Admission of review without notice.**—A proceeding admitting a review, without notice to the opposite party, as required by section 378 of the Code of Civil Procedure, 1859, is wholly vitiated by such defect, and not binding on that party. GOLABOO *v.* RAMDYAL SINGH
[8 W. R., 304

4. REVIEW BY JUDGE OTHER THAN JUDGE IN ORIGINAL CASE.

38. ——— **Proper Court to review judgment.**—*Power of one Judge to review another's judgment.*—As a general rule, the Court which pronounces a judgment is the only Court that can review that judgment. RAM NATH *v.* GOWHUR
[2 N. W., 230

39. ——— **Hearing of application by different Judge when allowable.**—*Delay.*—A review was intended to be a consideration of the same subject by the same Judge, as distinguished from an appeal, which is a hearing before another tribunal. A review, therefore, should be presented with as much expedition as possible with a view to the re-hearing before the same Judge. The exceptions to this rule are allowable only *ex necessitate,*—that is, from death of the original Judge or some unexpected and unavoidable cause which prevents him from hearing the review. The causes accounting for delay in applying for a review must, to justify the grant of it, be of grave importance. MOHESHUR SINGH *v.* GOVERNMENT OF INDIA
[3 W. R., P. C., 45 : 7 Moore's I. A., 283

See SURUT SOONDUREE DEBIA *v.* RAJENDUR KISHORE ROY CHOWDHRY . **9 W. R., 125**

40. ——— **Power of Judge to review judgment of predecessor.**—*Civil Procedure Code, 1859, s. 379.*—The law makes no distinction between the power of a Judge who originally heard a case, and subsequently has an application for review before him, and the power of a Judge subsequently succeeding to the same office who has such an application before him, and is not barred by the circumstances stated in section 379, Act VIII of 1859, from considering that application. AMAN ALI CHOWDHRY *v.* KASIM ALI . . **6 W. R., 316**

41. ——— **Power to review judgment of predecessor.**—*Ground of review.*—A lower Court acts without jurisdiction if it admits a review of its predecessor's judgment, unless either the party apply for review within ninety days, or the Court is

REVIEW—*continued.*

4. REVIEW BY JUDGE OTHER THAN JUDGE IN ORIGINAL CASE—*continued.*

Power to review judgment of predecessor—*continued.*

satisfied that there is just and reasonable cause for not having preferred the application within the limited period. GOSSIE DOSS *v.* NARAIN DOSS [W. R., 1864, 287

PURMESSUREE NARAIN SINGH *v.* ROMEEZOODDEEN AHMED . . . . 5 W. R., 226

SREENATH CHOWDHRY *v.* KRITATTOMOYEE DOSSEE . . . . 18 W. R., 286

42. ———— *Exercise of power.*—A Subordinate Judge has the power under the law to review the decision of his predecessor, although the power is one which should be exercised very sparingly. KANGALEE CHURN JOSH *v.* DURSUNEE DOSSEE . . . . 18 W. R., 198

43. ———— *Civil Procedure Code, 1859, ss. 376, 378.—Power of Judge to review judgment of his predecessor.*—A Judge has no power to allow a review of his predecessor's judgment on the ground that he comes to a different conclusion on the facts of the case. The general words used in sections 376 and 378 of Act VIII of 1859 are controlled and restricted by the particular words, and it is only the discovery of new evidence, or the correction of a patent and indubitable error or omission, or some other particular ground of the like description, which justifies the granting of a review. ROY MEGHRAJ *v.* BEEJOY GOBIND BURRAL [I. L. R., 1 Calc., 197 : 23 W. R., 438

See IN THE MATTER OF THE PETITION OF MATHRA PARSHAD . . . I. L. R., 1 All., 296

BANEE MADHUB BOSE *v.* KALEE CHURN SINGH ROY . . . . 24 W. R., 387

MUNEEROODEEN *v.* KADIR BUKSH [24 W. R., 410

WOLFUT *v.* NUSRUTOOLLAH . 25 W. R., 48

44. ———— *Ground for review.—Civil Procedure Code, 1859, ss. 376-378.*—Where a Judge allowed a review of his predecessor's judgment on the sole ground that it appeared to him that the judgment of his predecessor had done injustice,—*Held* by the High Court (MORGAN, *C. J.*, and INNES, *J.*) that though the generality of the terms used in the sections of the Procedure Code, Act VIII of 1859, relating to review of judgment,—*viz.*, "other good and sufficient reason" (section 376), "and otherwise requisite for the ends of justice" (section 378),—confers a wide jurisdiction, this jurisdiction could not be held to authorise a Judge to revise and reverse his predecessor's decree on the ground above mentioned. If the review is asked for in reference to the conclusions of fact drawn from the evidence, it should not be granted simply upon the same evidence. *Reasut Hossein* v. *Abdoollah, I. L. R., 2 Calc., 131,* discussed. RAMAN *v.* KURUNATHA THARAKAN . . . I. L. R., 2 Mad., 10

REVIEW—*continued.*

4. REVIEW BY JUDGE OTHER THAN JUDGE IN ORIGINAL CASE—*continued.*

45. ———— **Power of Judge to review case after transfer to his file.**—*Order dismissing suit.*—A Judge cannot, by transferring a case to his own file, confer on himself the power to review an order of dismissal pronounced by a Principal Sudder Ameen. GOLAM ESHA *v.* HURRISH CHUNDER MOOKERJEE . . W. R., 1864, Mis., 29

46. ———— **Case transferred to another Court on abolition of original Court.**—*Civil Procedure Code, 1882, ss. 623, 624.*—Section 624 of the Code of Civil Procedure must be read as a proviso to section 623. *Held,* therefore, that when a Court had been abolished and its business transferred to a Court presided over by another Judge, such Judge should not entertain an application for review of judgment except in the case provided for by section 624. SARANGAPANI *v.* NARAYANASAMI [I. L. R., 8 Mad., 567

47. ———— **Application presented to original Judge.**—*Grant of application, Notice of.—Hearing by successor.—Civil Procedure Code (Act XIV of 1882), s. 624.*—An application for review of judgment, upon a ground other than those mentioned in section 624 of the Civil Procedure Code, if presented to the Judge who delivered it, and who thereupon directs notice to be given to the opposite party, may be heard and disposed of by his successor. *Pancham* v. *Jhinguri, I. L. R., 4 All., 278,* dissented from. KAROO SINGH *v.* DEO NARAIN SINGH [I. L. R., 10 Calc., 80 : 13 C. L. R., 261

48. ———— *Civil Procedure Code, 1882, s. 624.—Application for review heard by successor to Judge who passed the decree.*—When an application for review is presented to the Judge who made the decree, and he thereupon issues notice to the other side, the application is "made" to him within the meaning of section 624 of the Civil Procedure Code, and may be heard and disposed of by his successor in office. *Karoo Singh* v. *Deo Narain Singh, I. L. R., 10 Calc., 80,* followed. FAZEL BISWAS *v.* JAMADAR SHEIK [I. L. R., 13 Calc., 231

49. ———— *Civil Procedure Code, 1877, ss. 623, 624.—To whom application may be made.—Meaning of "made."*—The term "made" in section 624 of the Civil Procedure Code does not mean "presented," but means and includes the hearing and determination of the application for review of judgment. *Held,* therefore, where an application for a review of judgment on the ground, not of the discovery of new and important matter or evidence as mentioned in section 623 of the Civil Procedure Code, or of a clerical error apparent on the face of the decree, but on other grounds, was presented to the District Judge who delivered the judgment, and such Judge was transferred before he could entertain such application, that his successor was not competent to entertain it. PANCHAM *v.* JHINGURI [I. L. R., 4 All., 278

REVIEW—*continued.*

5. GROUND FOR REVIEW.

50. ——— Good and sufficient reason.—*Change of incumbent of office of Judge.*—A Court has the power, for any reason that it may consider good and sufficient, to grant a review of its judgment; and if the application is made within ninety days, the Court's estimate of those reasons cannot be interfered with by an Appellate Court. The procedure is not different when there has been a change (during the ninety days) of office incumbents. MONTOORA *v.* ABLAK ROY . . . **11 W. R., 197**

51. ——— Unfairness of decision.—*Power to admit review.*—When once a Civil Court has passed a final decision between the parties it loses jurisdiction over the suit, except for the purposes of executing the decree; and it cannot hold a new trial of the same unless, for some reason within the Procedure Act, the first trial appears to have been unfair between the two parties. LULEET MOHUN ROY CHOWDHRY *v.* SOWTRA BEEBEE . **10 W. R., 42**

52. ——— Correction of error or omission.—*Civil Procedure Code, 1859, ss. 376-378.*—PINHEY, *J.*—A review may be admitted on any ground, whether urged at the original hearing of the appeal or not, whenever the Court considers that it is necessary to correct an evident error or omission, or is otherwise requisite for the ends of justice; following *Chintamani Pal* v. *Pyari Mohun Mookerjee, 6 B. L. R., 126.* KALU BIN BHIWAJI *v.* VISHRAM MAWAJI . . . **I. L. R., 1 Bom., 543**

53. ——— Error in law.—An error on a point of law is a ground for a review of judgment. KOH POH *v.* MOUNG TAY . . **10 W. R., 143**

54. ——— Omission to try material issue.—*Act VIII of 1859, s. 376.*—The omission of a Court to take into consideration a material issue is a sufficient ground to admit an application for review of judgment. BIHARI LAL NANDI *v.* TRAILAKHOMAYI BARMANI

[3 B. L. R., A. C., 346 : 12 W. R., 223

HUSSUN ALI CHOWDHRY *v.* NASIROODDEEN

[16 W. R., 134

WISE *v.* HURO LALL GIREE GOSSAIN

[16 W. R., 150

55. ——— *Act X of 1877 (Civil Procedure Code), s. 623.—Reasons for applying for review,—Error in fact or law.*—A Divisional Bench of the High Court, sitting as a Court of second appeal, being of opinion that the Court of first appeal had omitted to determine a certain issue of fact, determined such issue itself and decided the appeal in accordance with its determination of such issue. An application for review of judgment was made on two grounds, *viz.*, (i) that the Bench was wrong in thinking that such issue had not been determined by the Court of first appeal; and (ii) that the Bench, sitting as a Court of second appeal, was not empowered to determine an issue of fact which the Court of first appeal had omitted to determine, but should have referred such issue to that Court for de-

REVIEW—*continued.*

5. GROUND FOR REVIEW—*continued.*

Omission to try material issue—*continued.*

termination under section 566 of the Civil Procedure Code. *Held* that, looking to the provisions of that Code relating to review of judgment, such application ought not to be allowed on the grounds mentioned, which virtually disclosed reasons for appeal from the judgment. SHEO RATAN *v.* LAPPU KUAR

[I. L. R., 5 All., 14

56. ——— Omission to decide issue.—The absence of a formal finding on an issue tried and decided by a Court of first instance is not an error calling for review of judgment in the High Court. SABAPATHI *v.* SUBBAYA . **I. L. R., 2 Mad., 58**

57. ——— Omission to consider effect of documentary evidence.—*Civil Procedure Code, 1859, ss. 376-378.*—Where a Judge has, in deciding a case, omitted to consider the effect of important documentary evidence filed with the plaint which was not taken issue upon, and which materially affects the merits of the case, he is competent, under sections 376 to 378 of Act VIII of 1859, to grant a review and re-hear the case. MAHADEVA RAYAR *v.* SAPPANI

[I. L. R., 1 Mad., 396

58. ——— Erroneous decision on immaterial point.—*Held* that when an issue which decides the case on the merits has been found in favour of either party, a review of judgment will not be granted merely because there has been an erroneous decision on a point affecting an issue which, in consequence of the finding, has become immaterial. RAKUB DOSS *v.* SOORAJ MULL

[Bourke, O. C., 131

59. ——— Summarily discrediting documentary evidence without inspection.—*Report of Commissioner to make local inquiry.*—An application for a review of judgment was made to a Court of Appeal on the ground that certain very material documents on which the Court of first instance had relied had been summarily discredited without being inspected by the Court of Appeal, and that the Court of Appeal had erred in declaring the report of a Commissioner appointed by the Court of first instance for the purpose of making a local inquiry to be unworthy of reliance, because he was a mohurrir of the Court of first instance. *Held* that, in granting the review applied for, the lower Appellate Court had not exceeded the discretion vested in it by law. ABDUL RAHIM *v.* RACHA RAI . **I. L. R., 1 All., 363**

60. ——— It may be competent to a Judge to entertain an application for a review, although such application contains no distinct allegation of an error in law in the order sought to be reviewed, nor any suggestion of the discovery of new evidence. IN THE MATTER OF THE PETITION OF ABDOOLAH. REASUT HOSSEIN *v.* ABDOOLLAH

[I. L. R., 2 Calc., 131 : 26 W. R., 50
L. R., 3 I. A., 221

61. ——— Omission to examine witness.—*Objection not taken on appeal.*—That the

REVIEW—*continued.*

5. GROUND FOR REVIEW—*continued.*

Omission to examine witness—*continued.*

lower Court should have improperly neglected to examine a witness is not a ground for a review of judgment, if the objection was not taken when the case was heard by the Court in regular appeal. MUNSHAD BIBEE *v.* LUCHMEEPUT SINGH . **9 W. R., 129**

62. ——— **Error in not remanding case.**—The fact that the High Court ought to have remanded the case on the ground that the Judge had wrongly decided a point of law is no ground for review. PROSUNNONATH DUTT *v.* JUDOONATH PAUL **[9 W. R., 589**

63. ——— **Further consideration of evidence.**—*Probability of different conclusion.*—It is not a proper ground for granting a review of judgment that a Judge by going through the evidence a second time might arrive at a different conclusion. CHUNDER CHUEN AUGGRODANY *v.* LOODUNRAM DEB . . . **25 W. R., 324**

64. ——— **Opportunity to re-argue case.**—*Chance of altering decision.*—A review cannot be given merely for the purpose of allowing the parties to re-argue the case upon the evidence, upon the chance of eventually throwing doubt upon the decision already passed. KOLEEMOODDEEN MUNDUL *v.* HEEBUN MUNDUL . . **24 W. R., 183**

65. ——— **Error in decision.**—*Additional evidence.*—Where a Subordinate Judge admitted a review on the representation of plaintiff that he (the Judge) had made a mistake as to the subject of a certain dagh in a Government halabadee chitta, the applicant filing with his petition for review another chitta and other evidence for the purpose of convincing the Court that it had made an error,—*Held* that an error of this kind was sufficient to found the jurisdiction of the Court to entertain the review. GUNESH RAM SURMAH *v.* ROHINEE DASSEE . . . **14 W. R., 236**

66. ——— **Erroneous refusal to admit additional evidence.**—Where a Judge on appeal declined to admit additional evidence, on the ground that the application should have been made to the lower Court,—*Held* it was a ground for applying for a review of his order pointing out his mistake. RAM LALL *v.* RUNG LALL . **17 W. R., 47**

67. ——— **Decision of special appeal on ground not taken in lower Courts.**—*Review of special appeal.*—It is not a sufficient ground for a review of judgment passed on special appeal that the point which was then raised, and on which the Court's decision was based, was one not raised in either of the lower Courts, and especially, as in this case, where the question was pointedly raised in the special appeal, and the respondent had ample time to prepare himself to meet the statement therein. COWELL *v.* MOHADEB MUNDUL . **17 W. R., 182**

68. ——— **Necessity of review for ends of justice.**—*Omission to raise issue.*—A case

REVIEW—*continued.*

5. GROUND FOR REVIEW—*continued.*

Necessity of review for ends of justice—*continued.*

having been remanded for the trial of an issue under the specific provisions of clause 1, section 4, Bengal Regulation XI of 1825, an application for review was made on the ground that it was requisite for the ends of justice to remand the case upon an issue under clause 2, which, it was alleged, was the issue to which the applicant had directed all his evidence. *Held* that, as the correctness of this allegation could not be ascertained without going through the record again, the application could not be granted, for to grant it would in fact be to grant a second special appeal, which is not the object of a review. JUGGOBUNDHOO BOSE *v.* WISE . . **12 W. R., 409**

69. ——— **Later Privy Council decision.**—*Facts not fully placed before Court.*—A review cannot be granted on the ground that if the facts had been better or more fully placed before the Court the judgment would have been different, or even on the ground of a subsequent decision of a question of law by the Privy Council in another suit where there has been no discovery of new evidence such as is contemplated in section 376 of Act VIII of 1859. JADUB RAM DEB *v.* RAM LOCHUN MUDDUCK . . . . . **19 W. R., 189**

70. ——— **Subsequent Full Bench ruling.**—A lower Court admitted a review of judgment on the ground that the decision of a Divisional Bench of the High Court which it had followed in that judgment had subsequently been overruled by the Full Bench. *Held* that the lower Court was not authorised to admit a review of judgment on such ground. AMRIT LAL *v.* MADHO DAS **[I. L. R., 6 All., 292**

71. ——— **New contrary ruling.**—*Civil Procedure Code, 1882, s. 623.*—Although the discovery of a new ruling may not entitle a party to a review of judgment, yet when a Court is satisfied that its judgment has proceeded upon an erroneous view of the law, the provisions of section 623 of the Code of Civil Procedure allow a review of judgment. VELLAYA *v.* JAGANATHA . **I. L. R., 7 Mad., 307**

72. ——— **Different decisions of Division Benches.**—That one Division Bench of the High Court has decided a point at variance with the decision of another Division Bench is no reason for granting a review of judgment. NOBEEN KISHEN MOOKERJEE *v.* SHIB PERSHAD PATTUCK **[9 W. R., 161**

FERGUSSON *v.* GOVERNMENT. GOVERNMENT *v.* FERGUSSON . . . . **9 W. R., 158**

73. ——— **Production of authority on law not before produced.**—*Civil Procedure Code, 1859, s. 376.*—*Error in law.*—The production of an authority which was not brought to the notice of the Judge at the first hearing, and which lays down a view of the law contrary to that taken by the Judge,

REVIEW—*continued.*

5. GROUND FOR REVIEW—*continued.*

Production of authority on law not before produced—*continued.*

is not a sufficient ground for granting a review. ELLEM *v.* BASHEER [I. L. R., 1 Calc., 184: 24 W. R., 382

74. ——— Production of new document.—The objection to the admission of a review of judgment on the strength of a new document was not allowed to prevail in a case where the so-called new document was not the sole reason for the admission of the review. HURO GOBIND PAL *v.* HURO SOONDAREE CHOWDHRAIN . . 18 W. R., 316

75. ——— Reversal of decree on which decision was based.—Where claims for rent were decreed by a Deputy Collector on the basis of a decree for a kabuliat, which latter decree was subsequently set aside, the proper remedy was an application to the Deputy Collector for a review of his decision. MOORAREE MOOBAJIM *v.* MAHOMED AKMAL . . . . . 22 W. R., 161

76. ——— Discovery of new evidence.—*Grounds for admission of review in special appeal.*—The High Court has no authority to admit a review of a judgment passed in special appeal merely on the ground that new evidence to prove a fact has been discovered. BHYRUB NATH TYE *v.* KALLY CHUNDER CHOWDHRY . . 16 W. R., 112

EX PARTE BASHIYAGARULU NAYADU [1 Mad., 254

JACKAMMAL *v.* PALNEAPPA CHETTY [5 Mad., 464

PANCHANAN MOOKERJEE *v.* RADHA NATH MOOKERJEE . . . 4 B. L. R., A. C., 213

77. ——— Discovery of fresh evidence.—*Evidence showing want of jurisdiction.—Ground of review.*—As a general rule the discovery of new evidence is not a ground for the admission of a review of a judgment passed in special appeal. *Quære,*—Whether this is so when such new evidence might affect the jurisdiction of the Court which tried the case. When new evidence is discovered, the proper course for the appellant to adopt is to ask leave to withdraw his special appeal, and to apply to the lower Court for a review of its judgment. NANABHAI VALLABHDAS *v.* NATHABHAI HARIBHAI . . 9 Bom., 89

PANDURANG SADASHIV *v.* MORO VASUDEV [6 Bom., A. C., 68

78. ——— *Proof that evidence was not before available.*—Before a review can be granted upon the ground of the discovery of new matter, it must be stated in the petition and proved that the new matter was not within the applicant's knowledge, or could not be adduced at the time when the decree was passed. DWARKANATH CHOWDHRY *v.* KISHENLALL CHOWDHRY [Marsh., 553: 2 Hay, 650

RADHEY KOONWER *v.* AJOODHYA PANDEY [3 Agra, 69

REVIEW—*continued.*

5. GROUND FOR REVIEW—*continued.*

Discovery of fresh evidence—*continued.*

NUBO KISHORE BISWAS *v.* JADUB CHUNDER SIRCAR . . . . 20 W. R., 426

79. ——— *Act VIII of 1859, s. 376.—Proof of alleged ground of review.*—A review of judgment under section 376 of Act VIII of 1859, on the ground of discovery of new evidence not within the applicant's knowledge at the hearing of the case, should not be admitted without proof of the truth of the ground alleged. UMRAO THAKUR *v.* GAKUL MUNDAL [8 B. L. R., Ap., 34: 16 W. R., 7

NOLITA MOHAN ROY CHOWDHRY *v.* DINONATH MOOKERJEE . . 13 B. L. R., 427, note

KHELUT CHUNDER GHOSE v. PRANKISTO GHOSE [11 B. L. R., 428, note: 12 W. R., 461

NAFFAR CHAND PAL CHOWDHRY *v.* SANDES [8 B. L. R., Ap., 35, note: 10 W. R., 432

RAMDHAN CHUCKERBUTTY *v.* JAINARAYAN PANWA [8 B. L. R., Ap., 36, note: 12 W. R., 536

SITANATH GHOSE *v.* SHAMASUNDARI DASI [8 B. L. R., Ap., 37, note: 14 W. R., 26

NUDARCHAND BHOOYA *v.* REEDOY MUNDUL [11 B. L. R., 424, note: 17 W. R., 458

SHUMSHEIR ALI KHAN *v.* RAM CHUNDER GOOPTO . . . . 2 W. R., 174

Otherwise the application will be refused. RAKUB DOSS *v.* SOORAJ MULL . Bourke, O. C., 131

JHUBHOO SAHOO *v.* JUSODA KOER [17 W. R., 200

AMRITRAV P. KOKDI *v.* MANAJI J. JAGTAP [3 Bom., A. C., 49

BROJENDRO COOMAR ROY CHOWDHRY *v.* WISE [19 W. R., 130

NISSA BIBEE *v.* ABDOOR RUHMAN [18 W. R., 413

80. ——— *Civil Procedure Code, 1859, s. 376.*—During the pendency of a suit for rent a plaintiff applied for postponement on the ground that he was unable to obtain a copy of a document which he had applied for from the Collectorate. The Munsif refused postponement and gave him a modified decree. The plaintiff subsequently obtained a review of judgment and a decree in full. The Judge on appeal decided that the Munsif was wrong in admitting the review, because the plaintiff had not mentioned that he was previously unacquainted with the existence of the document. *Held* that the review was properly admitted under Act VIII of 1859, section 376. GOOR DYAL ROY *v.* DEKA NOONYA . . . . . 22 W. R., 446

81. ——— *Nature of evidence.—Civil Procedure Code, 1859, s. 376.*—The new evidence referred to in section 376, Act VIII of 1859, is evidence that would probably alter the decision of the Court. The affidavit on which an application for review is grounded must state what the

REVIEW—*continued.*

5. GROUND FOR REVIEW—*continued.*

Discovery of fresh evidence—*continued.*

new evidence to be relied on is: in such an affidavit no reliance can be placed on a statement of belief of good defence on the merits, but the facts to be relied on as such must be set out. DHUNSOOK DOSS *v.* HURRY BABOO . . . **Bourke, O. C., 115**

82. ——————— *Fresh evidence, Nature of, requisite for review.*—Where new evidence is adduced in an application for review, it need not be, *per se*, sufficient to show that the previous decision is wrong or such as to cause an overmastering balance of evidence. If there is sufficient ground for receiving the new evidence, the case is to be heard as if it were being originally heard with the materials then before the Court. SAHEBJAN BIBEE *v.* SUFDUR ALI . . . . . **22 W. R., 288**

83. ——— **Error in adjudication of costs.**—*Other ground for application untenable.*—*Civil Procedure Code, 1877, s. 206.*—When an application for a review of judgment is made upon several grounds, one of which refers only to the question of adjudication of costs, and the Court to whom the application is made holds all the other grounds to be untenable, but is of opinion that there has been a clerical mistake in that part of its order or judgment which refers to costs, it may reject the application absolutely and permit the applicant to apply, under section 206 of the Civil Procedure Code, 1877, for a rectification of the clerical mistake. JOYKISHEN MOOKERJEE *v.* ATAOOR ROHOMAN **[I. L. R., 6 Calc., 22: 6 C. L. R., 575**

6. REVIEWS AFTER TIME.

84. ——— **Power to grant review after time.**—A Judge has power to grant a review after the lapse of the ninety days within which the application ought to be made. RAMGUTTEE DOSS *v.* GHOLAM AHMED KHONDKAR . **W. R., F. B., 84**

85. ——————— *Just and reasonable ground for delay.*—A Court has no jurisdiction to entertain an application for review after the lapse of ninety days of the judgment to be reviewed, unless just and reasonable cause for the delay be given. SHAMA CHURN CHUCKERBUTTY *v.* BINDABUN CHUNDER ROY **[B. L. R., Sup. Vol., 892: 9 W. R., 181**

MAHOMED GAZI CHOWDHRY *v.* DULLAB BIBI **[5 B. L. R., 318, note: 11 W. R., 22**

KASHEENATH ROY *v.* LUCKHEENARAIN CHATTERJEE . . . . . **W. R., 1864, 91**

JHUBHOO SAHOO *v.* JUSODA KOER **[17 W. R., 230**

FAKIRA *v.* BASAPA MAHADAN SHETTI **[8 Bom., A. C., 234**

86. ——————— *Petition for correcting decree.—Just and reasonable ground for delay.*—A petition for the rectification of a decree is not different from an application for a review when

REVIEW—*continued.*

6. REVIEWS AFTER TIME—*continued.*

Power to grant review after time—*continued.*

the object of the rectification is to alter the decision of the Court, and such a petition cannot be received after ninety days without just and reasonable cause for the delay being shown to the satisfaction of the Court. ASSUR ALI *v.* WOOLFUTOONISSA **[13 W. R., 33**

87. ——— **Improper grant of review after time.**—*Act VIII of 1859, s. 377.*—Where a party applying for a review of judgment after the expiry of the period of ninety days allowed by section 377, Act VIII of 1859, had not, as required by that section, shown any just and reasonable cause for not preferring his application within the prescribed period, the order admitting the review was held to have been improperly granted, and was set aside with all subsequent proceedings thereon. LUCHMUN SINGH *v.* TIRBANI BAKSH **[14 B. L. R., 373**

S. C. LUCHMUN SINGH v. SHUMSHERE SINGH **[L. R., 2 I. A., 58**

LULEETMOHUN ROY CHOWDHRY *v.* SOWTRA BEEBEE . . . . . **10 W. R., 42**

GOUR PERSHAD SURMAH *v.* ANJUB ALI **[24 W. R., 294**

FAKIRA *v.* BASAPA MAHADAN SHETTI **[8 Bom., A. C., 234**

GUNGANARAIN ROY *v.* GONOMOONEE **[8 W. R., 184**

BETTS *v.* BONSI MUNDUL . **25 W. R., 343**

KRISTO GOBIND JOARDAR *v.* JUGOBUNDHOO SIRCAR . . . . **12 W. R., 94**

SEEENATH CHOWDHRY *v.* KRITATTOMOYEE DOSSEE . . . . **18 W. R., 286**

88. ——— **Admission of review after time for good grounds.**—There seems to be no limit to the time after the expiration of ninety days at which the application for review may be filed, provided the applicant can satisfy the Court that there is just and reasonable ground for review. JOOGUL KISHORE SINGH *v.* OOGUR NARAIN SINGH **[8 W. R., 483**

89. ——— **Reversal by High Court of decision in similar case.**—*Review granted on insufficient grounds.*—Where an application for review of an order in execution, made after ninety days from the order, was granted simply on the ground that in the execution case of another person upon the same decree the decision, which apparently proceeded upon the same ground as the decision in this case, had been reversed by the High Court,—*Held* that the order admitting the review was open to appeal and must be set aside. ROY GOODUR SUHAYE *v.* ACHEBUR LALL . . . . **13 W. R., 120**

90. ——— **Different construction of law by High Court.**—*Civil Procedure Code, 1859,*

REVIEW—*continued.*

6. REVIEWS AFTER TIME—*continued.*

Different construction of law by High Court—*continued.*

s. 377.—Where the only cause for admitting a review after the ninety days prescribed by section 377, Act VIII of 1859, was that the High Court construed the law differently from the way in which it had been laid down in the decision admitted to review,—*Held* that the cause alleged was no excuse for the delay. PRAN KISHEN BHUTTACHARJEE *v.* BUKSHEE CAZEE . . . . **10 W. R., 26**

91. ——————— *Subsequent varying decision of law.—Order on remand.—Ground for review.*—A remand order made on special appeal is (unless a review of it be obtained within the prescribed time) a conclusive determination of the points of law involved in it; and the correctness of the law laid down upon a remand cannot be questioned on a second special appeal; nor is the fact of the Courts adopting a different view of the law after an order has been made, in general a good ground for allowing a review of such order after the time for a review has elapsed. RAMKUVARBAI *v.* DAMODHAR NARBHERAM . . . **6 Bom., A. C., 146**

92. ——— **Subsequent Full Bench decision.**—*Ground for review.*—A Full Bench judgment after the original judgment has been given in a suit is not a ground of review, a Full Bench judgment being prospective and not retrospective. MADHUB CHUNDER GHOSE *v.* RADHIKA CHOWDHRAIN . . . . . **7 W. R., 405**

DWARKANATH DOSS BISWAS *v.* MANICK CHUNDER DOSS . . . . . **9 W. R., 102**

Contra, FORBES *v.* DYANUTOOLLAH **[10 W. R., 415**

93. ——————— A new exposition of the law by a Full Bench after the passing of the original decree is not "just and reasonable cause" for admitting a review after the prescribed period. When a review has been granted, the Court is bound to decide the case according to any new exposition of the law by a Full Bench made since the original decision. SHAMA CHURN CHUCKERBUTTY *v.* BINDABUN CHUNDER ROY **[B. L. R., Sup. Vol., 892: 9 W. R., 181**

BURA BOODHO *v.* KOYLASH CHUNDER NUNDEE **[6 W. R., 100**

ALLADMONEE DOSSIA *v.* JOY SUNKUR ROY **[7 W. R., 408**

94. ——————— *Ground for review.—Suit by mortgagee to declare lien.—Subsequent suit for possession.*—The plaintiff, a mortgagee, obtained a money-decree against the defendant. A third party, in execution of another decree obtained against the same defendant, put up for sale the property included in the plaintiff's mortgage, and himself bought the right, title, and interest of his judgment-debtor in the property mortgaged to the plaintiff. The plaintiff subsequently, in execution of his decree, bought in the same property himself, and brought a suit against the defendant and the third party to have it declared that the latter held the property subject to his mortgage. The suit was decreed by the Subordinate Judge, but eventually dismissed by the High Court, on the ground that the plaintiff, by suing for his money-decree only, had deprived himself of the benefit of his lien as against the third party. The plaintiff thereupon brought another suit against the same parties to recover possession of the mortgaged property, which suit eventually came up before a Full Bench, where it was decided that the plaintiff had no right to bring the suit for recovery of possession, but that his proper course was to sue to have his lien upon the property declared, the Court intimating that it would be open to the plaintiff to apply for a review of judgment in the suit originally brought by him. On the review coming on to be heard, it was held that the plaintiff was entitled to a review of that judgment, and that the case was distinguishable from the general rule as to reviews laid down in *Madhub Chunder Ghose* v. *Radhika Chowdhrain, 7 W. R., 405; Dwarkanath Doss Biswas* v. *Manick Chunder Doss, 9 W. R., 102;* and *Shama Churn Chuckerbutty* v. *Bindabun Chunder Roy, B. L. R., Sup. Vol., 892,*—inasmuch as the granting the review did not interfere with previous decisions of the Court in other cases between other parties. JONMENJOY MULLICK *v.* DASMONEY DASSEE **[I. L. R., 8 Calc., 700**

95. ——— **Decision of High Court or Privy Council modifying the law.**—An application for review of judgment of a lower Court is not admissible after the limited period, merely in consequence of a decision of the High Court or of the Privy Council modifying the law or practice which prevailed at the time when the judgment sought to be reviewed was passed. ONOOP CHUNDER PAUL *v.* EKKOWREE SINGH . . **6 W. R., 167**

96. ——— **Subsequent decision of Privy Council.**—*Right to re-trial of case.*—Where the decision of a lower Court follows a view of the law taken by the High Court, and that view is set aside by a ruling of Her Majesty in Council, the judgment-creditor has a right to have his case re-tried upon that ruling. BANEE PERSHAD *v.* RADHA PERSHAD SINGH . . **15 W. R., 143**

97. ——— **Decision of Privy Council.**—*Civil Procedure Code, 1859, s. 379.—Ground for review out of time.*—A decision of the Privy Council in 1871 as to a question of fact in another suit, or the pendency of the appeal in the High Court, was held to be no cause (under section 379, Act VIII of 1859) for not having preferred an application for review of a judgment passed in May 1866 within ninety days from the date of the decree. BOLAKEE LALL *v.* MONJEE LALL . . . . **17 W. R., 163**

98. ——————— *Application for review after appeal by party who did not appeal.*—

REVIEW—*continued.*

6. REVIEWS AFTER TIME—*continued.*

Decision of Privy Council—*continued.*

Act VIII of 1859, s. 377.—Just and reasonable cause for delay in filing petition of review.—Upon the appeal of one of the defendants to the Privy Council, the judgment of the High Court was reversed. Another defendant, whose defence was the same as that of the defendant who had appealed, applied to the High Court to review its judgment after a lapse of several years from the date of the judgment of the High Court, but within three months from the date on which he became aware of the decision of the Privy Council. The application was refused. *Satto Saran Ghosal* v. *Tarini Charan Ghose, 3 B. L. R., A. C., 287,* doubted. PANCHANAN BOSE *v.* GURUDAS ROY

[9 B. L. R., 187: 18 W. R., 317

99. ——————— *Analogous cases.*—An application for review of judgment of three out of five analogous cases decided by the High Court, the judgment in two of which had been reversed by the Privy Council, was made after a lapse of more than ninety days from the date of judgment. *Held* that a lapse of ninety days, under the circumstances, would not be a bar to the granting of the review. SATTO SARAN GHOSAL *v.* TARINI CHARAN GHOSE

[3 B. L. R., A. C., 287

S. C. SUTTO SURRUN GHOSAL *v.* TARINEE CHURN GHOSE . . . . . 12 W. R., 154

100. ——— **Execution of decree against wrong person.**—*Act VIII of 1859, ss. 376, 377.—Reasonable ground for review.—Appeal by one defendant, right of review by another.*—A decree for wasilat was passed against "the defendant" in a case where there were several defendants; and as soon as one of them, who was not the person against whom the plaintiff sought for wasilat in the original plaint, found that the decree was to be executed against him, he applied to the Court for a review, though after the time prescribed by section 377, Act VIII of 1859. *Held* that the Court was quite right in holding that there was reasonable cause, within the meaning of that section, for the application for review not being preferred within the limited time. BUNKOO LALL SINGH *v.* BASOOMUNISSA BIBEE . . . . . 7 W. R., 166

101. ——— **Pendency of special appeal.**—*Ground for delay.—Civil Procedure Code, 1859, s. 377.*—Where an application for review is not made within the ninety days provided by Act VIII of 1859, the pendency of a special appeal is not "a just and reasonable cause" for the loss of time, such as the Court to which the application is made is bound to arrive at under section 377, before it can entertain the application at all. LUCAS *v.* STEPHEN

[9 W. R., 301

FAKIRA *v.* BASAPA MAHADAN SHETTI

[8 Bom., A. C., 234

102. ——— **Mistake of counsel.**—*Civil Procedure Code (Act XIV of 1882), s. 623.—"Sufficient cause."*—In a suit between *A.* and *B.*, heard on the 29th January 1883, a certain conveyance was filed with the plaint, but up to the hearing this conveyance had been protected from discovery. *B.'s* counsel had, however, had a copy thereof delivered to him at the time *B.'s* written statement was being drawn, and a copy briefed to him at the hearing. At the hearing, *A.'s* counsel stated that the effect of the conveyance was to vest the entirety of a certain property in *A.*; this view was accepted by *B.'s* counsel, who did not read the conveyance. The only issue in the case was "who was in possession of the property," and the Court decided this issue on the 5th February in favour of the plaintiff. On the 26th February *B.* brought a suit against *A.* to set aside this conveyance on the ground of fraud. And in certain proceedings in this case taken on the 31st March, *B.'s* counsel discovered, as he alleged for the first time, that under the conveyance a moiety of a seven-twenty-fourth share remained in *B.* On that day instructions were given to *B.'s* counsel to draw up a petition of review of the judgment of the 5th February. This petition, owing to the Easter vacation, was not, and could not have been, presented till the 9th April. *Held* that the words "sufficient reason" in section 623 of the Code should receive a liberal construction, and should be construed so as to do substantial justice to the parties; that as in this case it appeared to the Court that the construction placed upon the conveyance by *B.'s* counsel was the correct one, "sufficient reason" had been shown for making the application. IN THE MATTER OF THE PETITION OF SOLOMON. GOPAUL CHUNDER LAHIRY *v.* SOLOMON

[I. L. R., 11 Calc., 767

Held, on appeal, *per* GARTH, *C. J.*—Although it is difficult and perhaps undesirable to attempt to define precisely the meaning of the words "any other sufficient reason" in section 623 of the Civil Procedure Code, yet from the earlier part of the clause it is clear that a point which might have been, but which was not, discovered at the trial by the exercise of due diligence, was not intended by the section to afford any sufficient reason for review. *Per* WILSON, *J.*—*Semble*,—If at a trial all parties, counsel on both sides, and the Judge, are under a misapprehension as to the contents of a document, or even if the Judge alone is misled on such a point, and in consequence a wrong decree is made, the mistake ought to be corrected on review. GOPAL CHANDRA LAHIRI *v.* SOLOMON . . I. L. R., 13 Calc., 62

103. ——— **Discovery of new evidence.**—*Lapse of time.*—The discovery of new evidence may make it proper to grant a review, but the circumstances must be very special,—the more so when the application for review is made many years after the date of the decree, and the evidence discovered must be of a clear and conclusive character. HEERA LALL GHOSE *v.* RAM TARUCK DEY

[23 W. R., 323

104. ——— **Ground for delay.**—*Effect of ignorance of effect of judgment.*—An applicant for

REVIEW—*continued.*

6. REVIEWS AFTER TIME—*continued.*

Ground for delay—*continued.*

review cannot plead his ignorance of the effect of the judgment as a justification for his delay. GULAM HUSEN MAHAMED *v.* MUSA MIYA HAMAD ALI [I. L. R., 8 Bom., 260

105. ——— *Adoption of daughter's son.* — *Custom.* — *Breaches of custom.*— *Practice.*—*New case set up in special appeal.*—An application for review was presented to the High Court more than eighteen months after time, the applicant alleging that, soon after the decision sought to be reviewed, he was engaged in collecting instances of the special custom relied upon by him in support of his claim. The special custom was not set up in the Courts below, but an objection was taken for the first time in special appeal that an issue regarding it should have been raised in the lower Courts. No instance of such special custom had been given in evidence. It was urged that the applicant was a minor until shortly before the making of the High Court decree, and was only represented by his adoptive mother as his guardian. The High Court considered that there was no sufficient excuse for the delay, and rejected the application, observing that, unless upon very strong grounds and under very special circumstances, the Court would hesitate to permit a party at such a stage of his suit to set up a case which was not set up for him in the Courts below, where his professional representatives must have been well aware whether such a case could be legitimately set up, and abstained from any attempt to do so. GOPAL SAFRAY *v.* HANMANT SAFRAY . . . . I. L. R., 6 Bom., 107

106. ——— *Just and reasonable cause.*—*Civil Procedure Code, 1859, s. 377.*—The plaintiff in a suit applied, more than two years after the proper time, for a review of judgment in such suit, filing with his application a copy of a decision by the High Court, which had been passed subsequently to the date of such judgment, in support of a contention contained in his application which should have been, but was not, urged at the hearing of his suit. Such contention and the other arguments and statements contained in his application might have been adduced within the time allowed by law for an application for a review of judgment. *Held* that, as such contention might have been urged at the first hearing of the case, there was no "just and reasonable cause" for preferring the application after time, and the Court of first instance was therefore not warranted in granting the application and reviewing its judgment. MADHO DAS *v.* RUKMAN SEWAK SINGH . . . . I. L. R., 2 All., 287

107. ——— *Necessity for review not arising.*—*Civil Procedure Code, 1859, s. 376.*—Though a certain issue in a suit was decided against the plaintiff, the suit was decreed, and the defendants obtained a review on which that decree was set aside and the plaintiff's suit declared barred by limitation. On this the plaintiff applied for a review of both judgments. *Held* that, though his application in relation to the former judgment was not in time, yet as he had no occasion to ask for a review until the latter judgment was passed, the words of section 376, Civil Procedure Code, 1859, entitled him to ask the Court to reconsider both judgments. BAGOO JAN *v.* CHOWDHRY ZUHOORUL HUQ . . . . . 13 W. R., 69

7. QUESTIONS WHICH MAY BE RAISED ON REVIEW.

108. ——— **Raising new grounds.**—*Civil Procedure Code, 1859, s. 374.*—A party wishing to be heard in support of new grounds must apply for permission under section 374, Act VIII of 1859. he cannot be permitted to raise them in an application for review. FUKUROODDEEN MAHOMED AHSAN CHOWDHRY *v.* ANNUNDNATH ROY . 9 W. R., 370

109. ——— **Issue not raised in lower Courts.**—*Application for review after special appeal.*—In an application for review after special appeal, the Court will not entertain a question not raised before at a former stage of the suit. IN RE TUFANI SINGH . . . . 6 B. L. R., Ap., 141

110. ——— **New arguments.**—*Matter previously adjudicated on.*—The Judges are not required to re-adjudicate points considered and adjudicated when brought before them by a pleader then employed, though they may be better argued, and put in a different light by another pleader subsequently; but are to be guided in their admission of reviews by the definite terms of sections 377 and 378 of the Civil Procedure Code, 1859. CHOONEE MUNDUR *v.* CHUNDEE LALL DASS . . . 14 W. R., 334

111. ——— **Issue not noticed in the lower Court.**—*Arguments on appeal and review.*— In the first Court an issue was raised whether or no the hearing of this suit was barred by the law of limitation. One of the grounds of appeal to the Judge was, that the Principal Sudder Ameen ought to have held the suit barred as regards the diaras under the special limitation of three years from the date of the Collector's settlement. The Judge did not notice this ground in his judgment. The same ground of appeal was repeated on the special appeal to the High Court, but that Court refused to entertain it, for the reason that it did not appear to have been raised in argument before the Judge or in the first Court. On application for review, it was urged that the Court ought to have listened to this ground, but the Court adhered to its former decision. Counsel should not be heard to re-argue a case on review upon the same points as were argued on special appeal. RAJ KUNWAR *v.* INDIRJIT KUNWAR [5 B. L. R., 585: 13 W. R., 52

112. ——— **Points for argument.**—*Questions already discussed and decided.*—*New points.*— On application for review of judgment,—*Held*, a party applying for the review of judgment must show that

REVIEW—*continued.*

7. QUESTIONS WHICH MAY BE RAISED ON REVIEW—*continued.*

Points for argument—*continued.*

there is good and sufficient cause for granting the review before he can be heard to argue that the decision is erroneous. In so showing cause, (first) no point can be raised which has been already discussed and decided on the original hearing of the appeal; and (secondly) no new point which has not been raised at the hearing of the appeal can be argued on the application for review. BHAWABAL SINGH *v.* RAJENDRA PRATAP SAHOY . . . **5 B. L. R., 321**

RAJENDRO PROTAB SAHEE *v.* BHOWABUL SINGH **[14 W. R., 105**

Upholding on review, BHOWABUL SINGH *v.* RAJENDRO PROTAB SINGH . **13 W. R., 157**

JANAB ALI *v.* CHANDI CHARAN DEY **[5 B. L. R., 334, note: 11 W. R., 202**

GUNGAPRESAD *v.* AGRA AND MASTERMAN'S BANK **[5 B. L. R., 340, note**

S. C. AGRA AND MASTERMAN'S BANK *v.* GUNGA PERSHAD . . **[15 W. R., F. B., 5, note**

HAZRA BEGUM *v.* HOSSEIN ALI KHAN **[5 B. L. R., 341, note**

COLLECTOR OF TIPPERAH *v.* MAFZUNNISSA BIBI **[5 B. L. R., 341, note: 14 W. R., 84**

GARIB HOSSEIN CHOWDHRY *v.* WISE **[5 B. L. R., 342, note**

S. C. MEHUROONISSA KHATOON *v.* WISE **[15 W. R., F B., 2, note**

BENI MADHAB GHOSE *v.* GANGA GABIND MANDAL **[5 B. L. R., 345, note: 15 W. R., F. B., 3, note**

113. ——— Points for argument.—*Act VIII of 1859, s 376.—Arguments and grounds to be raised on review.*—It cannot be treated as a universal rule that no point can be raised on an application for a review which has been already discussed and decided on the original hearing of the appeal; or that no new point which has not been raised on the hearing of the appeal can be argued on the application for a review. In each case the Court to which the application is made must consider and decide whether a review is necessary to correct any evident error or omission, or is otherwise requisite for the ends of justice. IN THE MATTER OF THE PETITION OF CHINTAMANI PAL. CHINTAMANI PAL *v.* PYARI MOHUN MOOKERJEE. IN THE MATTER OF THE PETITION OF SALEH SHABI SABI-UD-DIN ABU SALEH. SALEH SHABI SABI-UD-DIN ABU SALEH *v.* ASADUNISSA BIBEE **[6 B. L. R., 126: 15 W. R., F. B., 1**

114. ——— *Points already decided.—New points.—Discretion of Court.*—Parties applying for a review of judgment are not absolutely debarred from asking for a re-hearing of a matter which has been already argued and considered, nor are they debarred from raising a point which has not, but which might have been, raised previously; but in every such case it lies upon the party making the application to show the Court some good ground upon which that indulgence is asked for, and it is in the discretion of the Court to allow or to refuse such an application. HUREE PERSHAD MUNDUL *v.* NUND KISHORE SINGH . . . **17 W. R., 479**

115. ——— *Question raised and abandoned.*—A party who not only had an opportunity of raising a question, but who did raise it on appeal and on argument abandoned it, cannot, under ordinary circumstances, be allowed to agitate the question on review. SABAPATHI *v.* SUBRAYA RAMANADHA . . . **I. L. R., 2 Mad., 58**

116. ——— *Admissibility of admitted documents.*—Whether certain documents which have already been admitted as evidence were so admissible or not, is not a point which can be urged in review. KOLEEMOODDEEN MUNDUL *v.* HEEREUN MUNDUL . . . **24 W. R., 186**

8. GRANT OR REFUSAL OF REVIEW.

117. ——— Reasons for granting order for review.—*Record of reasons.*—Before a review of judgment is granted, an order granting the application for review and the reasons for granting the same should be recorded. BHAIRON DIN SINGH *v.* RAM SAHAI . . . **I. L. R., 3 All., 316**

118. ——— Effect of refusal to grant review.—*Judgment of refusal.*—A mere refusal to grant a review of judgment cannot alter the judgment sought to be reviewed or the decree founded on it, and nothing which the Judge says with reference to his refusal to grant the review can be binding so as to alter such judgment or decree. RAMHUREY MONDUL *v.* MOTHOOR MOHUN MONDUL **[20 W. R., P. C., 450**

9. APPEALS AND PROCEDURE IN APPEALS.

119. ——— Orders rejecting review.—*Orders on review.—Civil Procedure Code, 1859, s. 378.—Application of section.*—Section 378 (section 626 of Civil Procedure Code, 1882) does not apply to judgments on review, but only to orders rejecting reviews. APCAR *v.* HOWAH BYE **[1 Ind. Jur., N. S., 231**

RUGHOONATH ROY *v.* ANUNDO PAURAY **[10 W. R., 387**

120. ——— Appeal by some only of several defendants.—*Application for review by some only of defendants in separate interests.—Effect of decree on review modifying decision on appeal.*—In a suit, in which several defendants were joined, to set aside alienations made at different times and to different persons, plaintiff succeeded in the first Court partly, and on appeal wholly, and obtained a decree ordering the alienated property to be restored to him. Then the defendants, their interests being

REVIEW—*continued.*

9. APPEALS AND PROCEDURE IN APPEALS —*continued.*

Appeal by some only of several defendants—*continued.*

separate, brought separate special appeals, which were dismissed. After this, two of them applied for a review, and the decrees were modified (a portion of the claim being declared barred by limitation), but on a ground not applicable to all the defendants. *Held* that, if these decrees were separate decrees in each appeal, the High Court had no power to modify the decrees in which there was no application for review, and which therefore remained in force, and should be executed. PEGOO JAN *v.* MULLICK WAIZOODDEEN . . . . . **18 W. R., 464**

121. ——— Order other than order rejecting applications for review.—*Order modifying original decree.—Right of appeal.*—Any order made upon an application for a review of judgment, except an order absolutely rejecting the application, becomes, if it in any way modifies or alters the original order, although the modification or alteration extends only to the rectification of a clerical mistake, the final order in the case; and the party aggrieved by the original decree is entitled, although the modification or alteration was made in his favour, to treat the order upon review of judgment as the final decree or order in the case; and if it was made by a Court, an appeal from which lies to the Court of a District Judge, he is entitled to prefer his appeal at any time within thirty days from its date. JOYKISHEN MOOKERJEE *v.* ATAOOR ROHOMAN **[I. L. R., 6 Calc., 22: 6 C. L. R., 575**

122. ——— Order rejecting review.—*Finality of order.*—An order rejecting a review is final. NOBIN CHUNDER CHOWDHRY *v.* GRIDHAREE LALL . . . . . **11 W. R., 264**

BANEE RAM *v.* HOSSEIN ALI . **11 W. R., 184**

123. ——— Order granting review on insufficient ground.—*Act VIII of 1859, ss. 376 to 378.—Appeal.—"Final."*—Where a Subordinate Judge, after deciding a regular appeal, granted an application for review of judgment on the ground that new evidence had been discovered, but without any inquiry or proof that such evidence was not within the knowledge of the applicant or could not have been adduced by him at the time the decree was passed,—*Held* that this was an error or defect in the procedure or investigation of the case which affected the decision, and was a ground of appeal when the decision upon review was brought bef re the High Court on special appeal. The word "final" in section 378 of Act VIII of 1859 meaas that the order rejecting the application or granting the review shall not by itself be open to appeal. BHYRUB CHUNDER SURMAH CHOWDHRY *v.* MADHUBRAM SURMAH . . . **11 B. L. R., F. B., 423 [20 W. R., 84**

NUBO KISHORE BISWAS *v.* JADUB CHUNDER SIRCAR . . . . . **20 W. R., 426**

DHUNKA DEVLA *v.* HIRA RAMLA **[4 Bom., A. C., 57**

REVIEW—*continued.*

9. APPEALS AND PROCEDURE IN APPEALS —*continued.*

124. ——— Decision as to what is just and reasonable ground.—*Application for review after ninety days.—Act VIII of 1859, ss. 363, 377, and 378.*—The decision of a subordinate Court as to what constitutes "just and reasonable cause" for admitting a review after the prescribed period is appealable. The words in section 378, Act VIII of 1859, "its order in either case, whether for rejecting the application or granting the review, shall be final," are applicable only to the order for rejecting the application or granting the review, and not to the decision as to whether there was just and reasonable cause for allowing the application to be made after the period of ninety days prescribed by section 377 had elapsed. SHAMA CHURN CHUCKERBUTTY *v.* BINDABUN CHUNDER ROY **[B. L. R., Sup. Vol., 892: 9 W. R., 181**

GEORGE *v.* HAMILTON, BROWN, & CO. **[4 N. W., 74**

125. ——— Presumption as to performance of preliminaries to review.—The Court will presume that the proper preliminaries have been observed in admitting the review, and unless anything appears to have been done contrary to law, will not set aside the decision. AKKUL SAHOO *v.* ABDOOL GUFFOOR . . . . . **18 W. R., 15**

See GURUMURTTI NAYUDU *v.* PAPPA NAYUDU **[1 Mad., 164**

126. ——— Objection taken on appeal.—*Objection as to improper grant of review.—Civil Procedure Code, 1859, s. 376.*—Although the order itself for granting a review of judgment is final, yet, on appeal against the decision passed in review, objection may be taken that the review was improperly granted. ABDUL RAHIM *v.* RACHA RAI **[I. L. R., 1 All., 363**

127. ——— *Objection that evidence was within knowledge of applicant.*—Where, owing to the conduct of the opposite party, who, though served with notice, made no objection, an applicant for review had no opportunity of showing that a new piece of evidence which he adduced was not within his knowledge and could not be adduced by him when the decree was passed, such opposite party cannot afterwards be allowed to object on the ground of the Full Bench ruling in *Bhyrub Chunder Surmah Chowdhry* v. *Madhubram Surmah, 11 B. L. R., 423: 20 W. R., 84.* RAM JOY GOOPTO *v.* JUGODESSUREE . . . . . **22 W. R., 399**

128. ——— *Civil Procedure Code, 1859, s. 378.— Appeal against review not justified by evidence.*—The Full Bench ruling, *Bhyrub Chunder Surmah Chowdry* v. *Madhubram Surmah, 11 B. L. R., 423: 20 W. R., 84,* that a special appeal would lie to determine whether in an order granting a review there had been any irregularity, and that the word "final" in the Civil Procedure Code, section 378, would not prevent the Appellate Court from considering afterwards the legality of the order, was

REVIEW—*continued.*

9. APPEALS AND PROCEDURE IN APPEALS —*continued.*

Objection taken on appeal—*continued.*

held to apply to cases in which a regular appeal is preferred on the ground that the admission of the review was not justified by the evidence. JOY KISHEN MOOKERJEE *v.* PARBUTTY CHURN GHOSSAL [22 W. R., 183

129. ——— *Fresh evidence.—Error in granting review.*—The Munsif dismissed a suit. Afterwards he issued a rule calling upon the defendant to show cause why a review of judgment should not be granted. The defendant showed cause, but his objections were overruled; the review was granted, both plaintiff and defendant adduced new evidence, and a decree was given for the plaintiff. On appeal, the Subordinate Judge reversed this decision on the ground relied upon by the defendant in showing cause in the lower Court,—namely, that the defendant had not established that with due diligence he could not have brought forward in the original trial the evidence upon which his application for review was based. *Held*, on special appeal, that the fact of the defendant having adduced fresh evidence in the Court below did not debar him from objecting before the Subordinate Judge that the review was wrongly granted, because the order admitting it was final. PRANNATH BHADOORY *v.* SREEKANT LAHOORY [2 C. L. R., 257

10. PROCEDURE ON RE-HEARING OF CASE.

130. ——— **Effect of order for review.**—*Reopening of whole case.*—When a review of a decision has been admitted, the whole case is thereby reopened. SAINAL RANCHHOD *v.* DULLABH DVARKA [10 Bom., 360

131. ——— **Re-trial by different Judge.**—*Point directed by order of review.*—When a case is admitted to review by the deciding Judge, and tried afterwards by another Judge, the new Judge ought to try only the point directed by the order of review. HURRO CHUNDER CHUCKERBUTTY *v.* RAMKISSORE CHUCKERBUTTY . W. R., 1864, 142

132. ——— **Review granted on particular ground.**—*Civil Procedure Code (Act X of 1877), s. 630.—Discretion of Court as to re-hearing whole case or not.*—Where a review of judgment is granted on a particular ground, the Court is not bound to re-hear the whole case under section 630 of the Civil Procedure Code: it is in the discretion of the Court to re-hear the whole case, or only the particular point on which the review has been granted. HURBANS SAHYE *v.* THAKOOR PURSHAD [I. L. R., 9 Calc., 209

S. C. THACOOR PROSAD *v.* BALUCK RAM [12 C. L. R., 64

133. ——— *Review of portion of case.—Power to re-hear case on another point.*—Where a Judge, who had ordered a certificate of guardianship to be granted under Act XL of 1858, granted a review of his order on one point,—

REVIEW—*continued.*

10. PROCEDURE ON RE-HEARING OF CASE —*continued.*

Review granted on particular ground—*continued.*

Held that he had no power to reopen another question which he had already decided finally, and on which no application for review was made. BYJNATH SAHOY *v.* WUZEER NARAIN . . 24 W. R., 427

134. ——— *Power to entertain another objection without remand.*—In a suit to recover possession of certain land, which, though described in the plaint as partly bastoo and partly agricultural land, was treated by both parties as agricultural only, it was found by the Court of first instance that the defendants had acquired a right of occupancy. This finding having been confirmed by the lower Appellate Court, an application was made for a review, and on review that Court reversed its former decree on the ground that no right of occupancy could be acquired. *Held* that on review the lower Appellate Court ought not to have entertained the objection that the land was not agricultural without remanding the case for the trial of a fresh issue on that point. KHORESH MAHOMED *v.* MAHOMED TAKEE . . . . . 10 C. L. R., 106

135. ——— **Power to reverse order for re-hearing of suit.**—*Re-hearing before another Judge.*—Where one Judge decided that the suit was not barred as a *res judicata*, and directed the suit to be re-tried on the merits, and after another trial it came on appeal to the same Court before another Judge,—*Held*, whatever power he would have had to review the order of his predecessor had nothing been done on it, he could not reverse the order at that stage, one Court having no power to reverse an order of a co-ordinate Court. PALAVARAPU MUTANNA *v.* CHANDURI NARAPPA . . . 2 Mad., 349

But *see* MURDAN ALI *v.* TUFUZZUL HOSSEIN [16 W. R., 78

SALAHMUNISSA KHATOON *v.* MOHESH CHUNDER ROY . . . . . 16 W. R., 85

136. ——— **Admission of review by one Judge only of Bench who heard the case.**—*Objection to propriety of order admitting review.*—Where a review has been admitted by the sole remaining Judge of the Bench which heard the case originally, it is not open to counsel, on the re-hearing of the appeal, to question the propriety of the order for admission. If such order is wrong, the error cannot be corrected by the Bench appointed to hear the appeal after its restoration to its original number on the file. JARDINE, SKINNER, & Co., *v.* DHUN KISHEN SEIN . . . 13 W. R., 82

137. ——— **Qualified order for admission of review.**—*Discretion of Court as to extent case should be reopened.—Held* that Judges of the Sudder Court admitting an application for review were competent to make a qualified order, leaving in the Court which was to review the decision a discretion as to the extent to which the review should be carried. BHUGWANDEEN DOOBEY *v.* MYNA BAEE [9 W. R., P. C., 23: 11 Moore's I. A., 487

REVIEW—*continued.*

10. PROCEDURE ON RE-HEARING OF CASE —*continued.*

138. ——— Admission of additional evidence on re-hearing.—*Act VIII of 1859, s. 376.*—When an application for review is admitted upon other grounds, fresh evidence not produced at the trial may be received, although no reason, as required by section 376, Act VIII of 1859, had been assigned for the non-production at the trial. BIHARI LAL NANDI *v.* TRAILAKHOMAYI BARMANI [3 B. L. R., A. C., 346

139. ——— *Question as to genuineness of pottah.*—In a suit for confirmation of title to a village alleged to be in the possession of plaintiff under a mokurrari pottah, the first Court found the pottah to be genuine and gave plaintiff a decree. The lower Appellate Court at first doubted the genuineness of the pottah and reversed that decision, but, on an application for review, admitted additional evidence on both sides and dismissed the appeal. *Held* that the lower Appellate Court ought not to have allowed points to be explained away in the review stage by admitting additional evidence thereon, though in this particular case injustice was not done. TEKAET KHOOD NARAIN SINGH *v.* TOOLSEE ROY . . . . . 15 W. R., 9

140. ——— Reasons for different opinion.—*Duty of Court on review.*—A Court should give reasons, on review of judgment, for coming to a different conclusion from that which it had previously formed. ANUNDMOYEE DOSSIA *v.* KALEE COOMAR ROKHEET . . . . . 6 W. R., 18

141. ——— Admission of review and dismissal of appeal, Effect of.—One of the Judges of a Division Bench, which gave a decision on special appeal in favour of plaintiff, having left the Court, the remaining Judge heard an application for the admission of a review. The review having been admitted, the case was re-heard before the Judge last mentioned and another Judge, and a conclusion was arrived at contrary to the former decision. An application was made by the plaintiff for a review of this judgment, and notice was issued to the defendant, who came in thereupon, and judgment was then delivered at considerable length, in which the Judge delivering it said that no sufficient ground had been made out for the admission of a review, and that he dismissed the appeal. *Held* that the last judgment was a re-hearing, and that it dismissed, not the application for the admission of a review, but the case itself on its merits. LEKRAJ ROY *v.* KANHYA SINGH . . . . . 18 W. R., 494

11. CRIMINAL CASES.

142. ——— Power of review.—*Judgment in criminal appeal.*—The High Court cannot review its judgment passed in a criminal case before it on appeal. QUEEN *v.* GODAI RAOUT [B. L. R., Sup. Vol., 436 : 5 W. R., 61

KRISTO CHUNDER MAHATA *v.* OBINESSUREE DEBIA . . . . . 11 W. R., 532

REVIEW—*continued.*

11. CRIMINAL CASES—*continued.*

Power of review—*continued.*

IN THE MATTER OF THE PETITION OF KRISHNO CHURN . . . . . 17 W. R., Cr., 2

143. ——— *Criminal Procedure Code.*—The Code of Criminal Procedure contains no provision for a review of an order passed in a criminal case. REG. *v.* MEHTARJI GOPALJI . . . . . 7 Bom., Cr., 67

QUEEN *v.* TILOKE CHUND . 3 N. W., 273

**144. ——— *Application to set aside order of third Judge agreeing with junior Judge where there is difference of opinion between the Judges of Division Bench.*—*Held* by MORGAN, *C. J.*, and TURNER, *J.* (ROSS and SPANKIE, *JJ.*, dissenting), that an application to set aside an order made by the junior Judge of a Division Bench and a third Judge contrary to the opinion of the senior Judge of the Division Court in a case where the two Judges differed in opinion, is not in the nature of a review of judgment, and is cognisable by the Court. Where an order has been actually issued by the High Court, a Division Bench will not disturb the same, unless in the opinion of a majority of the Court the order is bad. QUEEN *v.* NYN SINGH [2 N. W., 117 : S. C. Agra, F. B., Ed. 1874, 196

145. ——— Review of sentence once passed.—A sentence duly passed and recorded cannot be revised by the Judge. ANONYMOUS [4 Mad., Ap., 19

ANONYMOUS . . . 6 Mad., Ap., 18

ANONYMOUS . . . 6 Mad., Ap., 8

Contra, ANONYMOUS . . 5 Mad., Ap., 20

146. ——— Order obtained on misstatement of facts.—*Forfeited property.*—*Criminal Procedure Code (Act XXV of 1861), ss. 184, 185.*—Where an order for the release of the property of an absconding offender, which had been attached under section 184 of the Criminal Procedure Code, Act XXV of 1861, had been obtained from the High Court on an *ex parte* application, and on an incorrect statement of facts, the High Court, on the application of the Government, cancelled such order. IN THE MATTER OF THE PETITION OF THE GOVERNMENT OF BENGAL [9 B. L. R., 342

147. ——— Order dismissing application by accused person for revision.—*Criminal Procedure Code, s. 369, s. 434.*—*Letters Patent, High Court, N.-W. P., cls. 18 and 19.*—The High Court had no power under section 369 of the Criminal Procedure Code to review an order dismissing an application for revision made by an accused person, and the only remedy was by an appeal to the prerogative of the Crown as exercised by the Local Government. *Per* BRODHURST, *J.*—The Legislature has not conferred in express words upon a High Court the power of reviewing its judgments in all criminal cases as it has done under the Civil Procedure Code in civil cases; and the provisions of section 369 of the Criminal Pro-

REVIEW—*continued.*

11. CRIMINAL CASES—*continued.*

Order dismissing application by accused person for revision—*continued.*

cedure Code, so far as they affect the High Court, apply merely to questions of law arising in its original criminal jurisdiction, and which are reserved and are subsequently disposed of under the provisions of section 434 of the Criminal Procedure Code and section 18 and 19 of the Letters Patent for the High Court of the North-Western Provinces. *Queen* v. *Godai Raout, B. L. R., Sup. Vol., 436,* referred to. QUEEN-EMPRESS *v.* DURGA CHARAN . **I. L. R., 7 All., 672**

148. ———— Order made on revision.—*Power of High Court.—Criminal Procedure Code, s. 439.*—A Division Bench of the High Court has not, under section 439 of the Code of Criminal Procedure (Act X of 1882), any power to review its judgment pronounced on revision in a criminal case. *Queen-Empress* v. *Durga Charan, I. L. R., 7 All., 672,* followed. QUEEN-EMPRESS *v.* FOX

[I. L. R., 10 Bom., 176

REVISION—CIVIL CASES.

See CASES UNDER SUPERINTENDENCE OF HIGH COURT.

———— CRIMINAL CASES.

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See SENTENCE—POWER OF HIGH COURT AS TO SENTENCES—MITIGATION. **[B. L. R., Sup. Vol., 484**

1. GENERAL RULES FOR EXERCISE OF POWER.

1. ———— Cases where appeal lies.—*Appeal preliminary to application for revision.*—Where there is a Court of Appeal, resort should be had thereto before application is made to the High Court for the exercise of its powers of revision. EMPRESS *v.* NILAMBHAR BABU **[I. L. R., 2 All., 276**

REVISION — CRIMINAL CASES—*continued.*

1. GENERAL RULES FOR EXERCISE OF POWER—*continued.*

Cases where appeal lies—*continued.*

2. ———————— *Appeal by Local Government.—Application for revision by Local Government.—Criminal Procedure Code, 1882, ss. 417, 439.*—It is not an inflexible rule that where either Government on the one side or an accused on the other has a right of appeal, and does not exercise it, the powers of the High Court under section 439 of the Criminal Procedure Code cannot be exercised; but in such cases these powers should be sparingly used, and, save in very exceptional circumstances, not at all in reference to questions of fact. QUEEN-EMPRESS *v.* ALA BUKSH **[I. L. R., 6 All., 484**

3. ———— Error which cannot be corrected by appeal.—*Power of High Court.*—The High Court may act as a Court of Revision after it has acted as a Court of Appeal in order to correct an error which cannot be set right by appeal. QUEEN *v.* GORA CHAND GOPE **[B. L. R., Sup. Vol., 443: 1 Ind. Jur., N. S., 177 5 W. R., Cr., 45**

4. ———— Power of High Court on revision.—*Letters Patent, High Court, N.-W. P., cl. 27.—24 & 25 Vict., c. 104, s. 13.*—Section 13 of 24 and 25 Victoria, Cap. 104, and section 27 of the Letters Patent of the High Court, apply to the High Court in its revisional as well as in its appellate jurisdiction. QUEEN *v.* NYN SINGH **[2 N. W. 117: S. C. Agra, F. B., Ed. 1874, 196**

5. ———————— *Criminal Procedure Code, 1882, s. 439.*—The provisions of section 439 of the Criminal Procedure Code in no way affect the powers of the High Court as a Court of Revision vested in it by the High Courts Act. CHAKOWRI LALL *v.* MOTI KURMI . . **13 C. L. R., 275**

6. ———— Irregularity or illegality in proceedings.—*Ground for revision.*—A fair *primâ facie* case as to the irregularity of those proceedings, or the illegality or impropriety of the sentence or order, must appear before the Court will call for or direct a return of the record of the proceedings. QUEEN *v.* SUBBAYYA GAUNDAN . **1 Mad., 138**

7. ———— Application by private prosecutor.—*Act X of 1872 s. 297.—Power of private prosecutor to move the Court in a case of acquittal.*—A private prosecutor can move the High Court, in the case of an acquittal, to exercise its powers of revision under section 297 of Act X of 1872. SUKHO *v.* DURGA PRASAD . . . **I. L. R., 2 All., 448**

See IN THE MATTER OF HARDEO **[I. L. R., 1 All., 139**

8. ———— Power of High Court to act on private information.—*Revision by High Court, Power of.—Ground for revision.*—In the

REVISION — CRIMINAL CASES—*continued.*

1. GENERAL RULES FOR EXERCISE OF POWER—*continued.*

Power of High Court to act on private information—*continued.*

course of a serious riot one *S.* was killed by a shot from a gun. The first prisoner and others were charged with murder. The Sessions Judge, believing the statement of the first prisoner and his witnesses that he had fired in self-defence, acquitted him of the charge. Upon a petition presented by the widow of the deceased praying the Court to exercise their powers of revision,—*Held* that under the provisions of section 297 of the Criminal Procedure Code, the High Court might exercise its powers of revision upon information in whatever way received. IN THE MATTER OF AUROKIAM

[I. L. R., 2 Mad., 38

2. DELAY.

9. ——— Necessity of immediate application for relief.—*Criminal Procedure Code, 1861, s. 404.—Application to set aside proceedings under s. 318.*—The High Court refused to interfere, under section 404, Criminal Procedure Code, 1861, on an application by a party who had, in proceedings under section 318 of the Code, been found not to be in possession, to set aside the proceedings, on account of the great delay that had taken place in making it. Such applications ought to be made at once. GOGUN PRAMANICK *v.* SURNOMOYEE . **19 W. R., Cr., 39**

10. ——— *Irregular summary rejection of appeal.—Rejection without giving reasons.*—Where a Sessions Judge rejected an appeal summarily under section 421 of the Criminal Procedure Code, 1882, by an order consisting merely of the words "Appeal rejected," and an application for revision of such order was made to the High Court nearly nine months thereafter, on the ground that the Judge was wrong in rejecting the appeal without assigning his reasons for so doing,—*Held* that this objection, if taken within a reasonable time, would have been valid, but as the application for revision was made with very great delay, the Court should not interfere. QUEEN-EMPRESS *v.* RAM NARAIN

[I. L. R., 8 All., 514

11. ——— *Application to revise order of acquittal.*—Where an application was made by the Local Government to the High Court for revision of an order of acquittal, under section 439 of the Criminal Procedure Code, 1882, nearly ten months after the sessions trial, and upwards of twelve months after the commission of the alleged crime, and where there was, upon the face of the Judge's judgment, no error in law, and no appeal had been preferred upon a question of fact,—*Held* that, under such circumstances, the Court did not feel called upon to enter into the case at large upon the merits, under a petition for revision. QUEEN EMPRESS *v.* ALA BAKHSH . . . **I. L. R., 6 All., 484**

REVISION — CRIMINAL CASES—*continued.*

3. QUESTION OF FACT.

Under the former Code of 1872 the Court had power to deal on revision with questions of law, not with questions of fact. MUNGLO *v.* DURGA NARAIN NAG . . . . . **25 W. R., Cr., 74**

IN THE MATTER OF THE PETITION OF DEBI CHURN BISWAS . . . . **20 W. R., Cr., 40**

EMPRESS *v.* DONNELLY. IN THE MATTER OF THE PETITION OF DONNELLY

[I. L. R., 2 Calc., 405

12. ——— Power to go into facts.—*Discretion of Court.—Criminal Procedure Code (Act X of 1882), s. 435.*—Under section 435 of the Criminal Procedure Code the High Court has power to go into questions of fact, but it will only exercise this power in cases in which it finds that it will be in the interests of justice to do so. NOBIN KRISHNA MOOKERJEE *v.* RASSICK LALL LAHA

[I. L. R., 10 Calc., 1047

4. EVIDENCE AND WITNESSES.

13. ——— Conviction inconsistent with evidence.—*Criminal Procedure Code (Act X of 1882), ss. 439 and 423.—Court of Appeal.—Appellate powers.—Discretion.*—In cases in which the law allows no appeal, the High Court, as a Court of Revision, will not, except on very exceptional grounds, exercise the powers of an Appellate Court; but where such exceptional grounds exist, as where the conviction is not in any degree supported by the evidence, the High Court will exercise its discretion under section 439 of the Code of Criminal Procedure, and reverse the conviction and sentence. EMPRESS *v.* BADRUDIN . . . **I. L. R., 8 Bom., 197**

Also where there is no evidence to support the conviction. IN THE MATTER OF THE PETITION OF RAMJOY KURMOKAR . . **25 W. R., Cr., 10**

IN THE MATTER OF KRISHNANAND BHUTTACHARJEE . . **3 B. L. R., A. Cr., 50**

S. C. IN THE MATTER OF KISHEN SOONDUR BHUTTACHARJEE . . **12 W. R., Cr., 47**

EMPRESS *v.* NAROTAM DAS

[I. L. R., 6 All., 98

REG. *v.* GANU BIN KRISHNA GURAV

[4 Bom., Cr., 25

14. ——— Laxity in weighing and testing evidence.—Under the former Code the Court would interfere in the case of great laxity in weighing and testing evidence. EMPRESS OF INDIA *v.* MURLI . . . . **I. L. R., 2 All., 336**

But not on a mere error in the appreciation of evidence. REG *v.* SAKHARAM MANOHAR

[11 Bom., 125

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ANONYMOUS CASE . . **5 Mad., Ap., 10**

REVISION — CRIMINAL CASES—*continued.*

4. EVIDENCE AND WITNESSES—*continued.*

15. ——— Improper estimate of evidence by the Magistrate.—The High Court would only interfere on revision if it came to the conclusion that the Magistrate had illegally and improperly underrated the value of the evidence. LACHMAN *v.* JUALA . . . I. L. R., 5 All., 161

16. ——— Decision that evidence is insufficient.—*Refusal of Magistrate to proceed further in revision case.*—As a Court of Revision, the High Court will not enter upon a consideration of the value of the evidence on which the Magistrate decided not to proceed further in a case under section 521, Criminal Procedure Code, 1872. SHONAI PORAMANICK *v.* JOGENDRO SHAHA [1 C. L. R., 486

17. ——— Questions depending on conflict of evidence.—Questions of fact depending upon conflicting evidence which has been considered by the Judge who has given his opinion upon it are not cases for revision. IN THE MATTER OF THE PETITION OF DEBI CHURN BISWAS [20 W. R., Cr., 40

See BHARUT CHUNDER BOSE *v.* DWARKANATH CHOWDRY . . . 15 W. R., Cr., 86

18. ——— Conflict of opinion on evidence.—*Ground for exercise of power of revision.—Difference of opinion between Magistrates.*—The difference of opinion on a question of proof between a Magistrate who did, and another who did not, hear the witnesses, is not a ground on which the High Court will be disposed to exercise its powers of revision. NUNDO KISHORE HALDAR *v.* ANUNDO CHUNDER CHATTERJEE . . . 23 W. R., Cr., 64

Nor are questions of the credibility of evidence. IN THE MATTER OF THE PETITION OF HURI PERSHAD [24 W. R., Cr., 60

S. C. on further hearing, IN THE MATTER OF THE PETITION OF HURRIPROSAD DUTTA [25 W. R., Cr., 61

GOVERNMENT OF BENGAL *v.* KAZIMUDDIN [18 W. R., Cr., 3

19. ——— Omission to take material evidence.—*Decision on discrepant evidence.*—Omission to take very material evidence proffered by the accused was held to have prejudiced him, and to afford ground for the High Court's interference under the Code of Criminal Procedure, 1872, section 297. IN THE MATTER OF THE PETITION OF HURI PERSHAD [24 W. R., Cr., 60

20. ——— Omission to give available evidence for prosecution.—"*Material error.*"—*Error in appreciation of evidence.—Act X of 1872, s. 297.*—It was not a ground for revision by the High Court that all the evidence for the prosecution which might have been brought before the Sessions Judge had not been brought before him. The words "material error" in that section could not be held to include error in the appreciation of evidence. Under

REVISION — CRIMINAL CASES—*continued.*

4. EVIDENCE AND WITNESSES—*continued.*

Omission to give available evidence for prosecution—*continued.*

the 1st clause of section 297, Act X of 1872, the High Court could not set aside findings of fact except in case of an appeal from a conviction. IN THE MATTER OF AUROKIAM . I. L. R., 2 Mad., 38

21. ——— Irregularity in dealing with evidence.—*Withholding admissible statement of witness from the jury.*—Where a statement by a witness for the defence that a witness for the prosecution was at a particular place at a particular time, and consequently could not then have been at another place where the latter states he was and saw the accused persons, after being admitted, was withheld from the jury, the High Court ordered a new trial. REG. *v.* SAKHARAM MUKUNDJI [11 Bom., 166

22. ——— *Criminal Procedure Code, 1861, ss. 426, 439.—Misconception of evidence.*—Misconception of evidence was a defect or irregularity within the meaning of section 426 and 439 of the Code of Criminal Procedure, 1861. QUEEN *v.* BEHAREE DOSADH . . . 7 W. R., Cr., 7

23. ——— *Criminal Procedure Code, 1861, s. 426,—Admission of illegal evidence.—Act II of 1855, s. 57.—New trial.*—The Appellate Court, where it finds that illegal evidence has been admitted, should consider whether it is such as is likely to have exercised prejudicial influence on the minds of the jury; and if the Court be of opinion that it is so, it will treat the case as if it had been tried by a Sessions Judge with the aid of assessors. If the evidence (after omitting that portion of it which should not have been admitted) is sufficient to sustain the verdict, the conviction will be upheld. In exceptional cases, where the evidence is of such a character as to suggest the consideration that its real value cannot fairly be appreciated except by a Court which has heard that evidence given, a new trial will be directed. REG. *v.* RAMSWAMI MUDLIAR [6 Bom., Cr., 47

24. ——— *Discretion of Sessions Judge.—Power of Appellate Court.*—The exercise of the discretion which the Sessions Judge had under section 249 of the Criminal Procedure Code, 1872, to determine whether the depositions taken before the Magistrate at the preliminary inquiry are to be evidence at the hearing before the Sessions Court, was open to review by the High Court on appeal. REG. *v.* ARJUN MEGHA . 11 Bom., 281

25. ——— *Improper admission in evidence of examination of prisoner.*—When the examination of the prisoner by the Magistrate had not been recorded in full as required by section 205 of the Criminal Procedure Code, 1861, and was therefore inadmissible in evidence, and the other evidence was sufficient to support the conviction, the fact that such examination had been admitted by the Sessions Court was not a ground for setting

REVISION — CRIMINAL CASES—*continued.*

4. EVIDENCE AND WITNESSES—*continued.*

Irregularity in dealing with evidence—*continued.*

aside the trial on revision. REG. *v.* KALLA LAKHMAJI . . . **2 Bom., 419 : 2nd Ed., 395**

REG. *v.* PEVADI BIN BASSAPPA **[2 Bom., 421 : 2nd Ed., 397**

REG. *v.* VITHAJI **[2 Bom., 422 : 2nd Ed., 398**

REG. *v.* GANU BAPU **[2 Bom., 422 : 2nd Ed., 398**

26. ——— **Error in mode of recording evidence.**—Where the evidence was taken down by the Magistrate in English, and no memorandum was attached to it (as required by section 199, Code of Criminal Procedure, 1861) stating that the evidence was read over to the witness in a language which he understood, it was held that the accused was materially prejudiced, and the Court interfered on revision. QUEEN *v.* ISSUR RAUT **[8 W. R., Cr., 63**

27. ——— *Criminal Procedure Code, 1872, s. 297.—Evidence in dispute regarding land.*—In a case of a dispute regarding land commenced under the Code of Criminal Procedure, 1861, but continued under the Code of 1872, where the evidence was not recorded in the manner provided for by section 334 and the following sections of the Code, the Court set the order aside on revision. KHETTROMONY DASI *v.* SREENATH SIRCAR **[20 W. R., Cr., 14**

28. ——— *Criminal Procedure Code, 1861, ss. 426, 439.—Irregularity not prejudicing prisoner.—Mad. Police Act, 1859, s. 44.*—A police constable was tried and convicted by the Assistant Agent of Vizigapatam under section 44 of Act XXIV of 1859, and sentenced to fine and imprisonment. On appeal, the Agent reversed the conviction and sentence, on the ground that there had been irregularity of procedure on the part of his assistant in not recording evidence for the prosecution, and in only taking down the substance of the prisoner's statement, and not the full statement as made. *Held* that the question was, whether there had been such error and irregularity on the part of the Assistant Agent as to prejudice the accused and to occasion a failure of justice; that if not, the order reversing the conviction was rendered bad in law by sections 426 and 439 of the Criminal Procedure Code; that the accused did not appear to have been prejudiced: consequently the order of the Appellate Court was set aside, and a re-hearing directed. ANONYMOUS . . **6 Mad., Ap., 45**

29. ——— **Irregularities concerning witnesses.**—*Irregularity in taking evidence of witnesses.*—The High Court refused to interfere where a witness for the prosecution was examined after the defence was over, where the prisoner had notice of the evidence to be given by the witness,

REVISION — CRIMINAL CASES—*continued.*

4. EVIDENCE AND WITNESSES—*continued.*

Irregularities concerning witnesses—*continued.*

and therefore was not prejudiced by it in his defence. QUEEN *v.* SHAM KISHORE HOLDAR **[13 W. R., Cr., 36**

But *see* QUEEN *v.* ASSANOOLLAH **[13 W. R., Cr., 15**

30. ——— *Omission to examine and reduce to writing evidence of complainant.*—The not examining a complainant and not reducing his examination into writing is not such an irregularity as to require the interference of the High Court in a trivial case, unless it appears probable (of which there was no suggestion in the present case) that a fresh investigation would produce a different result. KABIL NUSYO *v.* BAHARULLAH . . . . . **17 W. R., Cr., 37**

31. ——— *Omission to examine witnesses.*—Where a Magistrate omitted to examine all the complainant's witnesses before declaring the accused not guilty, the Court dealt on revision with the omission. SREENATH MUNDLE *v.* SREERAM RAJPUT . . . **24 W. R., Cr., 62**

SANTOO MUNDLE *v.* ABDOOL BISWAS **[13 W. R., Cr., 35**

32. ——— *Omission to give opportunity to produce witnesses.—Error or defect in trial.—Criminal Procedure Code, 1861, s. 426.*—Where the accused had not his witnesses in attendance, and did not apply to the Magistrate to summon them (sections 352 and 353, Code of Criminal Procedure), the omission of the Magistrate to require him to produce his witnesses was held not to prejudice the accused, or so as to call for interference on revision. QUEEN *v.* TOTARAM . . **11 W. R., Cr., 15**

33. ——— *Power of High Court.—Criminal Procedure Code (Act XXV of 1861), s. 366.—Examination of accused.—Postponement of trial for summoning a witness.—Discretion of Judge.*—A Deputy Magistrate committed certain prisoners for trial on a charge of dacoity. Some of the prisoners had confessed before the Deputy Magistrate, but he failed to record the examination of the prisoners, or to attest it as required by section 205 of the Code of Criminal Procedure. The Sessions Judge, therefore, refused to admit the examination of the prisoners by the Deputy Magistrate in evidence, and also refused to postpone the trial for the purpose of summoning the Deputy Magistrate and taking his evidence in the matter. *Held* that, it being wholly within the discretion of the Judge, under section 366, to say whether or not he should postpone the trial, or summon any witness to give his evidence, the High Court as a Court of Revision would not interfere or order a new trial. QUEEN *v.* RADHA JANA **[3 B. L. R., A. Cr., 59 : 12 W. R., Cr., 44**

REVISION — CRIMINAL CASES—*continued.*

4. EVIDENCE AND WITNESSES—*continued.*

Irregularities concerning witnesses—*continued.*

34. ——————— *Criminal Procedure Code, 1861, ss. 426, 439.*—Where the evidence of witnesses given on a previous trial was read over and used in a subsequent trial at the express request of the prisoners, instead of the witnesses being examined *de novo*, the High Court declined to interfere, as the irregularity of procedure was one by which the prisoners were not prejudiced. PURMESSUR SINGH *v.* SOROOP AUDHIKAREE **[13 W. R., Cr., 40**

35. ——————— *Refusal to allow witnesses to be cross-examined by accused.*—The refusal of the Judge to allow to be cross-examined, by the accused, witnesses whose depositions have been taken by the Magistrate, but whose evidence is dispensed with at the trial, was held not to be a matter for revision. REG. *v.* FATTECHAND VASTACHAND . . . . . **5 Bom., Cr., 85**

36. ——————— *Order of Magistrate refusing to recall witnesses for prosecution for cross-examination.*—An order of the Deputy Magistrate refusing to recall the witnesses for the prosecution for the purpose of cross-examination is one which can be immediately corrected by the High Court under its general powers of superintendence and revision. IN THE MATTER OF THE PETITION OF BALILIOS. BELILIOS *v.* THE QUEEN ON THE PROSECUTION OF KALI DOSS BANERJEE **[19 W. R., Cr., 53**

37. ——————— *Power of High Court.—Penal Code, ss. 283, 291.—Evidence not taken on oath.*—In exercise of its powers as a Court of Revision, the High Court quashed convictions by a Joint Magistrate and Assistant Magistrate of certain persons for offences under section 283 (danger, obstruction or injury to any person in a public way or line of navigation) and section 291 (repeating or continuing public nuisance) of the Penal Code, in which it appeared that the complainants' statement was not made on oath or before a Magistrate, and in which there was no statement of charge or evidence of any kind. IN THE MATTER OF MOHESH CHUNDER **[20 W. R., Cr., 55**

5. ACQUITTALS.

38. ——————— **Acquittal from which Government may appeal.**—*Criminal Procedure Code, 1872, s. 297.*—It is not the practice of the High Court to interfere by way of revision under section 297 of the Code of Criminal Procedure, 1872, with an acquittal against which the Government may appeal. EMPRESS *v.* CHEDI RAI **[7 C. L. R., 142**

39. ——————— **Improper acquittal.**—*Acquittal on erroneous ground.*—Where the senior Assistant Sessions Judge on the hearing of a charge of false evidence, without taking evidence acquitted the accused after calling upon him to plead, the prosecutor being unable to say that the alleged false statements of the accused were material to the trial on which they were made, the High Court reversed the order of acquittal, and directed the trial to be proceeded with. REG. *v.* DAMODHAR RAM CHANDRA **[5 Bom., Cr., 68**

REVISION — CRIMINAL CASES—*continued.*

5. ACQUITTALS—*continued.*

Improper acquittal—*continued.*

40. ——————— *Trial on evidence taken in another case.*—The Court set aside an order of acquittal passed by a Deputy Magistrate in a case which he tried, not on evidence taken before himself in the case, but entirely on evidence in another case before another officer (the Joint Magistrate). TUKHEYA RAI *v.* TUPSEE KOOER **[15 W. R., Cr., 23**

41. ——————— **Order for detention of accused pending appeal from acquittal.**—*Power of High Court on revision.*—Where, an appeal having been preferred to the High Court against a judgment of acquittal, a Magistrate made an order on the parties having been arrested and brought before him that they should be detained in custody pending the decision of the appeal,—*Held* by TURNER, *C. C. J.*, and PEARSON, *J.* (SPANKIE and OLDFIELD, *J.J.*, dissenting), that the High Court had no power as a Court of Revision to interfere with the order. QUEEN *v.* GHOLAM ISMAIL **[I. L. R., 1 All., 1**

6. COMMITMENTS.

42. ——————— **Power to quash commitments.**—*Power of revision by High Court.—Criminal Procedure Code, 1872, s. 472.—Held per* STUART, *C. J.* (SPANKIE, *J.*, doubting), that the High Court was competent, in the exercise of its power of revision under section 297 of Act X of 1872, to quash a commitment made by a Court of Session under the provisions of section 472 of that Act. EMPRESS *v.* LACHMAN SINGH . . **I. L. R., 2 All., 398**

But *see* QUEEN *v.* SHAMA SUNKER BISWAS **[10 W. R., Cr., 25**

and QUEEN *v.* SHEETARAM CHOWDHRY **[2 W. R., Cr., 44**

7. DISCHARGE OF ACCUSED.

43. ——————— **Improper discharge.**—*High Court's powers of revision.—Criminal Procedure Code, 1882, s. 439.—Power to order commitment.—Revival of prosecution.*—The High Court has power under section 439 of the Criminal Procedure Code, 1882, if it considers that an accused person has been improperly discharged, to order him to be committed for trial. EMPRESS *v.* RAM LAL SINGH **[I. L. R., 6 All., 40**

This was also the case under the former Act. IN

REVISION — CRIMINAL CASES—*continued.*

7. DISCHARGE OF ACCUSED—*continued.*

Improper discharge—*continued.*

THE MATTER OF THE PETITION OF PROSUNNO COOMAR GHOSE . . . . **19 W. R., Cr., 56**

EMPRESS *v.* GOWDAPA . **I. L. R., 2 Bom., 534**

IN THE MATTER OF THE PETITION OF MOHESH MISTREE **[I. L. R., 1 Calc., 282 : 25 W. R., Cr., 30, 67**

EMPRESS *v.* DONNELLY. IN THE MATTER OF THE PETITION OF DONNELLY **[I. L. R., 2 Calc., 405**

EMPRESS *v.* HARY DOYAL KARMOKAR **[I. L. R., 4 Calc., 16**

S. C. ISHEN CHUNDER KURMOKAR *v.* HURRY DOYAL KURMOKAR . . **3 C. L. R., 263**

IN THE MATTER OF TROYLOKHYANATH MITTER **[1 C. L. R., 83**

44. ——— Dismissal of charge against accused.—*Dismissal of case of breach of contract on the ground that Act XIII of 1859 did not apply.*—The High Court declined to exercise their extraordinary powers of revision in a case in which the Joint Magistrate dismissed a complaint of breach of contract under Act XIII of 1859, on the ground that that Act did not apply to the contract, which was a contract to work at a certain factory. LYALL & Co. *v.* RAM CHUNDER BAGDEE **[18 W. R., Cr., 53**

8. JUDGMENTS, DEFECTS IN—

45. ——— Judgment without giving reasons.—*Criminal Procedure Code, 1882, s. 421.—Appeal, Summary rejection of.—Judgment of Criminal Appellate Court.*—The powers conferred by section 421 of the Criminal Procedure Code should be exercised sparingly and with great caution, and reasons, however concise, should be given for rejecting an appeal under that section. Where a Sessions Judge rejected an appeal summarily under section 421 by an order consisting merely of the words "Appeal rejected," and an application for revision of such order was made to the High Court after great delay,—*Held* that the Judge was wrong in rejecting the appeal without assigning any reasons for so doing, and if it had been taken within a reasonable time it would have been a valid objection. QUEEN-EMPRESS *v.* RAM NARAIN . . . . **I. L. R., 8 All., 514**

46. ——— Judgment not containing substance of evidence relied on.—*Omission to comply with s. 228, Criminal Procedure Code.—Irregularity in proceedings.—Error or defect.*—*K.* was tried by a Magistrate in a summary way and convicted. He appealed to the Court of Session, which quashed his conviction, on the ground merely that the substance of the evidence on which the conviction was had was not embodied in the Magistrate's judgment. *Held* that the Court of Session should not have quashed the conviction merely by

REVISION — CRIMINAL CASES—*continued.*

8. JUDGMENTS, DEFECTS IN—*continued.*

Judgment not containing substance of evidence relied on—*continued.*

reason of such defect, but, if it found it impossible to dispose of the appeal because of such defect, it should have required the Magistrate to repair the same by recording a judgment in which the substance of the evidence should be fully embodied, and, if necessary, re-examining the witnesses for that purpose, or to have ordered a retrial with that view. EMPRESS OF INDIA *v.* KARAN SINGH **[I. L. R., 1 All., 680**

47. ——— Judgments not giving the best reasons for conviction.—Where the record contains ample evidence of the guilt of the accused, the conviction ought not to be set aside merely on account of the weakness of the reasons assigned for it. QUEEN *v.* PEARI RAUR . **8 W. R., Cr., 40**

48. ——— Omission to record reasons for conviction. — *Omission to take notes of evidence in non-appealable case.—Criminal Procedure Code, 1882, ss. 370, 537.*—In a case where the accused was convicted of theft and sentenced to six months' rigorous imprisonment, the notes of the evidence taken by the Magistrate did not afford sufficient materials upon which the prisoner could be legally convicted, and the Magistrate had omitted to record his reasons for the conviction under section 370, clause (*i*) of the Code of Criminal Procedure. *Held* by the High Court as a Court of Revision that the conviction and sentence must be set aside, notwithstanding the provisions of section 537 of the Code of Criminal Procedure. IN THE MATTER OF THE PETITION OF YACOOB. YACOOB *v.* ADAMSON **[I. L. R., 13 Calc., 272**

9. RE-TRIAL.

49. ——— Power to order re-trial.—*Power of High Court as Court of Revision and Appeal.—Act XI of 1874, s. 28.*—The High Court has full power as a Court of Revision to order a re-trial when necessary. As a Court of Appeal it has the like power under Act XI of 1874, section 28, in cases tried with assessors. IN THE MATTER OF THE PETITION OF LUCKHY NARAIN NAGORY . **24 W. R., Cr., 24**

50. ——— Ground for re-trial.—*Improper discharge of accused.—Per* MARKBY, *J.*—When the discharge has been improper, the only proper course open to a Magistrate is to report the case to the High Court for orders, and that Court, if of opinion that the accused has been improperly discharged, will order a re-trial. EMPRESS *v.* DONNELLY. IN THE MATTER OF THE PETITION OF DONNELLY **[I. L. R., 2 Calc., 405**

51. ——— *Improper discharge of accused.*—As the case was one of improper discharge and came before the Magistrate under section 295 of the Criminal Procedure Code, 1872, the proper and only course for him was to report it for

REVISION — CRIMINAL CASES—*continued.*

9. RE-TRIAL—*continued.*

Ground for re-trial—*continued.*

orders to the High Court, which, if of opinion that the accused were improperly discharged, might, under section 297, have directed a re-trial. The case of *Sidya bin Satya* differed from. IN THE MATTER OF THE PETITION OF MOHESH MISTREE

[I. L. R., 1 Calc., 282: 25 W. R., Cr., 30, 67

10. SENTENCES.

See CASES UNDER SENTENCE—POWER OF HIGH COURT AS TO SENTENCES.

52. ——— Case in which sentence has expired.—*Criminal Procedure Code, 1882, s. 439.—High Court's powers of revision.—Revision of case in which term of imprisonment has been served.* The High Court is competent, in the exercise of its powers of revision under section 439 of the Criminal Procedure Code, to interfere with a conviction, even though, in consequence of the expiry of the sentence, it may not be possible to interfere with the latter. QUEEN-EMPRESS *v.* SINHA . I. L. R., 7 All., 135

53. ——— Enhancement of sentence on appeal.—*Criminal Procedure Code (Act X of 1882), ss. 423, 439.*—A head constable was convicted under section 330 of the Penal Code, and at a trial before a Sessions Judge sentenced to four months' simple imprisonment. The prisoner appealed. The High Court, in dismissing the appeal, directed, as a Court of Revision, that the sentence passed should be enhanced. METHER ALI *v.* QUEEN-EMPRESS

[I. L. R., 11 Calc., 530

See QUEEN *v.* GORACHAND GOPE

[B. L. R., Sup. Vol., 443

54. ——— Enhancement of sentence so as to alter its nature.—*Criminal Procedure Code, 1882, s. 439.*—The High Court, in the exercise of its powers of revision, can enhance a sentence so as to alter its nature. QUEEN-EMPRESS *v.* RAM KURIA

[I. L. R., 6 All., 622

55. ——— Setting aside conviction and sentence, and directing trial on graver offence.—*Power of High Court.—Conviction of lesser offence by Court having no jurisdiction to convict of a graver one.*—When the evidence upon which a prisoner is convicted by a subordinate tribunal of an offence within its jurisdiction discloses an offence of a graver character beyond the jurisdiction of that tribunal, the High Court may quash the conviction and sentence for the minor offence, and direct a trial before a tribunal having jurisdiction for the graver offence. Whether it will do so or not, is a question not of law but of expediency on the facts of each particular case. ANONYMOUS . . 7 Mad., Ap., 5

56. ——— Ground for enhancing sentence.—*Sentence clearly inadequate.—Charge improperly framed.*—In a case in which the Magistrate referred the proceedings to the High Court with a recommendation that they should be set aside because

REVISION — CRIMINAL CASES—*continued.*

10. SENTENCES—*continued.*

Ground for enhancing sentence—*continued.*

the sentence was inadequate, it was held that it is not merely because circumstances occur to the Magistrate which would render necessary a more severe sentence or a different charge that the High Court should interfere. There must be matter on the record of the case showing that the charge has been improperly framed, or that the sentence passed is clearly inadequate to the offence. QUEEN *v.* HURNATH SINGH

[20 W. R., Cr., 22

57. ——— Ground for refusing to enhance sentence.—*Reference by Commissioner having jurisdiction.—Inadequate sentence.*—The High Court refused to interfere on a reference made to it by a Deputy Commissioner in a case which was sent up for heavier punishment to the Deputy Commissioner under section 46, Code of Criminal Procedure, 1861, by a Magistrate of the 2nd class, as the Court was of opinion that the Deputy Commissioner, instead of referring the case, ought under that section to have tried the prisoners himself, and convicted them of any offence which he thought was made out against them by the evidence. SOBIL DASS *v.* CHUNDRA DEB

[20 W. R., Cr., 15

58. ——— Setting aside improper sentence.—*Escape from illegal confinement.*—Where a party was sentenced by order of the Magistrate to ten months' imprisonment for escaping from a confinement which he was undergoing without warrant of law and without having committed an offence, the High Court, in the exercise of its powers of interference, set aside the order. QUEEN *v.* RUGHOOBUR SINGH . . . . . 25 W. R., Cr., 1

59. ——— Severity of sentence.—*Criminal Procedure Code, 1861, s. 404.*—The severity of a sentence is not of itself a ground on which the High Court should call for the record of a trial or other judicial proceeding, under the general power of revision. QUEEN *v.* NARAPUREDDY . 4 Mad., 242

See IN THE MATTER OF KRISHNANAND BHUTTACHARJEE . . . 3 B. L. R., A. Cr., 50

S. C. IN THE MATTER OF KISHEN SOONDUR BHUTTACHARJEE . . . 12 W. R., Cr., 47

60. ——— Necessity for alteration of conviction from one section of Penal Code to another.—*Reference to High Court.*—The necessity for altering a conviction from one section to another for cognate offences, when the accused has not been prejudiced by any such error, is no sufficient ground for a reference to the Court of Revision. EMPRESS *v.* ISHAN CHUNDRA DE

[I. L. R., 9 Calc., 847: 12 C. L. R., 451

61. ——— Conviction under repealed law.—*Criminal Procedure Code, 1861, s. 426.*—Where a Magistrate convicted under certain repealed sections of law, the High Court refused to set aside the conviction, having regard to section 426, Code of

REVISION — CRIMINAL CASES—*continued*

10 SENTENCES—*continued*

Conviction under repealed law—*continued*

Criminal Procedure, as the conviction and sentence might have been passed under sections of the Penal Code and no substantial injury had been done to the accused RUGHOONATH DASS *v* CHUCKERDHUN RAUT . . . . . **15 W. R., Cr., 49**

62. ——— Conviction under Penal Code of offence committed before Penal Code came into operation.—*Criminal Procedure Code, 1861, s 426 —Act XVII of 1862, s 4* — In a case in which the accused was charged under the Penal Code with an offence which was committed before the Penal Code came into operation, it was held that, having regard to section 4, Act XVII of 1862, and section 426 of the Code of Criminal Procedure, the error of procedure was not sufficient to vitiate the conviction so long as the punishment awarded as under the Penal Code did not exceed that which was the legal penalty for the offence before the Penal Code became law IN THE MATTER OF THE PETITION OF MOHABEEB SINGH

[15 W. R., Cr., 48

63. ——— Conviction for separate offences.—*Penal Code (Act XLV of 1860), ss 380, 456, 457.—New trial* —The prisoner was convicted by the Magistrate of two separate offences under sections 456 and 380 of the Penal Code, and sentenced for both On appeal, the Sessions Judge, holding that the offence proved was under section 457, ordered a new trial for offences under sections 457 and 380 *Held* that there ought not to be a new trial, but that the conviction and sentence under section 380 should be set aside QUEEN *v* RAMCHARAN KAIBI

[B. L R., Sup. Vol., 488: 6 W. R., Cr., 39

64. ——— Sentence for different offence than that committed —*Criminal Procedure Code, 1861, s 426* —On reference by a Sessions Judge in reviewing the monthly magisterial returns, where the conviction by the Magistrate was for cheating by personation, and the offence appeared to the High Court to be furnishing false information for which the punishment awarded was legal,—*Held* that the Court, under section 426 of the Criminal Procedure Code, ought not to interfere with the conviction or sentence. REG *v* RAGHOJI BIN KANOJI . . . . . **3 Bom., Cr., 42**

REG. *v.* BABAJI BIN BHAU . **4 Bom., Cr., 16**

65. ——— Conviction without jurisdiction.—*Criminal Procedure Code, 1861, ss 426, 434 —Revision by High Court* —In a case referred by a District Magistrate under section 434 of the Criminal Procedure Code, on the ground that the sentence was illegal, because the charge should have been under section 324 of the Penal Code, for causing hurt by means of a heated substance, an offence which the 2nd class Subordinate Magistrate had no jurisdiction to try, and not under section 323, for causing hurt, of which offence the accused had been convicted, the

REVISION — CRIMINAL CASES—*continued*

10. SENTENCES—*continued.*

Conviction without jurisdiction — *continued.*

Court passed no order, as it did not think it right, under the circumstances of the case, to direct the retrial of the accused on the proper charge REG *v* AMBA KOM GIRSOJI . . . **4 Bom., Cr., 1**

66. ——— *Offence not cognisable by Magistrate convicting* —In a case referred by a District Magistrate under section 427 of the Criminal Procedure Code, 1861, on the ground that the charge should have been under section 324 of the Penal Code—an offence not within the cognisance of a 2nd class Subordinate Magistrate, and not under section 323,—the Court passed no order, and remarked that the case should not have been referred under section 427, which applies only to the Court of Session acting on appeal from a Court subordinate to it REG. *v* NABAJI VALAD VITHOJI . **4 Bom., Cr., 2**

67. ——— Trial on wrong charge.—*Criminal Procedure Code, 1861, s 404.*—Where a person scourged another with nettles in order to extract property from the sufferer, and the Magistrate tried the case as one of hurt (under section 323, Penal Code) and extortion (section 384), although the accused ought to have been charged under section 327, and tried by the Court of Session, the High Court declined to interfere under section 404, Code of Criminal Procedure, and direct a new trial, believing that substantial justice had been done in the case IN THE MATTER OF THE PETITION OF TARINEE PROSAUD BANERJEE . . . . . **18 W. R., Cr., 8**

IN THE MATTER OF THE PETITION OF BUNKABEHAREE SEIN . . . **18 W. R., Cr., 23**

IN THE MATTER OF ROOPNARAIN DUTT

[18 W. R., Cr., 38

68. ——— Trial under wrong charge.—*Conviction of non-cognisable offence* —In a case referred by a District Magistrate, on the ground that the accused had been convicted, under section 403 of the Penal Code, of dishonest misappropriation of property, whereas the charge should have been, under section 406, of criminal breach of trust, an offence not within the cognisance of the 2nd class Subordinate Magistrate who passed the sentence, the Court annulled the conviction and sentence, and directed the case to be tried before a proper Court. REG *v* GANU VALAD RAMCHANDRA . . **4 Bom., Cr., 3**

69. ——— Sentence under special Act instead of Penal Code.—*Criminal Procedure Code, 1872, s. 297.— Criminal Procedure Code, 1861, s 426 —Sentence under Post Office Act, XIV of 1866* —The accused being entrusted to put a proper amount of stamps on a letter and return such as might not be required, did not return them, but misappropriated stamps to the value of two annas, and was convicted and punished under section 49 of the Post Office Act, XIV of 1866, instead of under the Penal Code for criminal breach of trust. As the accused had not been sentenced to a larger amount

REVISION — CRIMINAL CASES—*continued.*

10. SENTENCES—*continued.*

Sentence under special Act instead of Penal Code—*continued.*

of punishment than could have been awarded for criminal breach of trust, nor shown to have been prejudiced by the error of convicting him under the Post Office Act, the High Court refused to reverse or alter the sentence, pointing out at the same time that this was one of those cases in which it was a mistake to look at the smallness of the amount misappropriated rather than to the gravity of the offence. IN THE MATTER OF NOBIN CHUNDER DUTT [17 W. R., Cr., 50

See IN THE MATTER OF THE PETITION OF TARINEE PROSAUD BANERJEE . . 18 W. R., Cr., 8

70. ——— **Erroneous conviction under wrong section of Penal Code.**—Where a Magistrate, erroneously holding that the offence committed was one under section 406, Penal Code, over which he had jurisdiction, instead of under section 409, which was cognisable only by the Court of Session, tried and sentenced the accused, it was held by the High Court as a Court of Revision that his proceedings were contrary to law, and he was directed to commit the case for trial by the Court of Session. IN THE MATTER OF RAM SOONDER PODDAR [2 C. L. R., 515

11. VERDICT OF JURY AND MISDIRECTION.

71. ——— **Ground for interference with verdict.**—*Power of High Court.—Verdict of jury not manifestly erroneous.*—The Court will not interfere with the finding of a jury unless their verdict is shown to be manifestly erroneous. A prisoner was charged under sections 302 and 304 of the Penal Code, and the Judge at the trial added a further charge under section 325. The Judge in his charge to the jury directed them that in the event of their finding the charges under sections 302 and 304 unsustainable, they might find the prisoner guilty under section 325. The jury unanimously acquitted the prisoner under the charge framed under section 302, and a majority of them acquitted him under the charge framed under section 304; but a majority of them found him guilty under the charge framed under section 325. The Judge disagreed with their finding as regarded the charge framed under section 304, and referred the case to the High Court under section 307 of the Criminal Procedure Code. The High Court refused to interfere with the verdict, on ground that the verdict could not be said to be manifestly erroneous, the Judge having heard the evidence and having expressed his opinion to the jury that they might find the prisoner guilty under section 325. QUEEN-EMPRESS *v.* JACQUIET . . . I. L. R., 11 Calc., 85

72. ——— **Conviction on evidence not amounting to proof.**—A jury may be satisfied with a minimum of proof, and it is beyond the power of the High Court in such cases to interfere with its

REVISION — CRIMINAL CASES—*continued.*

11. VERDICT OF JURY AND MISDIRECTION —*continued.*

Conviction on evidence not amounting to proof—*continued.*

verdict; but when there is nothing which can, if believed, amount to proof, the case should not be put to the jury at all, as a verdict of guilty cannot under such circumstances be sustained. Under such circumstances the Court will set a conviction aside. QUEEN *v.* RUTTON DASS . 16 W. R., Cr., 19

73. ——— **Finding of jury as to grave and sudden provocation.**—*Criminal Procedure Code, 1872, s. 297.—Criminal Procedure Code, 1861, s. 426.—Question of fact.—Power of High Court.*—Under exception 1, section 300 of the Penal Code, the finding of a jury as to whether the offence of murder was committed under gave and sudden provocation sufficient to prevent the offence from amounting to murder, is a question of fact with which the High Court cannot interfere. QUEEN *v.* SOHRAIE . . . . 13 W. R., Cr., 33

74. ——— **Omission to charge jury properly.**—*Power of High Court to set aside verdict.*—Omission to sum up properly to the jury is, if the prisoner is thereby prejudiced, an error in law such as to justify a Court of Appeal in setting aside the verdict. REG. *v.* FATTECHAND VASTACHAND [5 Bom., Cr., 85

75. ——— **Misdirection.**—*Trial by jury.—Power to go into facts of case.—Mode of dealing with directions of Judge to jury.*—In a case tried by jury the High Court has no power to go into the facts of the case in order to see whether or not the conviction was right, that standing entirely upon the verdict of the jury. The Court has only to consider the facts in order to see whether the Judge has done his duty in laying the case before the jury for their consideration. The mode of dealing by the High Court with the Judge's summing up to the jury pointed out, first as regards the law and then as regards the facts. QUEEN *v.* NIMCHAND MOOKERJEE [20 W. R., Cr., 41

76. ——— *Error in law.—Prejudice to accused.—New trial.*—Improper advice given by the Judge to the jury upon a question of fact, or the omission of the Judge to give that advice which a Judge in the exercise of a sound judicial discretion ought to give the jury upon questions of fact, amounts to such an error in law in summing up as to justify the High Court on appeal or revision in setting aside a verdict of guilty. The power of setting aside convictions and ordering new trials for any error or defect in the summing up, will be exercised by the High Court only when the Court is satisfied that the accused person has been prejudiced by the error or defect, or that a failure of justice has been occasioned thereby QUEEN *v.* ELAHI BAX [B. L. R., Sup. Vol., 459: 5 W. R., Cr., 80

77. ——— *Omission to leave material facts to jury.*—The verdict of the jury

REVISION — CRIMINAL CASES—*continued.*

11. VERDICT OF JURY AND MISDIRECTION —*continued.*

Misdirection—*continued.*

was reversed, on the ground of misdirection by the Judicial Commissioner in not having left the cause of death and the prisoner's connection with certain attempts at bribery as questions for the consideration of the jury. QUEEN *v.* KALI CHURN GANGOOLY [7 W. R., Cr., 2

78. ——— *Prejudice to prisoner from erroneous summing up.*—Where there is a failure of justice, or where the prisoner has been prejudiced by the defective summing up of the Judge, the High Court can interfere either by discharging the prisoner, if the evidence on the record is not sufficient to convict him, supposing the trial to have taken place with the aid of assessors, or to direct a fresh trial. QUEEN *v.* MUTHOORA SINGH [18 W. R., Cr., 66

12. MISCELLANEOUS CASES.

79. ——— **Order by Collector under Penal Code.**—*Power of revision by High Court.*—A Collector as such not being subject to the revisional jurisdiction of the High Court in criminal matters, that Court, in the exercise of such jurisdiction, is not competent to deal with an alleged illegal order made under the Penal Code by a Collector. IN THE MATTER OF DIANUT HOSEN . . 10 C. L. R., 14

80. ——— **Order made under s. 58 of the Forests Act (VII of 1878) for confiscation.**—*Criminal Procedure Code, 1872, s. 297.*—The High Court was competent, under section 297 of Act X of 1872, to revise an order made by a District Judge under section 58 of the Forests Act, 1878, on appeal from the order of a Magistrate made under section 54 of that Act, the jurisdiction of the High Court under section 297 of Act X of 1872 not being expressly taken away by section 58 of the Forests Act, 1878. EMPRESS *v.* NATHU KHAN [I. L. R., 4 All., 417

81. ——— **Valid conviction in case improperly instituted.**—*Reference to Local Government.*—*Per* MACLEAN, *J.*—The High Court has power, without reference to the Local Government, to set aside a conviction in a case improperly originated. IN THE MATTER OF THE PETITION OF NOBIN CHUNDRA BANIKYA. EMPRESS *v.* NOBIN CHUNDRA BANIKYA . . . . I. L. R., 8 Calc., 560

S. C. NOBIN CHUNDER BANIKYA *v.* EMPRESS [10 C. L. R., 369

82. ——— **Acting without proper discretion.**—*Order for prosecution.*—That a Magistrate has acted without proper discretion in ordering a prosecution is no ground for reversing his order. IMAM ALI *v.* SUDDERUDDEEN . 9 W. R., Cr., 18

83. ——— **Order in bona fide exercise of discretion.**—*Conviction under Municipal Act,*

REVISION — CRIMINAL CASES—*continued.*

12. MISCELLANEOUS CASES—*continued.*

Order in bona fide exercise of discretion—*continued.*

III of 1864.—The Court declined to quash proceedings held under a *bonâ fide* exercise of discretion in a case where a fine was imposed under Bengal Act III of 1864, section 68, for keeping a piggery in a filthy state. IN THE MATTER OF AMAN CHINAMAN [17 W. R., Cr., 58

84. ——— **Order passed by Magistrate without jurisdiction.**—The High Court may interfere with and quash an order passed by a Magistrate when the order is one that was beyond the power and out of the jurisdiction of the Magistrate to make. LALOO *v.* ADAM SIRCAR. GOVERNMENT *v.* SURJAKANT ACHARJIA. DENGOO SHAIKH *v.* ADAM SIRCAR . . . . . 17 W. R., Cr., 37

EMPRESS OF INDIA *v.* BERRILL [I. L. R., 4 All., 141

85. ——— The Deputy Magistrate adjourned the case to the 21st, on which day he ordered the case to be dismissed for non-attendance of the complainant; but on the following day cancelled that order, and revived the case on the ground of his having dismissed it by mistake in ignorance of the complainant having petitioned for an adjournment by reason of sickness. The Magistrate on appeal reversed the order of the Deputy Magistrate. As the order of the Deputy Magistrate was manifestly wrong, the High Court set aside the whole of the proceedings, and restored the case to the position in which it stood before the 21st. QUEEN *v.* RAM NARAIN GHOSE . . . 8 W. R., Cr., 5

86. ——— *Magistrate acting under section of Code under which he has no jurisdiction.*—*Held* that where a Magistrate professes to act under one section of the Criminal Procedure Code under which he has no jurisdiction, but it is found that he has jurisdiction under some other section of the Code, the mistake is one which does not justify interference with the Magistrate's order, if otherwise good, and if the accused has not been prejudiced thereby. QUEEN *v.* PRANKISTO PAL [14 W. R., Cr., 41

87. ——— **Unreasonable order for security to keep the peace.**—*Power of revision of High Court.*—*Material error.*—In a case of apprehended breach of the peace, the Magistrate bound over the parties in sums of money aggregating on the whole to R60,000 or upwards. The High Court quashed the order, holding that it was altogether unreasonable. IN THE MATTER OF JUGGUT CHUNDER CHUCKERBUTTY . I. L. R., 2 Calc., 110

88. ——— **Alteration of conviction.**—*Setting aside proceedings.*—*Trial by jury where case was not so triable.*—The High Court will not alter a conviction by a Sessions Court, aided by a jury, on a charge only triable by a jury, to one of a nature not triable by such a tribunal, but will annul the proceed-

REVISION — CRIMINAL CASES—*continued.*

12. MISCELLANEOUS CASES—*continued.*

Alteration of conviction—*continued.*

ings, and leave the prosecution to take fresh proceedings against the prisoner on any other charge it may be advised. REG. *v.* NABO GOPAL

[5 Bom., Cr., 56

89. ——— Conviction in case where no appeal is given by Act on point of repeal.—*New Act giving appeal.—Criminal Procedure Code, 1882, ss. 408 and 439.—Jurisdiction of High Court.*—On the 9th December 1882 a person was convicted under sections 457 and 109 of the Penal Code, and sentenced to three years' rigorous imprisonment by a Deputy Magistrate in Assam, exercising special powers under section 36 of the old Code of Criminal Procedure, Act X of 1872. The new Code came into force on the 1st January 1883. The prisoner presented an appeal to the High Court from the conviction and sentence above mentioned on the 23rd January 1883. *Held* that there was no appeal, the case being governed by section 408 of the new Code, but that the case was a fit one for the exercise of the High Court's revisional jurisdiction, and should be dealt with under the powers conferred on the High Court by virtue of that jurisdiction. RONGAI *v.* EMPRESS . . . I. L. R., 9 Calc., 513

S. C. IN THE MATTER OF RANGAI

[12 C. L. R., 500

90. ——— Defect in form of summons to persons to show cause why they should not give security for keeping the peace.—*Defect not prejudicing persons required to show cause.*—Certain persons were convicted by a Magistrate of the first class of assault, an offence punishable under section 352 of Act X of 1877. The case was brought to the knowledge of the High Court by the complainant preferring a petition to it, together with a copy of the Magistrate's order. This petition was laid before STRAIGHT, *J.*, who, observing that the case was one in which the Magistrate should have taken security from such persons for keeping the peace, as provided by section 489 of Act X of 1872, directed the Magistrate to summon such persons to show cause why they should not be required, under section 491 of that Act, to enter into a bond to keep the peace. The Magistrate accordingly summoned such persons as directed, the summonses setting forth that they were issued "under the orders of the High Court." The Magistrate took evidence on behalf of such persons, and eventually made an order requiring such persons to enter into a bond to keep the peace. Such persons were fully aware of the order made by STRAIGHT, *J.* Such persons applied to the High Court to set aside the order requiring them to enter into a bond to keep the peace, on the ground that the Magistrate had not proceeded of his own motion, but under the order of STRAIGHT, *J.*, which was made without jurisdiction; and on the ground that the summonses had not set forth the report or information on which they were issued. *Held* by STUART, *C. J.*, that, inasmuch as STRAIGHT, *J.*, when he made his order, represented the full authority and jurisdiction of the High Court,

REVISION — CRIMINAL CASES—*continued.*

12. MISCELLANEOUS CASES—*continued.*

Defect in form of summons to persons to show cause why they should not give security for keeping the peace—*continued.*

such order was final, and the application could not be entertained. *Held* by PEARSON, *J.*, SPANKIE, *J.*, and OLDFIELD, *J.* (SPANKIE, *J.*, doubting whether such order could be questioned), that the order of STRAIGHT, *J.*, was one which he was competent to make as a Court of Revision under section 297 of Act X of 1872. *Held* by PEARSON, *J.*, and SPANKIE, *J.*, that, inasmuch as such persons had not been in the slightest degree prejudiced by the defect in the summonses which were issued to them, such defect was not a ground on which to set aside the Magistrate's order requiring them to enter into a bond to keep the peace. EMPRESS *v.* MUHAMMAD JAFIR

I. L. R., 3 All., 545

91. ——— Order confirming order for security for good behaviour.—*Criminal Procedure Code, 1861, ss. 404, 408.*—An order of a Sessions Judge confirming an order directing security for good behaviour made by the Magistrate was held to be open to revision. IN RE JUSWUNT SINGH

[1 Ind. Jur., N. S., 301: 6 W. R., Cr., 18

* Also an order for maintenance. REG. *v.* THAKU BIN IRA . . . . . 5 Bom., Cr., 81

92. ——— Order rejecting appeal without calling for record and proceedings.—*Criminal Procedure Code, 1872, ss. 278, 285.—Order under s. 278.*—An order under section 278 of the Code of Criminal Procedure by the Appellate Court, rejecting an appeal on a perusal of the petition of appeal and the copy of the judgment or order appealed against, and without calling for the record and proceedings of the case, is a final order falling within the scope of section 285, and is not subject to revision. EMPRESS *v.* MAHOMED YASHIN

[I. L. R., 4 Bom., 101

REVIVAL OF CRIMINAL PROCEEDINGS.

See CASES UNDER COMPLAINT—REVIVAL OF COMPLAINT.

See CRIMINAL PROCEDURE CODE, 1882, SS. 436, 438 (1872, S. 296).

[I. L. R., 4 Calc., 16, 647
I. L. R., 2 All., 570

See REVISION—CRIMINAL CASES — DISCHARGE OF ACCUSED.

[I. L. R., 1 Calc., 282
I. L. R., 2 Calc., 405
I. L. R., 2 Bom., 534
19 W. R., 56
I. L. R., 6 All., 40
I. L. R., 4 Calc., 16
1 C. L. R., 83
3 C. L. R., 263

REVIVAL OF DECREE.

See DECREE—REVIVAL OF DECREE.
[3 B. L. R., Ap., 94: 12 W. R., 28

See LIMITATION ACT, 1877, ART. 179 (1871, ART. 167)—PERIOD FROM WHICH LIMITATION RUNS — CONTINUOUS PROCEEDINGS . . . 24 W. R., 143

See RIGHT OF SUIT— DECREES, SUITS ON—
[I. L. R., 7 Calc., 74

REVIVAL OF PROCEEDINGS IN EXECUTION.

See CASES UNDER EXECUTION OF DECREE —EXECUTION AGAINST REPRESENTATIVES.

See LIMITATION ACT, 1877, ART. 178.
[I. L. R., 5 Bom., 29

REVIVAL OF PROSECUTION.

See CASES UNDER COMPLAINT—REVIVAL OF COMPLAINT.

See CASES UNDER REVISION—CRIMINAL CASES—DISCHARGE OF ACCUSED.

REVIVAL OF SUIT.

See ABATEMENT OF SUIT—SUITS.
[I. L. R., 5 Calc., 139

See CASES UNDER LIMITATION ACT, 1877, ART. 171.

See LIMITATION ACT, 1877, ART., 178.
[I. L. R., 6 Calc., 60
I. L. R., 8 Calc., 420
I. L. R., 5 Calc., 139
I. L. R., 5 Bom., 29

See PARTIES—SUBSTITUTION OF PARTIES —DEFENDANTS . I. L. R., 6 Calc., 777

1. ——— **Notice of revival.**—Before a suit can be revived, notice should be served upon the opposite party to appear in support of the decree as originally made. HURO MOHUN MOOKERJEE *v.* MOHENDRONATH GHOSE . . 16 W. R., 135

2. ——— **Right to revive suit.**—*Act LIII of 1860, s. 2.—Civil Procedure Code, 1859, s. 378.*—Section 2, Act LIII of 1860 referred to appeals and also to suits, and as the suit of the special appellant, which had been decreed in the Court of first instance, was dismissed by the lower Appellate Court, the special appellant was held entitled to a revival of his suit. Section 378, Act VIII of 1859, refers to applications for review of judgment, but this was an application for revival of the suit under section 2, Act LIII of 1860. BUNGSHEEDHUR MUNDUL *v.* PUDDO LOCHUN ROY . W. R., F. B., 11
[1 Ind. Jur., O. S., 5: Marsh., 38: 1 Hay, 90

3. ——— **Revival of suit by successor of Judge.**—*Ex parte decree.—Act X of 1859, s. 58.* —Where defendants against whom an *ex parte* decree has been passed by a Collector applied to his successor, under section 58, Act X of 1859, for a revival of the suit, showing good and sufficient cause for their non-appearance, and that there had been a failure of justice, the successor was competent to alter or rescind

REVIVAL OF SUIT.—Revival of suit by successor of Judge—*continued.*

his predecessor's decree according to the justice of the case. RUGHOO MOHINEE DOSSEE *v.* KASHEE NATH ROY CHOWDHRY. KASHEE NATH ROY CHOWDHRY *v.* SHABITREE SOONDUREE DOSSEE
[10 W. R., 156

4. ——— **Effect of revival.**—*Act X of 1859, s. 58.*—The revival of a suit under section 58, Act X of 1859, did not reopen the case as regards all the defendants, but only as regards the party who had applied to have his particular case revived and heard on the merits. BROJONATH SURMAH CHUCKERBUTTY *v.* ANUND MOYEE DEBIA CHOWDHRAIN
[7 W. R., 237

5. ——— **Form of order for revival.**—*Abatement.—Civil Procedure Code (XIV of 1882), ss. 365, 366, 371.*—The plaintiff died on the 28th August 1883, and in December 1884 letters of administration to his estate were granted to the Administrator General. The defendant died in June 1884, leaving a widow and one son him surviving. By his will he appointed two executors. On the 3rd February 1885 the Administrator General took out a summons to revive the suit. *Held* that, notwithstanding the provisions of section 365 of the Civil Procedure Code (XIV of 1882), and of the Limitation Act, XV of 1877, it was competent for a Judge in chambers to revive the suit by making an order for abatement under section 366 of the Code, coupled with an order under section 371 setting aside the order for abatement. FULVAHU *v.* GOCULDAS VALLABHDAS . . . I. L. R., 9 Bom., 275

6. ——— **Mode of revival.**—*Revival by Bill.—Civil Procedure Code, 1877.*—There is nothing in the Civil Procedure Code to prevent a suit being revived as before it was passed by Bill, if the simpler mode of proceeding is for any reason not available. ATTERMONY DOSSEE *v.* HURRY DOSS DUTT
[I. L. R., 7 Calc., 74: 9 C. L. R., 357

RIGHT OF APPEAL.

See CASES UNDER APPEAL—RIGHT OF APPEAL, EFFECT OF REPEAL ON—

See CASES UNDER ASSIGNMENT OF CHOSE IN ACTION.

See CIVIL PROCEDURE CODE, 1882, s. 3.
[I. L. R., 4 Calc., 825

See CIVIL PROCEDURE CODE, 1882, s. 244 —PARTIES TO SUIT . 2 C. L. R., 545

See EXECUTION OF DECREE—EXECUTION BY AND AGAINST REPRESENTATIVES.
[I. L. R., 3 Calc., 371

See NAWAB NAZIM OF BENGAL DEBTS ACT.
[21 W. R., 59

See PRACTICE—CIVIL CASES—APPEAL.
[I. L. R., 3 Calc., 228
I. L. R., 9 Calc., 738

See SUPERINTENDENCE OF HIGH COURT— —CIVIL PROCEDURE CODE, s. 622.
[I. L. R., 8 Mad., 192

RIGHT OF APPEAL—*continued.*

——— Deprivation of—

See CRIMINAL PROCEEDINGS.

[I. L. R., 4 Calc., 18

1. **——— Appeal from favourable decision.**—There is nothing in strict law to prevent a party, acting for himself or through his guardian, from appealing against a decision in his favour. STEPHENSON *v.* UNNODA DOSSEE [6 W. R., Mis., 18

2. **——— Appeal by defendant from decision as dismissing suit on wrong ground.**—*Civil Procedure Code, 1859, ss. 332, 334, 337.—Decree.—Decision.*—Although section 332 of Act VIII of 1859 provides that an appeal shall lie from the *decrees* of the Courts of original jurisdiction, sections 334 and 337 show not less clearly that the *decisions* of the Court may be impugned in the appeal and considered by the Appellate Court. Where a suit was dismissed, therefore, the defendant was held entitled to appeal from the *decision*, though the *decree* was in his favour, as he contended it had been dismissed on a wrong ground. SHEO GHOLAM SINGH *v.* NURSINGH . . . 4 N. W., 120

Contra, CHOWDHRY MAHOMED MOMIN *v.* LUTAFUT HOSSEIN . . . 13 W. R., 239

Contra, SHAMA SOONDUREE DEBIA *v.* DIGAMBUREE DEBIA . . . 13 W. R., 1

3. **——— Change of jurisdiction during suit.**—*Munsif with powers of Small Cause Court.—Effect of change on right of appeal.—Beng. Civil Courts Act (VI of 1871), s. 29.*—The investiture of a Munsif with the powers of a Small Cause Court under section 29, Act VI of 1871, does not deprive parties to pending suits of any right of appeal which they might have had; the general rule being that the law as it existed when the action commenced must decide the rights of the parties, unless the legislative authority expresses a clear intention to vary those rights. GHOTAE MUNDLE *v.* KAJROO [16 W. R., 227

4. **——— Right of new relators to appeal.**—As to the terms on which new relators will be allowed to come in after decree to prosecute an appeal. ADVOCATE GENERAL *v.* MUHAMMAD HUSEN HUSENI . . . 4 Bom., O. C., 203

5. **——— Appeal by party struck out of suit in lower Court.**—A person was once made a party to a suit, but the decree was set aside, the suit as against him dismissed, and the case remanded for trial. From this last decision he appealed. The Court ordered the appeal to be struck off as made by a party no longer a party to the suit. GOKOOL PERSHAD DISCHEET *v.* BROJO MONEE DEBIA . . . . . 24 W. R., 259

6. **——— Appeal after intervenor had appealed and his name taken off record of suit.**—*Reopening of case on remand.*—A suit having been decided by the first Court after an intervenor had been made a party under section 73, Code of Civil Procedure, 1859, it was remanded on the appeal

RIGHT OF APPEAL.—Appeal after intervenor had appealed and his name taken off record of suit—*continued.*

of the intervenor, whose name was ordered to be expunged from the record. The suit was decided again in favour of the plaintiff, but the decision was reversed on appeal. *Held* that the fact of the defendant having, in the first instance, allowed the intervenor alone to appeal, did not debar him, after the case was reopened by remand, from appealing in his own person. BUCHA SINGH *v.* MASHOOK ALI BEG . . . . . 15 W. R., 572

7. **——— Right of pro formâ defendant to appeal.**—A *pro formâ* defendant against whom no judgment has been given has no right to appeal, even if another party has been found to be the owner of land which he claims; for such finding carries with it no legal consequence as against him. RAM DOSS LUSHKUR *v.* HUREEHUR MOOKERJEE [23 W. R., 86

8. **——— Right of party opposing will in case of application for certificate under Act XXVII of 1860.**—*Party not opposing grant of certificate.*—A widow having applied, under Act XXVII of 1860, for a certificate under her deceased husband's will, his brother came in not as a claimant of the certificate, and impugned the widow's allegation that the deceased husband had made a will. The Judge upon this went into the evidence, found in favour of the will, and granted the certificate applied for. Against this order the brother appealed to the High Court. *Held* that the appellant had no *locus standi*, as the appeal contemplated in section 6 was limited to persons in conflict with the original petitioner as claimants. RAM LALL MOOKERJEE *v.* KOMOLA KAMINEE DEBEE [24 W. R., 92

9. **——— Appeal brought by principal in suit where agents have sued.**—The plaintiffs, karindas of the appellant, having brought a suit in their own name, the suit was dismissed on the merits, and appeals preferred by the appellant in his own name to the Judge and to the High Court. *Held* that the procedure was illegal, and the decrees of the lower Courts must be set aside. FYAZ-OOD-DEEN *v.* PUDMEE . . 4 N. W., 68

10. **——— Right of appeal by heirs.**—*Appeal against joint heirs.—Civil Procedure Code, 1859, s. 102.—Continuance.*—Section 102, Act VIII of 1859, does not bar the right of heirs to proceed with an appeal as against joint heirs. LUTEEFOONISSA BIBEE *v.* RAJAOOR RUHMAN . . 8 W. R., 84

11. **——— Want of interest in subject of appeal.**—*Appeal by sons of Hindu widow after finding adverse to her right.*—Where a Hindu widow, jointly with her sons, sued for confirmation of title, and both the Courts below found adversely to her title to hold the land in dispute as separate property, it was held that her sons, who had no interest in the result of the suit, were not competent without her to prefer a special appeal. DOORGA PERSHAD MOHAPATTUR *v.* RADHAMOHUN MYTEE . 15 W. R., 536

RIGHT OF APPEAL—*continued.*

12. ——— Right of co-mortgagor to appeal.—*Sale of equity of redemption.*—One of several co-mortgagors cannot appeal against a foreclosure decree when the equity of redemption has been sold before the institution of the suit. KOTTALE UPPI *v.* KALLIYATT PANOLI KUNNI KUTTI [1 Mad., 7

13. ——— Right of appeal as to costs.—*Disclaimer of interest in subject-matter of suit.*—The fact of a defendant having, in the Court of first instance, disclaimed any right or interest in the land in a suit, does not deprive him of the right to appeal, if a judgment is given against him with costs. NUND COOMAR SINGH *v.* GUNGA PERSHAD NARAIN SINGH . . . . . 10 W. R., 94

14. ——— Right of purchaser to appeal on death of assignor.—*Assignment of interest in subject-matter of suit.*—*A.* sued *B.* in the Court of first instance, and obtained a decree declaring *A.'s* right to a house. The District Court, on appeal, reversed this decree and rejected *A.'s* claim. The High Court reversed the decree of the District Court, and remanded the appeal. The District Court, on remand, made a decree confirming the original decree of the Court of first instance in *A.'s* favour. Subsequently to the last-mentioned decree of the District Court, *B.* sold the house to *C.* *B.* then preferred a special appeal to the High Court, but died before it was heard. *Held*, under Act VIII of 1859, that *C.* could not carry on the special appeal after *B.'s* death. MORESHWAR BAPUJI PHATAK *v.* KUSHABA SHANKROJI . . . . . I. L. R., 2 Bom., 248

15. ——— Appeal from order prior to decree.—*Civil Procedure Code, 1859, s. 363.*—Objections having been successfully raised, under section 246, Act VIII of 1859, against a decree-holder's attachment of a tenure as the property of his judgment-debtor, he brought a regular suit and obtained a declaratory decree that the property belonged to his debtor. He then took out execution, attached, sold, and himself purchased the property in question. The objector meantime appealed to the Privy Council, and, having obtained a decree reversing the declaratory decree, took out execution against the opposite party for costs and wasilat. The opposite party objected, but the Judge allowed the execution to proceed, and deputed an Ameen to ascertain the amount of mesne profits collected. *Held* that the Judge's order was not an order prior to decree within the meaning of section 363 of the Code, and that the opposite party was entitled to appeal against the principle that he was liable, without waiting the result of the Ameen's investigation. GOPAL CHUNDER CHUCKERBUTTY *v.* OODOY LALL DEY . . 12 W. R., 411

16. ——— Right of party to suit not a party to compromise to appeal from order made in execution of decree on compromise.—*Civil Procedure Code, 1882, s. 224.*—*Resistance to execution.*—*Procedure.*—In a suit for partition, a compromise was entered into by all the parties except *S.*, and a decree obtained on the terms thereof. In execution *S.* was dispossessed and presented a petition

RIGHT OF APPEAL.—Right of party to suit not a party to compromise to appeal from order made in execution of decree on compromise—*continued.*

to the Court, objecting that the decree was not binding on her. The petition was rejected. *Held* that the objection raised by *S.* ought to have been investigated under section 244 of the Code of Civil Procedure, and that *S.* was entitled to appeal against the order rejecting the petition. SANKARAVADIVAMMAL *v.* KUMARASAMYA . . I. L. R., 8 Mad., 473

17. ——— Appeal from original decision after review granted illegally has been set aside.—Where a suit under the rent law was dismissed, and the Munsif granted a review of judgment on fresh evidence without satisfying himself that it had been out of plaintiff's power to produce such evidence at first,—*Held* that the Munsif had acted illegally and without jurisdiction, and that the Subordinate Judge was right in reversing his judgment after the re-hearing, but that the decision did not prejudice plaintiff's liberty to appeal from the original decision. BEITS *v.* BONSI MUNDUL . . . . . 25 W. R., 343

RIGHT OF OCCUPANCY.

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1. ACQUISITION OF RIGHT . . .	5174
(*a*) PERSONS BY WHOM RIGHT MAY BE ACQUIRED . . .	5174
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See LANDLORD AND TENANT—MIRASIDARS [I. L. R., 1 Mad., 205

See SALE FOR ARREARS OF RENT—INCUMBRANCES . 5 B. L. R., Ap., 18, 20

1. ACQUISITION OF RIGHT.

(*a*) PERSONS BY WHOM RIGHT MAY BE ACQUIRED.

1. ——— Cultivating ryots at fixed rates.—*Act X of 1859, s. 6.*—*Ryots holding since permanent settlement at varying rates of rent.*—Act X of 1859 provided for two classes of ryots only,—*viz.*, those who have held and cultivated the land for a period of twelve years, and those who have held at fixed rates from the time of the permanent settlement; it made no provision for ryots who have held since the time of the permanent settlement at varying rates. Such a ryot acquired no right of occupancy on that ground. DINOBUNDHOO DEY *v.* RAMDHONE ROY . . . . . 9 W. R., 522

2. ——— Cultivating ryots.—*Act X of 1859, s. 6.*—*Sub-lessors to actual cultivators.*—Only those tenants who cultivate their lands or sub-let them to actual cultivators of the soil were entitled to rights of occupancy under section 6, Act X of 1859.

RIGHT OF OCCUPANCY—*continued.*

1. ACQUISITION OF RIGHT—*continued.*

(*a*) PERSONS BY WHOM RIGHT MAY BE ACQUIRED —*continued.*

Cultivating ryots—*continued.*

BINDRABUN CHUNDER CHOWDHRY *v.* ISSUR CHUNDER BISWAS . . **W. R., 1864, Act X, 1**

3. ——— *Act X of 1859, s. 6.—Actual cultivators.—Ryots deriving profits directly from produce.*—The benefits of section 6 of Act X of 1859 were not restricted to those who with their own hands till the soil, but applied to those who are actual cultivators in the sense of deriving their profits from the produce directly. KALEECHURN SINGH *v.* AMEEROODDEEN . . **9 W. R., 579**

4. ——— **Holders of land.**—*Act X of 1859, s. 6.—Land cultivated by other than ryot.*—Section 6 of Act X of 1859 applied to land "held" as well as to land "cultivated," and although a tenant may not have personally cultivated, but may have made over the land to another to cultivate (assuming that by custom he has such power), he still may gain a right of occupancy if he continues to be recognised by the zemindar as the holder of the land. BUTABEE BEGUM *v.* KHOOSHAL . . . **2 N. W., 24**

5. ——— **Possessors of ryoti tenure.**—*Test of ryoti interest as distinguished from mere right to collect rent.—Per* FIELD, *J.*—The only test of a ryoti interest is to see in what condition the land was when the tenancy was created. If ryots were already in possession of the land when the interest was created, and the interest was a right, not to the actual physical possession of the land, but to collect the rents from the ryots, the interest is not ryoti. If, on the other hand, the land was jungle, or uncultivated or unoccupied, and the tenant was let into physical possession of the land, the interest would be ryoti, and the nature of that interest would not be altered by the fact of the tenant subsequently sub-letting to under-tenants. DURGA PROSUNNO GHOSE *v.* KALI DAS DUTT . . **9 C. L. R., 449**

6. ——— **Holder of ryoti jote.**—*Act X of 1859, s 6.—Right against purchaser of putni talook.*—The holder of a ryoti jote was protected by section 6, Act X of 1859, and had a clear right of occupancy against the purchaser of the putni talook fourteen years after his purchase. WOOMANATH ROY CHOWDHRY *v.* ROGHOONATH MITTER **[5 W. R., Act X, 63**

7. ——— **Persons not holding as ryots or middlemen.**—*Act X of 1859, s. 6.*—Persons who are not shown to have held possession of lands, of which they complain they have been illegally dispossessed, as ryots, or in any other sense than as middlemen receiving rents from the actual cultivators, did not come under section 6, Act X of 1859, and cannot acquire any rights of occupancy GOPEE MOHUN ROY *v.* SIB CHUNDER SEN . **1 W. R., 68**

8. ——— **Tenant holding a term under a farming lease.**—*Act X of 1859, s. 6.*—A tenant

RIGHT OF OCCUPANCY—*continued.*

1. ACQUISITION OF RIGHT—*continued.*

(*a*) PERSONS BY WHOM RIGHT MAY BE ACQUIRED —*continued.*

Tenant holding a term under a farming lease—*continued.*

holding a term under a farming lease of land which he might sub-let is not a ryot, and therefore did not by twelve years' occupation acquire a right of occupancy under Act X of 1859, section 6. HURRISH CHUNDER KOONDOO *v.* ALEXANDER . **Marsh., 479**

9. ——— **Middleman.**—*Party sub-letting.—Act X of 1859, s. 6.*—The mere fact of a party sub-letting did not make him a middleman excluded from the privileges of section 6, Act X of 1859. The real question for trial is whether he was or was not a ryot, or one who held land under cultivation by himself or others who took for him under his supervision as a superior cultivator; or whether he was a middleman because he really did not cultivate in the sense of section 6, but was a general leaseholder or a speculator in land rent. RAM MUNGUL GHOSE *v.* LUKHEENARAIN SHAHA **[1 W. R., 71**

10. ——— **Sub-tenant of cultivating ryot.**—A sub-tenant of a cultivating ryot cannot acquire a right of occupancy. KETAL GAIN *v.* NADUR MISTREE . . . . . **6 W. R, 168**

11. ——— **Sub-lessee from occupancy ryot.**—*Act X of 1859, s. 6.*—A sub-lessee from a ryot having a right of occupancy could gain no right of occupancy for himself under section 6, Act X of 1859. GILMORE *v.* SURBESSUREE DOSSEE **[W. R., 1864, Act X, 72**

NIL KOMUL SEIN *v.* DANESH SHAIKH **[15 W. R., 469**

UNNOPOORNA DOSSEE *v.* RADHA MOHUN PATTRO **[19 W. R., 95**

HARAN CHUNDRA PAL *v.* MUKTA SUNDARI CHOWDHRAIN **[1 B. L. R., A. C., 81: 10 W. R., 113**

Contra, ABDOOL JUBBAR *v.* KALEE CHURN DUTT **[7 W. R., 81**

RAMDHUN KHAN *v.* HARADHAN PARAMANICK **[9 B. L. R., 107, note: 12 W. R., 404**

12. ——— **Ryot holding over after sub-lease.**—*Act X of 1859, s. 6.*—A right of occupancy under section 6, Act X of 1859, could not be acquired by a ryot holding over for more than twelve years after the expiration of a sub-lease for a term by a ryot having a right of occupancy. JUMMEEUTTUNNISSA *v.* NOOR MAHOMED . **W. R., 1864, Act X, 77**

13. ——— **Ticcadar.**—*Obligation on ticcadar to restore tenure.*—A ticcadar is bound to restore his holding to the zemindar in the condition in which he got it when his lease is over, and cannot acquire a right of occupancy under it. RAM SARUN SAHOO *v.* VERYAG MAHTON . . **25 W. R., 554**

RIGHT OF OCCUPANCY—*continued.*

1. ACQUISITION OF RIGHT—*continued.*

(*a*) PERSONS BY WHOM RIGHT MAY BE ACQUIRED —*continued.*

14. ——— Purchasers from neem howladars.—*Neem howlas, Nature of.—Transferable tenures.*—Neem howlas (even though they may not comprise the right of holding at a fixed rent), and all other such rights of occupancy established by the ancient prescription and custom of the country, are transferable tenures. Purchasers from neem howladars are consequently entitled to rights of occupancy. JUGGUT CHUNDER ROY *v.* RAMNARAIN BHUTTACHARJEE . . . **1 W. R., 126**

15. ——— Tenants of temple lands at a specified rent so long as they hold.—*Occupancy rights, Proof of.—Tenancy from year to year.—Fifty years' tenure.—Purakudi.*—In a suit brought in 1882 by the trustee of a temple to eject tenants upon notice to quit, the tenants pleaded that they were entitled to occupy the lands permanently, and proved that their predecessors had cultivated since 1830. In that year a muchalka had been executed by which the tenants, who were therein styled purakudis (a term which does not usually denote tenants with right of occupancy), bound themselves to pay a specified rent so long as they held the lands of the temple. *Held* that the tenants had not acquired a right of occupancy, and were merely tenants from year to year. THIAGARAJA *v.* GNANASAMBANTHA. SABRAMANYA *v.* GNANASAMBANTHA **[I. L. R., 7 Mad., 374**

16. ——— Government ryot in Assam.—*Act X of 1859, s. 6.*—A Government ryot can acquire a right of occupancy in respect of lands cultivated by him under the rent law in force in Assam. KONARAM GAONBURAH *v.* DHATOARAM THAKOOR. **[I. L. R., 6 Calc., 196 : 7 C. L. R., 47**

But *see* PRASIDHA NARAYAN KOER *v.* MANKOOH **[I. L. R., 9 Calc., 330 : 11 C. L. R., 554**

17. ——— Farmer of revenue or proprietary right.—A mere farmer of revenue or proprietary right cannot acquire a permanent right of occupancy. KRISHNASAMI PILLAI *v.* VARADARAJA. VARADARAJA *v.* VENKATACHALA PILLAI **[I. L. R., 5 Mad., 345**

18. ——— Zemindar occupying his own lands.—*Transfer of zemindari.*—A zemindar occupying his own lands as nij-jote cannot, when the zemindari passes into other hands, lay claim to them on the ground that he is a ryot with rights of occupancy. REED *v.* SREE KISHEN SINGH . **15 W. R., 430**

19. ——— Occupant of land rent-free.—*Beng. Act VIII of 1869, ss. 6 and 22.*—A party who has been in the occupancy of land without paying any rent is not entitled to the protection of Bengal Act VIII of 1869, section 6, or of section 22, even on the ground of a right to hold the land rent-free. KALEE KRISHNA DEB *v.* SHASHONEE DASSEE **[25 W. R., 42**

RIGHT OF OCCUPANCY—*continued.*

1. ACQUISITION OF RIGHT—*continued.*

(*a*) PERSONS BY WHOM RIGHT MAY BE ACQUIRED —*continued.*

20. ——— Assignee of zemindar.—*Act X of 1859, s. 6.*—A person occupying land merely as the assignee of the zemindar and cultivating because of the opportunity thus afforded, cannot, under colour of that character, acquire the rights adverse to the zemindar or claim the benefit of Act X of 1859, section 6. WOOMANATH TEWAREE *v.* KOONDUN TEWAREE . . . . . **19 W. R., 177**

21. ——— Person holding as ryot and as farming tenant.—*Assignee of landlord's interest.*—Where a person holding land at first as a ryot, subsequently obtained a farming lease of it, and thus became assignee of the landlord's interests, he was held at the expiration of the lease not to have acquired an occupancy right. Where a ryoti interest co-exists with a farming lease, the ryoti interest remains unchanged in character during the currency of the lease. SAVI *v.* PUNCHANUN ROY . . **25 W. R., 503**

22. ——— Possession as servant.—*Act X of 1859, s. 6.—Possession without payment of rent.*—Mere possession for twelve years in the capacity of a servant did not create a right of occupancy under section 6, Act X of 1859 : rent must be shown to have been paid so as to make the occupier a ryot. WOOMA MOYEE BURMONYA *v.* BOKOO BEHARA **[13 W. R., 333**

23. ——— Heir to tenant-at-will.—A person cannot claim a right of occupancy as heir of a tenant-at-will. BUSHEEROODDEEN *v.* DAL CHUND **[3 Agra, 236**

24. ——— Firm, Members of.—*Transmission of rights in firm to changing members of it.*—A firm of capitalists taking a lease of lands from a zemindar, and transmitting their rights to the changing members of the firm, cannot, by any length of occupation, acquire occupancy rights under ection 6 of Act X of 1859, or Bengal Act VIII of 1869. RAI KOMUL DOSSEE *v.* LAIDLEY **[I. L. R., 4 Calc., 957**

25. ——— Indigo concern.—*Power to acquire right of occupancy.—Corporation.*—An "Indigo Concern" or "Firm" has no corporate or legal existence so far as the question of a right of occupancy is concerned, which can only be recognised in particular individuals. CANNAN *v.* KYLASH CHUNDER ROY CHOWDHRY . . . **25 W. R., 117**

26. ——— *Partnership holding a cultivating lease.—Indigo concern as a cultivating ryot.—Beng. Act VIII of 1869, s. 6.*—A firm owning an indigo concern, and carrying on the manufacture of indigo, took, in the collective names of Robert Watson & Co., a cultivating lease of certain lands which they held continuously for more than twelve years; cultivation of these lands being carried out by the servants of the firm, and also by sub-tenants. *Held* that the lease must be taken to be a lease to the individuals who were at the time of the grant

RIGHT OF OCCUPANCY—*continued.*

1. ACQUISITION OF RIGHT—*continued.*

(*a*) PERSONS BY WHOM RIGHT MAY BE ACQUIRED —*continued.*

Indigo concern—*continued.*

members of the firm, and that under the circumstances of the particular case they had obtained an occupancy right. *Quære,*—Whether a right of occupancy could have been obtained in this case if the whole of the original grantees had died, either before the completion of the twelve years of occupation, or after acquiring a right of occupancy; or if it could be obtained, whether such right could, according to the custom of the locality, be transferred to persons subsequently admitted as members of the firm. The test of a ryoti lease is, whether the lease has been originally granted for the purpose of cultivation, and if it has been so granted, it is none the less a ryoti lease, though the lessee may happen subsequently to sub-let. LAIDLEY *v.* GOUR GOBIND SARKAR [I. L. R., 11 Calc., 501

(*b*) SUBJECT OF ACQUISITION.

27. ——— **Land to which addition has been made.**—*Addition creating fresh tenure of whole.*—Land which is held as one tenure is either subject to a right of occupancy as a whole, or it is not subject to any right of occupancy as to any part of it. If the whole land has been held for more than twelve years, then the tenant has a right of occupancy; but if within twelve years the tenant has been allowed to take possession of fresh lands, and such addition was intended to create a fresh tenure, then as regards the whole a right of occupancy has not been acquired, although a portion has been held for more than twelve years. AMAR CHAND LAHATA *v.* BUKSHEE PYEKAR . . . . 22 W. R., 228

28. ——— **Land of which cultivation is changed.**—*Nature of right of occupancy.—Enhancement, Liability to.—Landlord and tenant.*—The statutory right of occupancy under Bengal Act VIII of 1869 cannot be extended so as to make it include complete dominion over the land, subject only to the payment of a rent liable to enhancement. The landlord is still entitled to insist that the land shall be used for the purposes for which it was granted; and although the Court in such cases will be dipossed to place a liberal interpretation on the rights of the tenant, it will not sanction a complete change in the mode of enjoyment. LAL SAHOO *v.* DEO NARAIN SINGH . I. L. R., 3 Calc., 781: 2 C. L. R., 294

29. ——— **Land held for agricultural purposes.**—*Act X of 1859, s. 6.—Dwelling-house, Occupation of land for.*—The occupation intended to be protected by section 6, Act X of 1859, was occupation of land subject to agricultural or horticultural cultivation, and used for purposes incidental thereto, and did not include occupation, the main object of which is the dwelling-house itself, and where the cultivation of the soil, if any there be, is entirely subordinate thereto. KALEE KISHEN BISWAS *v.* JANKEE . . . . . 8 W. R., 250

RIGHT OF OCCUPANCY—*continued.*

1. ACQUISITION OF RIGHT—*continued.*

(*b*) SUBJECT OF ACQUISITION—*continued.*

30. ——— **Land used for habitation and cultivation.**—*Act X of 1859, s. 6.—Beng. Act VIII of 1869, s. 6.*—The right of occupancy acquired by a cultivator under Act X of 1859, or Bengal Act VIII of 1869, was as applicable to that portion of the land which is used for his habitation as for that portion which is cultivated. MOHESH CHUNDER GUNGOPADHYA *v.* BISHONATH DOSS [24 W. R., 402

31. ——— **Land occupied by buildings.**—*Beng. Act VIII of 1869, s. 6.*—The words "cultivated or held" in Bengal Act VIII of 1869, section 6, have the effect of excluding lands occupied exclusively by buildings from the right of occupancy there declared. MOHUR ALI KHAN *v.* RAM RUTTUN SEIN [21 W. R., 400

32. ——— **Waste land brought under cultivation.**—*Shikmi cultivation.—Held* that land newly broken and brought under cultivation by a ryot cannot be received as zemindar's sír land, nor can the former be held to be a mere shikmi cultivator incapable of acquiring right of occupancy in the land. JHUGRO *v.* LAUTOO PANDEY [1 Agra, Rev., 32

33. ——— **Nij-jote land.**—*Act X of 1859, s. 6.*—A cultivator of nij-jote land could acquire a right of occupancy under section 6, Act X of 1859, when it had not been let under a lease for a term of years, or year by year. GAURHARI SINGH *v.* BEHARI RAUT . 3 B. L. R., Ap., 138: 12 W. R., 277

34. ——— *Beng. Act VIII of 1869, s. 6.*—The nij-jote land referred to in Bengal Act VIII of 1869, section 6, as land in which a right of occupancy could not be acquired, is land which is the nij-jote of the zemindar, and not that which is merely the nij-jote of a sarbarakar holding under the zemindars. OBHOY CHURN MOHAPATTUR *v.* KANYE RAWUT . . . . 1 C. L. R., 394

35. ——— **Khamar land.**—*Land in possession of zemindar.*—Land in the possession of the zemindar, whether cultivated or uncultivated, is khamar land, and a right of occupancy cannot be acquired upon it by a ryot, except under some special arrangement. HURISH CHUNDER DAM *v.* GUNGA DHUR BHUDDRO . . . . 25 W. R., 181

36. ——— *Beng. Act VIII of 1869, s. 6.*—Where a ryot proves possession for upwards of twelve years, the mere fact of his land being khamar does not deprive him of the right of occupancy. Before his case can be brought within the exception in Bengal Act VIII of 1869, section 6. it must be shown whether he has held on a lease for a term or year by year. ASHRUF *v.* RAM KISHORE GHOSE . . . . . 23 W. R., 288

37. ——— **Khamat land.**—*Land on expiration of lease.*—Where khamat land is let by a zemindar for a term of years, and upon the expira-

RIGHT OF OCCUPANCY—*continued.*

1. ACQUISITION OF RIGHT—*continued.*

(*b*) SUBJECT OF ACQUISITION—*continued.*

Khamat land—*continued.*

tion of that term tacitly let to the same tenant from year to year for a long period, the tenant does not thereby acquire a right of occupancy. BHUGWAN BHAGUT *v.* JUG MOHUN ROY . **20 W. R., 308**

38. ——— Sir land.—*N.-W. P. Rent Act, XII of 1881, s. 8.—Act X of 1859, s. 6.—Occupancy tenure.*—Where land, originally the sír of a proprietor, has been transferred to a mortgagee, and has in his hands lost its character of sír, and has been leased to a tenant on the usual conditions of a tenancy, which otherwise do not bar the acquisition of a right of occupancy in the land, such a right will be acquired by twelve years' occupancy under section 8 of the Rent Act. In 1846 *B.* mortgaged a share in a village, together with certain land which was recorded as his sír, and which was so described in the deed of mortgage. After the mortgage it ceased to be recorded as his sír, and was recorded as land held by tenants in the same way as other lands in the estate. In 1857 it was leased to *S.*, and in 1863 to *H.*, and from 1863 to 1882 remained in the possession of the last-mentioned lessee. In 1882 *B.* redeemed the mortgage, and subsequently brought a suit against *H.* to establish that the land was his sír, and for possession of it. *Held* by the Full Bench that there being nothing in the terms of the mortgage-deed to indicate that the land was transferred to the mortgagee to be held as sír, and the land having ceased to be recorded as the sír of the proprietor, and not having been leased as the sír of the lessor, it had not retained its character as sír when the defendant's tenancy commenced, so as to prevent him from acquiring a right of occupancy therein under the provisions of section 8 of the Rent Act. *Per* MAHMOOD, *J.*, that there is nothing in the law to prevent a zemindar from relinquishing has rights in sír land and converting it into land held by ordinary tenants; that the mortgage-deed of 1846 showed that the sír right in the land in suit had been relinquished by the mortgagor; and that the sír land once relinquished by the zemindar ceases to have that character, and cannot prevent the accrual of the occupancy right within the meaning either of section 6 of Act X of 1859 or of section 8 of Act XII of 1881. HARPAL SINGH *v.* BAL GOBIND . **I. L. R., 7 All., 586**

39. ——— Holding commenced under a mortgagee.—*Act X of 1859, s. 6.*—Holdings which have commenced or continued under a mortgagee in possession were not within any exception to the general rule contained in section 6 of Act X of 1859, that a ryot who has held or cultivated a holding for twelve years is entitled to a right of occupancy therein. HEEROO *v.* DHOREE

[2 N. W., 129 : S. C. Agra, F. B., Ed. 1874, 204

40. ——— Land held as a grove.—*Act X of 1859, s. 6.—Kashtkari land.*—Land held as a grove upon the terms which have been heretofore customary in this country was not subject to the

RIGHT OF OCCUPANCY—*continued.*

1. ACQUISITION OF RIGHT—*continued.*

(*b*) SUBJECT OF ACQUISITION—*continued.*

Land held as a grove—*continued.*

provisions of section 6 of Act X of 1859. By an occupancy thereof for twelve years no right of occupancy can accrue. The provisions of section 6 of Act X of 1859 were intended to apply to kashtkari lands. PIRTUM KOORMY *v.* BHIKAREE

[2 N. W., 364

41. ——— Holding of trees under lease of their produce.—*Act X of 1859, s. 6.*—The possession of twelve years of the trees in a bagh under a lease which only entitled the lessees to the produce of the trees, and not to cultivate the land, would not be a holding of the land within the meaning of section 6, Act X of 1859, so as to confer upon the lessees a right of occupancy in the land. ROOKMIN KOOER *v.* BUKSHEE . . . . . **5 N. W., 155**

42. ——— Bunker tenure.—*Act X of 1859, s. 6.—Held* that plaintiffs, as holders of a lease from the proprietor which gave them the right of cutting grass and other spontaneous produce of the lands, did not, merely by reason of lengthened enjoyment, acquire any right of occupancy in respect to such holding, that the tenure under which they claimed to hold was not a holding of land within the meaning of section 6, Act X of 1859, and they must, in the absence of an express condition otherwise determining the period of lease, be held to be tenants-at-will holding year by year at the pleasure of the landlord. GOOR DIAL *v.* RAMDUT

[Agra, F. B., 15 : Ed. 1874, 11

43. ——— Land let for grazing cattle.—*Semble,*—A right of occupancy can be gained in land let for the purposes of grazing cattle or horses. FITZPATRICK *v.* WALLACE

[2 B. L. R., A. C., 317 : 11 W. R., 231

44. ——— Tank producing water-nuts.—*Growth of plant not spontaneous but from cultivation.*—In the land in suit (a tank), producing water-nuts, which do not grow spontaneously, but are the result of sowing or planting, a right of occupancy can be acquired. MOOLCHAND *v.* CHEETREE

[1 N. W., 175 : Ed. 1873, 254

45. ——— Tank not appurtenant to land.—*Beng. Reg. XIX of 1793.*—A right of occupancy in land includes the same right in respect of a tank appurtenant to the land; but a right of occupancy cannot be acquired in a tank with only so much land as is necessary for the banks, and the lease of such tank is terminable on the sale of the lessee's tenure for arrears of rent, the purchaser under Regulation XIX of 1793 receiving the tenure free of encumbrances. NIDHI KRISHNA BOSE *v.* RAM DASS SEIN . . . . . **20 W. R., 341**

46. ——— *Act X of 1859, s. 6.*—The provisions of Act X of 1859, with respect to acquiring a right of occupancy, did not apply to a tank which was not shown to form part of any

RIGHT OF OCCUPANCY—*continued.*

1. ACQUISITION OF RIGHT—*continued.*

(*b*) SUBJECT OF ACQUISITION—*continued.*

Tank not appurtenant to land—*continued.*

grant of land, nor to be appurtenant to any land. SIBU JELYA *v.* GOPAL CHANDRA CHOWDHRY [13 B. L. R., 423, note : 19 W. R., 200

47. ——— **Right of fishery.**—*Julkur not appurtenant to jote.*—Where a jotedar had exercised rights of fishery over two julkurs for more than twelve years, not as the owner of the jote (with which the julkurs were not connected), but as a tenant under a landlord,—*Held* that such possession did not confer upon him a right of occupancy. SHAM NARAIN CHOWDHRY *v.* COURT OF WARDS [23 W. R., 432

48. ——— *Julkur.*—The right of occupancy which accrues to tenants who have occupied or cultivated land for twelve years or upwards, does not arise in respect of the right called julkur or fishery. That is a right which may be let out by ijaradars under the landlord, and may be enjoyed under them so long as their ijara continues, but is liable to be determined at the expiration of the ijara. JUGGOBUNDHOO SHAHA *v.* PROMOTHONATH ROY . . . . I. L. R., 4 Calc., 767

The lessee of a julkur cannot acquire any right of occupancy. BOLLYE SATEE *v.* AKRAM ALLY [I. L. R., 4 Calc., 961

WOOMAKANT SIRCAR *v.* GOPAL SINGH [2 W. R., Act X, 19

49. ——— **Lands held on service tenure.**—*Semble,*—No rights of occupancy accrue in lands held under a service tenure. HURROGOBIND RAHA *v.* RAMRUTNO DEY . I. L. R., 4 Calc,. 67

50. ——— **Land in Assam.**—*Act X of 1859.—Ejectment, Suit for.—Per* MITTER and WHITE, *JJ.* (MACPHERSON, *J.*, dissenting).—Act X of 1859 does not apply to lands situated in the Assam valley district. In a suit brought to eject a tenant of certain land situated in Assam, on the ground that he was a trespasser, where it was shown that he had held the land direct from the Government for a considerable time, and that the land had been made over during his tenancy to the plaintiff in exchange for certain other lands made over to the Government, and where the tenant claimed to have acquired a right of occupancy under Act X of 1859, and not to be liable to ejectment in the manner sought for,—*Held per* MITTER and WHITE, *JJ.*, that as that Act did not apply to lands situated in Assam, no such right could be claimed; and the suit being properly framed, the plaintiff was entitled to the relief he asked for. PRASIDHA NARAYAN KOER *v.* MAN KOCH [I. L. R., 9 Calc., 330; 11 C. L. R., 554

But *see* KONARAM GAONBURAH *v.* DHATOARAM THAKOOR [I. L. R., 6 Calc., 196: 7 C. L. R., 47

RIGHT OF OCCUPANCY—*continued.*

1. ACQUISITION OF RIGHT—*continued.*

(*c*) MODE OF ACQUISITION.

51. ——— **Nature of right.**—*Right independent of wish of zemindar or mortgagee.—Acquisition under usufructuary mortgage.*—The right of occupancy conferred by the Legislature upon cultivators of more than twelve years' standing is a right wholly independent of the wishes either of the zemindar or his mortgagee in possession, and when a cultivator acquires such a right, it cannot be taken as in the nature of a grant from either of them. The right of occupancy may thus be acquired during the currency of a usufructuary mortgage and during the period of the mortgagee's possession of the zemindari rights, and the zemindar upon redeeming the mortgage cannot disturb the possession of such occupancy tenants on the ground that, when he mortgaged the zemindari, it was free of such occupancy tenures. *Heeroo v. Dhoree, 2 N. W., 129,* referred to. HARPAL SINGH *v.* BAL GOBIND . . . I. L. R., 7 All., 586

52. ——— **Conditions necessary for acquisition.**—*Non-payment of rent.—Beng. Act VIII of 1869, ss. 6, 22, and 52.*—Two conditions only are necessary for the acquiring of a right of occupancy,—*viz.*, (1), the cultivation or holding of land for a period of twelve years; and (2), that the person holding or cultivating the land should be a ryot. The essential conditions of section 6, Bengal Act VIII of 1869, are fulfilled without showing the payment of rent, that only being a condition necessary for the maintaining of the right when created. In a suit brought to evict a tenant who had been in possession of certain land for a longer period than twelve years, when it was shown that rent had not been paid, and notice to quit had been given,—*Held* that a right of occupancy had been acquired, and that the ryot had the power to prevent forfeiture under the provisions of section 52, Bengal Act VIII of 1869. NARAIN ROY *v.* OPNIT MISSER [I. L. R., 9 Calc., 304: 11 C. L. R., 417

53. ——— **Holding and cultivating for twelve years.**—*Acquisition previous to Rent Act, 1859.*—After the permanent settlement and before Act X of 1859 a right of occupancy was not acquired by a ryot merely by holding or cultivating land for a period of twelve years. When there is no contract, and the Statute of Limitation does not apply, the ryot cannot, by occupying and cultivating, become the proprietor of the soil; neither can he, by occupying with the consent of the zemindar, and paying rent for the land to him, become entitled to the proprietorship of the soil, even though he should acquire a right of occupancy by virtue of Act X of 1859. ISHORE GHOSE *v.* HILLS . . . W. R., F. B., 148

54. ——— **Holding for twelve years partly before and partly after Rent Act.**—*Act X of 1859, s. 6.—Ryot.*—A holding for twelve years, whether wholly before or wholly after, or partly before and partly after, the passing of the Rent Act, entitled a ryot to a right of occupancy under section 6, Act X of 1859. THAKOORANEE DOSSEE *v.* BISHESHUR MOOKERJEE [B. L. R., Sup. Vol., 202: 3 W. R., Act X, 29

RIGHT OF OCCUPANCY—*continued.*

1. ACQUISITION OF RIGHT—*continued.*

(c) MODE OF ACQUISITION—*continued.*

55. ——— Holding under purchaser of permanent transferable interest in land.—*Reservation of rent.—Relinquishment.*—Any ryot, holding under any purchaser of a permanent transferable interest in land, can acquire a right of occupancy if he fulfil the other conditions required by the law; and the mere fact that a certain rent is reserved year by year does not interfere with his right, unless something in his pottah is fatal to it. But the right may be extinguished by a relinquishment of the land. RUGHOONATH SONAR *v.* MOKOOND DOSS

[25 W. R., 213

56. ——— Possession for twenty years under mirasi lease.—*Act X of 1859, s. 6.*—When possession for twenty years, as on a mirasi lease, is found, the right of occupancy is inherent under the lease and under section 6, Act X of 1859. GOUREE KANT BANERJEE *v.* GOLUCK CHUNDER

[4 W. R., Act X, 49

57. ——— Occupation for twelve years under lease.—*Suit for abatement of rent.*—A right of occupancy may be acquired by a ryot holding lands for more than twelve years under a pottah, and he is therefore entitled to sue for abatement of rent. SHAM LALL SAHOO *v.* HADY BUNJARA

[2 Hay, 522

58. ——— Occupation by virtue of lease for term of years.—*Act X of 1859, s. 6.*—A right of occupancy could not be acquired by occupation for twelve years under section 6, Act X of 1859, when such occupation has been by virtue of a lease granting a term of years, and during the whole or part of such occupation the term had not expired. HURRISH CHUNDER KOONDOO *v.* ALEXANDER

[Marsh., 479

59. ——— Occupation under lease for fixed term.—*Act X of 1859, s. 6.*—While land is held under a pottah which defines the period for which the land is to be held, no right of occupancy can accrue, although such a right may accrue under section 6 in certain cases. SHADHOO JHA *v.* BHUGWAN CHUNDER OPADHIA

[1 Ind. Jur., N. S., 75: 5 W. R., Act X, 17

60. ——— Holding on after expired farming lease.—*Act X of 1859, s. 6.*—A right of occupancy under section 6 of Act X of 1859 could not be acquired by holding under a farming lease which has expired. GILMORE *v* SREEMUNT BHOOMICK

[W. R., 1864, Act X, 77

61. ——— Holding under customary right.—*Farmer of revenue.—Duration of tenancy how regulated.*—The principle laid down in *Chockalinga Pillai* v. *Vytheolinga Pundarasannady, 6 Mad., 164*, is that where a tenancy rests on contract only, the duration of the tenancy is regulated by the terms of the contract expressed or implied, and neither the Rent Act not the Regulations operate to

RIGHT OF OCCUPANCY—*continued.*

1. ACQUISITION OF RIGHT—*continued.*

(c) MODE OF ACQUISITION—*continued.*

Holding under customary right—*continued.*

extend its duration. That decision does not derogate from any customary right. KRISHNASAMI PILLAI *v.* VARADARAJA. VARADARAJA *v.* VENKATACHALA PILLAI . . . **I. L. R., 5 Mad., 345**

62. ——— Holding as ijaradars during lease.—*Contract for renewal of lease.—Beng. Act VIII of 1869, and Act X of 1859, s. 6.*—By the terms of an ijara (1865) the defendants were entitled at the end of a term of five years to a renewal of their lease of the chur land in dispute, at a rent to be fixed according to the measurement of the land to be made at that time and to the productive powers of the land. Three years after the expiration of the said term a notice was served on the defendants to come to a new settlement with the plaintiff, and in 1874 the plaintiff sued to recover possession. The defendants claimed a right of occupancy acquired under Bengal Act VIII of 1869 or under Act X of 1859. *Held* that the defendants' holding as ijaradars prior to and during the lease of 1865 did not create in them a right of occupancy, and that the plaintiff had a right to turn the defendants out of possession at the expiration of the term of five years, except so far as that right was qualified by the stipulation for a renewal; that the defendants, at the expiration of that lease, had an equitable right to a renewal not exceeding five years, according to the stipulations in the agreement; but that it was too late to rely upon their title to a renewal which, if it had been granted, would now have expired. JARDINE, SKINNER, & Co., *v.* SARUT SOONDARI DEBI

[L. R., 5 I. A., 164: 3 C. L. R., 140

63. ——— Holding on payment of rent in kind.—*Goozasta tenure.*—A bhouli tenure may be a goozasta tenure; and a ryot who pays rent in kind and is in possession of, or cultivates, land for a period of twelve years, has a right of occupancy in the land so held or cultivated by him so long as he pays the rent in kind for the same. JUTTO MOAR *v.* BASMUTTEE KOOER . . . **15 W. R., 479**

64. ——— Holding as bhagdari tenure.—*Act X of 1859, s. 6.*—Ordinarily a holding under a bhagdari tenure (*i.e.*, upon a rent consisting of a portion of the produce) would establish a right of occupancy under section 6, Act X of 1859. HUREEHUR MOOKERJEE *v.* BIRESSUR BANERJEE

[6 W. R., Act X, 17

65. ——— Holding for long period.—*Payment of rent to one of several proprietors.—Act X of 1859, s. 6.*—A holding for twelve years under one of several proprietors gave a right of occupancy under section 6, Act X of 1859, provided the tenant had paid the rent, which payment he may, in the absence of fraud, make to any one of the co-proprietors whom he chooses. MOOKTAKESHEE DOSSEE *v.* KOYLASH CHUNDER MITTER . **7 W. R., 493**

RIGHT OF OCCUPANCY—*continued.*

1. ACQUISITION OF RIGHT—*continued.*

(c) MODE OF ACQUISITION—*continued.*

66. ——— **Holding under permissive possession.**—*Beng. Rent Act, 1869, s. 6.*—Mere possession of a permissive character and without any right cannot confer a right of occupancy. MOHUR ALI KHAN *v.* RAM RUTTUN SEIN . **21 W. R., 400**

67. ——— *Act X of 1859, s. 6.*—During the plaintiff's absence on imprisonment and transportation, the defendant took possession of land which previously belonged to him as a tenant, and the landlord allowed the defendant to hold as his tenant. He held possession for more than twelve years. *Held,* under section 6, Act X of 1859, the plaintiff acquired a right of occupancy against the landlord. DOMUN *v.* SUDUNKOOLAH **[1 B. L. R., S. N., 25 : 10 W. R., 253**

68. ——— **Possession as intruder.**—*Right of intruder to hold house of absconding ryot.*—*Held* that the defendant, having failed to prove his right of possession to the house of an absconding ryot, either by sale or mortgage, was an intruder upon the holding of such ryot, and did not, by making additions or alterations, acquire any right against the zemindar who was not shown to have assented to such additions or alterations. KUNDHYEE *v.* ZUMAN KHAN . . . . . **1 Agra, 9**

69. ——— **Possession obtained by fraud.**—*Act X of 1859, s. 6.*—Possession obtained and continued by fraud was not possession within the meaning of Act X of 1859, section 6, so as to give a right of occupancy. BHOOBUNJOY ACHARJEE *v.* RAM NARAIN CHOWDHRY . . . **9 W. R., 449**

70. ——— **Possession and payment of rent to party without title.**—*Act X of 1859, s. 6.*—The mere fact that the person to whom he for some years paid rent had no title could not prevent his counting those years towards a right of occupancy under Act X of 1859. AMEER HOSSEIN *v* SHEO SUHAE . . . . . **19 W. R., 338**

71. ——— **Occupying and cultivating land under person with no title.**—*Nature of ryot's right.*—A ryot occupying and cultivating land for more than twelve years under a landlord who has no title to the land, nevertheless acquires a right of occupancy. The right is not one conferred by any lessor. It is a right which, by virtue of the law, grows up in the ryot from the mere circumstance of cultivating the land for twelve years or upwards and paying rent due thereon ZOOLFUN BIBEE *v.* RADHICA PROSONNO CHUNDER **[I. L. R., 3 Calc., 560 : 1 C. L. R., 388**

72. ——— **Necessity of continuous possession.**—To enable a tenant to acquire a right of occupancy, the twelve years' possession must be continuous. DEBIA *v.* BRIJ LAL . **3 N. W., 50**

73. ——— **Possession under lease containing proviso for re-entry.**—*Beng. Act VIII of 1869, s. 7.*—*Stipulation to negative right.*—

RIGHT OF OCCUPANCY—*continued.*

1. ACQUISITION OF RIGHT—*continued.*

(c) MODE OF ACQUISITION—*continued.*

Possession under lease containing proviso for re-entry—*continued.*

Where a lease contained a provision to the effect that, at the expiration of the term, the landlord should be at liberty to enter into a settlement with any one he pleased, and so put an end to the lessee's tenure, and the landlord notwithstanding allowed the tenant to continue his occupation, paying rent as before,—*Held* that, under the circumstances, there was nothing in the stipulation itself which operated to negative or destroy the tenant's right of occupancy. ERADUT-OOLLAH *v.* MAHOMED ALI . . **25 W. R., 114**

74. ——— *Beng. Act VIII of 1869, s. 6.*—*Effect of such proviso on acquisition of right.*—The mere fact of a lease being granted for a particular term, even where there is an express provision for re-entry by the lessor, does not prevent the accrual of an occupancy right under section 6 of Bengal Act VIII of 1869 to a ryot who continuously occupies for more than twelve years, nor is a right of occupancy already acquired destroyed by a grant of such a lease. MUKHTAR BAHADUR *v.* BROJRAJ SINGH CHOWDHRY . . . **9 C. L. R., 143**

75. ——— **Computation of time necessary for right.**—*Period during which land is held under lease.*—Ordinarily the period during which lands are held under a pottah or lease is not to be excluded from the computation of the time necessary to give to the ryot a right of occupancy HOOBA KHAN *v.* MUNSUB ALI . . . **3 N. W., 37**

76. ——— *N.-W. P. Rent Act, XVIII of 1873, s. 8.*—*Holding under a lease.*—*Deduction of time lease was running.*—In a suit in which the matter in dispute was whether the plaintiff was entitled to eject the defendants from their holding on the ground of their not holding a right of occupancy, and having retained possession of the holding wrongfully after the expiry of the terms of a lease granted to their father, the lower Courts were bound at the time of deciding the case by the provisions of section 8 of the North-Western Provinces Rent Act, and should have excluded from the calculation of the period necessary for acquiring a right of occupancy the term of the lease under which the occupancy commenced. RADHAPARSHAD SINGH *v.* BALMUKAND OJHA . **7 N. W., 318**

77. ——— *Jotedari right under expired ijara.*—*Act X of 1859, ss. 6 and 7.*—*Express stipulation.*—*Per* MITTER, *J.*—The expiration of the lease of the ijaradar under whom the ryot's possession under a jotedari right commenced cannot affect the application of section 6 of Act X of 1859. A tacit understanding that the ijaradar should give up possession on the expiry of his lease is not an express stipulation within the meaning of section 7. *Quære.*—Whether such an understanding between the zemindar's predecessors and the ijaradar can affect the ryot. GOLAM PANJA *v.* HURRISH CHUNDER GHOSE . . . . . **17 W. R., 552**

RIGHT OF OCCUPANCY—*continued.*

1. ACQUISITION OF RIGHT—*continued.*

(c) MODE OF ACQUISITION—*continued.*

Computation of time necessary for right —*continued.*

78. ——————— *Cultivating ryot under several leases, each for a specific term.—Act X of 1869, ss. 6 and 7.—Beng. Act VIII of 1869, ss. 6 and 7.*—A ryot who has held or cultivated a piece of land continuously for more than twelve years, but under several written leases or pottahs, each for a specific term of years, is entitled to claim a right of occupancy in that land, unless there is in the pottah an express stipulation contrary thereto. SHEO PEQKASH MISSER *v.* RAM SAHOY SINGH
[8 B. L. R., F. B., 165 : 17 W. R., 62

KHAJURANNISSA BEGUM *v.* AHMED REZA
[8 B. L. R., 166, note : 11 W. R., 88

NARAIN SINGH *v.* MUNSUR RAOOT
[25 W. R., 155

Contra, DAMUNULLA SIRKAR *v.* MAMUDI NASHIO
[3 B. L. R., A. C., 178 : 11 W. R., 556

KEBUL MAHTON *v.* SUNNOO
[5 W. R., Act X, 80

79. ——————— *Holding under leases.—Act X of 1859, s. 6.—Beng. Act VIII of 1869, s. 6.—Cultivating ryot.*—From 1824 to 1832 the defendant held certain lands as cultivator; from that year to 1839 he obtained a lease from the zemindar of the village in which the lands were situate; from 1839 to 1843 he continued to hold these lands as cultivator; from that time to 1862 he again obtained a lease of the village, retaining these lands in his own cultivation; and after the expiry of the lease he continued to cultivate the lands. In a suit by the zemindar for possession, on the ground that the defendant was holding over after the expiry of his lease, —*Held* that the defendant had acquired a right of occupancy under section 6, Act X of 1859. MUKANDI LAL DUBEI *v.* CROWDY
[8 B. L. R., Ap., 95

S. C. MOKOONDY LALL DOOBEY *v.* CROWDY
[17 W. R., 274

80. ——————— *Act X of 1859, s. 6.—Setting aside pottah as void.*—Even if a ryot's pottah be declared by a Court to be null and void, his title to the occupancy right laid down in section 6, Act X of 1859, was not affected, provided he had held or cultivated continuously for a period of twelve years. SHIB NATH ROY *v.* WATSON & Co.
[8 W. R., 374

81. ——————— *Occupation or cultivation by trespasser.*—Occupation as a trespasser, or cultivation by a trespasser, could not confer a right under Act X of 1859, and could not be taken into account in considering whether such trespasser had occupied as a ryot for twelve years PEER BUX *v.* MEAHJAN . . . . W. R., F. B., 146

GHOLAM HYDER *v.* POORNO CHUNDER ROY
[3 W. R., Act X, 147

RIGHT OF OCCUPANCY—*continued.*

1. ACQUISITION OF RIGHT—*continued.*

(c) MODE OF ACQUISITION—*continued*

Computation of time necessary for right —*continued.*

82. ——————— *Confiscation of zemindar's rights.—Interruption of growth of right.*—Confiscation of the zemindar's rights, under Act XXV of 1857, will not operate to interrupt the growth of a right of occupancy claimed by a tenant. SHEORAJ SINGH *v.* LEGGE . . 3 Agra, 293

83. ——————— *Interruption of possession during acquisition of right.*—In a suit by a zemindar for ejectment, where the ryot pleads continuous occupancy for twelve years, and it is found that the ryot was evicted during that period but got back into possession, if the eviction were wrongful, it would not be such an interruption of possession as would prevent the ryot from acquiring a right of occupancy. But it would lie with the ryot to show that the eviction was wrongful. MAHOMED GAZEE CHOWDHRY *v.* NOOR MAHOMED . 24 W. R., 324

Reversing decision of BIRCH, *J.*, in S. C.
[24 W. R., 324, note

84. ——————— *Application for ejectment, Time when pending.—Act X of 1859, s. 25.*—An application under section 25, Act X of 1859, for the assistance of the Collector in ejecting a ryot was not of the nature of a suit, so as to cause a term of occupancy to cease to run; and if the ryot, in spite of the zemindar's efforts to eject him, nevertheless continued in cultivatory possession and paid rent, he was entitled to count the time towards the twelve years required to found a right of occupancy. MAHOMED SHAH *v.* USGUR HOSSEIN . . 5 N. W., 151

85. ——————— *Exclusion of period when tenure is in dispute.*—In computing the period of twelve years' holding which creates a right of occupancy, all such time during which the land was subject to litigation should be excluded. NAIPAL SINGH *v.* RAM NARAIN . 2 Agra, 93

86. ——————— *Act X of 1859, s. 6.—Change of farmers.*—A right of occupancy under section 6, Act X of 1859, was not affected by a mere change in the farmers. SHEO CHURN SINGH *v.* GORA CHAND GHOSE . 3 W. R., Act X, 125

87. ——————— *Continuous occupation.—Alluvial land—N.-W. P. Rent Act, XVIII of 1873, s. 8.—Occupancy-tenant.*—A tenant who has occupied or cultivated alluvial land, whenever such land was capable of occupation or cultivation, for twelve years, acquires by such occupation or cultivation a right of occupancy in such land. LACHMAN PRASAD *v.* BAL SINGH
[I. L. R., 4 All., 157

88. ——————— *Custom of district.—Ootbundi tenures.—Effect of non-payment of rent for time when land not culturable.*—Where by the custom of a particular locality rent was not payable when the land was not culturable, and the ryot

RIGHT OF OCCUPANCY—*continued.*

1. ACQUISITION OF RIGHT—*continued.*

(*c*) MODE OF ACQUISITION—*continued.*

Computation of time necessary for right —*continued.*

paid rent only for the period that he could cultivate, he would still come within the meaning of the provision of the law which declares that a ryot who holds or occupies land for a period of twelve years has a right to occupy the land so long as he pays the rent due thereupon. PREMANUND GHOSE *v.* SHOOKENDRONATH ROY . . . . **20 W. R., 329**

89. ——————— *Successive occupants.—Act X of 1859, s. 6.—Occupancy by inheritance.*—Under section 6, Act X of 1859, it is only when occupancy is inherited that the occupancy of the predecessor is considered as the occupancy of the tenant in possession. WATSON & CO. *v.* SHURUT SOONDUREE DEBIA . . **7 W. R., 395**

KHERODE CHUNDER ROY *v.* GORDON **[23 W. R., 237**

90. ——————— *Successive occupants.—Act X of 1869, s. 6.—Occupancy by inheritance.*—A holding by a ryot and his father before him for many years constitutes a right of occupancy which will prevent ejectment by the zemindar except in due course of law. NIM CHAND BOROOAH *v.* MOOKAREE MUNDUL . . . **8 W. R., 127**

91. ——————— *Occupancy by inheritance.—Occupation by ryot as malik.—Rent Act (Beng. Act VIII of 1869), s. 6.*—It is only the holding of the father or other person from whom a ryot inherits that can be deemed to be the holding of the ryot within the meaning of section 6 of the Rent Act. Occupation by the predecessor in title is not such an occupation as will create in the holder of land any right of occupancy. Nor can the period during which the occupant of land is in possession as malik be included in considering whether he has acquired a right of occupancy; such a right must be acquired against somebody, and cannot be acquired by a man against himself. LAL BAHADOOR SINGH *v.* SOLANO **[I. L. R., 10 Calc., 45: 12 C. L. R., 539**

92. ——————— *Occupancy by inheritance.—Succession to occupancy right.—Acquisition of right by continuing holding.*—Where the plaintiff succeeded to his uncle's holding, who had a right of occupancy, and the zemindar permitted him for about six years to hold the land without any new arrangement,—*Held* that he was entitled to recover the land as against the zemindar, his occupation being presumed to have been regarded as a continuation of the right of occupancy already acquired. BRIJHBOOKUN *v.* BHYROW DUTT **[3 Agra, 240**

93. ——————— *Ryot succeeding by inheritance though not entitled.—Permissive holding for twelve years.*—Where the plaintiff, a ryot, was allowed to succeed to the holding of his uncle, who had a right of occupancy, and was allowed by the zemindar to continue in the holding for eleven years, —*Held* that, though the plaintiff was not strictly entitled to succeed by right of inheritance, yet he must be taken to have succeeded to the holding by the consent of the zemindar, and to have acquired a right of occupancy. HUKEEM-OON-NISA *v.* BHOOBIA **[5 N. W., 23**

94. ——————— *Occupancy by purchase or transfer.*—Unless the tenant hold a transferable tenure, the sale by him of his jote to another party, without the consent of his landlord, does not transfer to the purchaser any right of occupancy which the latter may have possessed, or enable the present occupant to plead that the period of his own possession, joined to that of the former tenant, gives him a presumptive right of occupancy. WATSON & CO. *v.* SHURUT SOONDUREE DEBIA **[7 W. R., 395**

95. ——————— *Transfer of tenure by consent. — Continuous possession.* — Where the zemindar consents to the transfer of a tenure from one ryot to another, the possession of both must be considered to be continuous, and the right of occupancy to date from the time of the first holder. HURO CHUNDER GOHO *v.* DUNN **[5 W. R., Act X, 55**

96. ——————— *Receipt of rent by zemindar.—Purchaser from tenant.*—A zemindar does not, by the mere receipt of rent from a purchaser from the tenant having a right of occupancy, sanction the sale to the purchaser so as to give him a right of occupancy. GAUR LAL SIRKAR *v.* RAMESWAR BHUMIK . . . . **6 B. L. R., Ap., 92**

97. ——————— *Transfer of right. —Possession of transferor.—Act X of 1859, s. 6.* —The possession of the vendor could not be added to the possession of the purchasers so as to give the latter a right of occupancy under section 6, Act X of 1859. HYDER BUKSH *v.* BHUBINDRO DEB COWAR **[13 B. L. R., 276, note: 17 W. R., 179**

TARAPRASAD ROY *v.* SURJOKANTO ACHARJEE CHOWDHRY **[13 B. L. R., 281, note: 15 W. R., 152**

98. ——————— *Beng. Act VIII of 1869, s. 6.—Joint and afterwards sole possession.* —The continuous possession for twelve years which is the subject of section 6 of the rent law of 1869 must be a possession under one and the same right. This right may be in its inception joint with other persons, and by the death of co-sharers ultimately become a sole right without its continuous nature being affected. FORBES *v.* RAM LALL BISWAS **[22 W. R., 51**

99. ——————— *Beng. Act VIII of 1869, s. 6.—A.* and *B.* jointly obtained a pottah of

RIGHT OF OCCUPANCY—*continued.*

1. RIGHT OF ACQUISITION—*continued.*

(*c*) MODE OF ACQUISITION—*continued.*

Computation of time necessary for right —*continued.*

a piece of land from the zemindar for a period of five years. Afterwards *A.* alone obtained a pottah for another period of five years. Upon the expiry of this period, *A.* held on for two years longer, when he was dispossessed by the zemindar. In a suit by *A.* for recovery of possession on the ground that he had acquired a right of occupancy,—*Held* that he had not acquired a right of occupancy. MAHOMED CHAMAN *v.* RAMPRASAD BHAGAT

[8 B. L. R., 338 : 22 W. R., 52, note

100. ——— **Presumption that right of occupancy exists.**—The mere fact of plaintiff suing for enhancement implies the tenant's right of occupancy, for a tenant-at-will may be ejected if he refuses to pay such rent as the landlord demands. TARRAMONEE DOSSEE *v.* BIREESSUR MOZOOMDAR

[1 W. R., 86

101. ——— **Effect of acquisition of right.**—*Right to hold at fixed rates.*—A right to hold at fixed rates does not necessarily follow a right of occupancy. RAMNARAIN SINGH *v.* HURONATH ROY

[W. R., 1864, Act X, 92

102. ——— *Interest in land.* —*Proprietorship of the soil.*—A ryot having a mere right of occupancy, and not a right to hold at a fixed rate of rent, has not such an interest in the land as gives him a right to a share of the rent. He has simply a right to occupy the land in preference to any other tenant, so long as he pays a fair and equitable rent. A Judge cannot fix the term in suits by a landlord for rent or for kabuliats, as can be done in a suit by a ryot having a right of occupancy for the delivery of a pottah. HILLS *v.* ISHORE GHOSE . . . . . W. R., F. B., 131

2. LOSS OR FORFEITURE OF RIGHT.

103. ——— **Sub-letting, Effect of.**—*Right of sub-lessee of occupany ryot.*—A ryot with a right of occupancy does not, by sub-letting his land, lose his right; but the sub-lessee thereby gains no right. KALEE KISHORE CHATTERJEE *v.* RAM CHURN SHAH

[9 W. R., 344

JAMIR GAZI *v.* GONEYE MUNDUL

[13 B. L. R., 278, note : 12 W. R., 110

GORA CHAND MUSTAFI *v.* MADAN MOHAN SIKDAR

[13 B. L. R., 279, note : 11 W. R., 94

DWARKANATH MISREE *v.* KANHAYE SIRDAR

[16 W. R., 110

104. ——— **Arrangement to pay certain rent for fixed term.**—*Surrender of rights by ryot for enlarged holding.*—A tenant with a right of occupancy does not lose that right merely by making an arrangement to pay a certain rent for his holding for a certain number of years; but if he surrenders his rights in return for an enlarged holding his occupancy right will be destroyed. DIRGANJ SINGH *v.* FOORSUT . . 1 N. W., 99 : Ed. 1873, 144

RIGHT OF OCCUPANCY—*continued.*

2. LOSS OR FORFEITURE OF RIGHT—*continued.*

Arrangement to pay certain rent for fixed term—*continued.*

105. ——— **Abandonment of land.**—*Khodkast ryot.*—The right of occupancy given in section 6, Act X of 1859, was a right to occupy and hold the land. When a ryot leaves his home he ceases to be a khodkast ryot; and if he refuses to come back and cultivate the land when called upon, the zemindar is at liberty to settle the land with others. HARO DASS *v.* GOBIND BHUTTACHARJEE

[3 B. L. R., Ap., 123

S. C. HURO DOSS *v.* GOBIND BHUTTACHARJEE

[12 W. R., 304

RAM CHUNDER ROY CHOWDHRY *v.* BHOLANATH LUSHKUR . . . . 22 W. R., 200

MAHOMED TUMEEZOODDEEN MUNDUL v. LUKKEE NARAIN DEY SIRCAR . . 25 W. R., 104

106. ——— *Ceasing to hold or cultivate land.*—A mokurrari mirasi pottah was granted in 1838 to *A.*, who was found to have held thereunder as a ryot till 1859, when his right, title, and interest were sold in execution of a decree and purchased by *B.*, and the latter was accepted as tenant by and paid rent to the zemindar for nearly twelve years. The zemindari being sold in 1871 for arrears of Government revenue, was purchased by the plaintiff, who gave *B.* notice to quit, and on his refusal brought a suit to eject him. *Held* that, by ceasing himself to hold or cultivate the land, it might be considered that *A.* had abandoned his right, or that the right had ceased. No right, therefore, remained in *A.* or his heirs such as would prevent the plaintiff from ejecting *B.* NARENDRA NARAYAN ROY CHOWDHRY *v.* ISHAN CHANDRA SEN

[13 B. L. R., F. B., 274 : 22 W. R., 22

See HYES *v.* MONEEROODDEEN AHUNG

[24 W. R., 6

and BONOMALEE BAZADAR *v.* KYLASH CHUNDER MOJOOMDAR . . . 24 W. R., 72

See HUREEHUR MOOKERJEE *v.* JODOONATH GHOSE . . . . . 7 W. R., 114

107. ——— **Failure to pay rent—non-payment of rent for long period.**—Where a ryot with a right of occupancy fails to pay rent even for five years, he does not necessarily forfeit his right, unless he has abandoned his land. BROJENDRO COOMAR ROY CHOWDHRY *v.* BUNGO CHUNDER MUNDUL . . . . 12 C. L. R., 389

108. ——— *Ejectment.*—*Abandonment of holding.—Beng. Act VIII of 1869, ss. 6 and 22.*—When a tenant having a right of occupancy abandons his holding and ceases to pay rent for five years, it is not a right construction of section 22 of Bengal Act VIII of 1869 to say that the landlord may not put another tenant into posses-

RIGHT OF OCCUPANCY—*continued.*

2. LOSS OR FORFEITURE OF RIGHT—*continued.*

Failure to pay rent—non-payment of rent for long period—*continued.*

sion without the formality of a suit. Section 6 of Bengal Act VIII of 1869 expressly limits duration of occupancy right by the words "so long as he pays the rent payable on account of the same," and distinct abandonment and cessation to pay rent disentitle the tenant from enforcing the rights which he may have previously enjoyed. GOLAM ALI MUNDUL *v.* GOLAP SOONDERY DOSSEE **[I. L. R., 8 Calc., 612: 10 C. L. R., 499**

109. ——— *Land submerged for long period.*—Where land held by tenants with rights of occupancy was completely submerged for a number of years, and during the period of such submersion no rent was paid by the tenants,—*Held* that the tenants had, by non-payment of rent during the period of submersion, forfeited their rights of occupancy. HEMNATH DUTT *v.* ASHGUR SINDAR **[I. L. R., 4 Calc., 894**

110. ——— *Dispossession.*—*Beng. Act VIII of 1869, s. 6.—Suit for possession of land.*—Where a ryot had been in possession of land, but had been dispossessed, and for some years previous to suit had failed to pay rent,—*Held* that at the time of the institution of a suit for recovery of possession he had no subsisting title, and consequently his suit must fail. HEM CHUNDRA CHOWDHARI *v.* CHAND AKUND . . **I. L. R., 12 Calc., 115**

111. ——— **Acquisition of ryot's holding by zemindar, Effect of.**—*Wrongful eviction.—Benami purchase.*—The right of occupancy is a right given to a ryot continuing only so long as the ryot pays rent for the land he holds, and though it cannot be affected by a wrongful eviction, still, when the zemindar acquires the land by purchase and takes possession, even in the benami name of a third party, seeing that he cannot pay rent to himself, the right is gone and cannot subsequently be revived. RADHA GOBIND KOER *v.* RAKHAL DAS MUKERJEE **[I. L. R., 12 Calc., 82**

112. ——— **Setting up adverse title.**—*Forfeiture of right of occupancy.—Denial of title.—Quære,*—Under what circumstances may a person having a right of occupancy forfeit it by setting up an adverse title? UNNOPOORNA DOSSEE *v.* RADHA MOHUN PATTRO . . . . **19 W. R., 95**

113. ——— *Effect of denial of title on tenant's rights.*—The setting up of a hostile title against the zemindar by a tenant under a pottah found to be fraudulent, amounts to a disclaimer and forfeiture of all rights of occupancy to which the tenant might have been entitled had he set up his title under section 6, Act X of 1859. NADIR BEG *v.* MUDDURRAM . **2 W. R., Act X, 2**

114. ——— **Assertion of transferable right.**—*Ejectment.—Transfer.—Effect of asserting a right to transfer land, by a ryot having a right of occupancy, who remains in possession.*—A ryot having a right of occupancy is not liable to ejectment by his superior landlord merely because he has asserted a transferable right in the lands, and sold that right to a stranger without giving up possession of the land. *Narendra Narain Roy Chowdhry* v. *Ishan Chandra Sen, 13 B. L. R., 274;* and *Ram Chandra Roy Chowdhry* v. *Bholanath Lushkhur, 22 W. R., 200,* distinguished. *Dwarka Nath Misser* v. *Hurrish Chundra, I. L. R., 4 Calc., 925,* referred to. SRISHTEEDHUR BISWAS *v.* MUDAN SIRDAR **[I. L. R., 9 Calc., 648**

115. ——— **Surrender to landlord.**—*Pottahdar in Madras Presidency.—Transfer by tenant.*—The tenancy of an ordinary pottahdar in the Madras Presidency, when properly created, entitles the tenant to the right of occupancy for the purpose of cultivation, until default in the payment of the stipulated rent or surrender to the landlord in writing, and the right of the tenant is assignable as a mortgage security. A verbal surrender by the tenant to the landlord after the assignment was known to the landlord cannot be relied on as rendering the assignment void. VENKATARAMANIER *v.* ANANDA CHETTY . . . . . **5 Mad., 120**

116. ——— **Delay in applying for pottah from Government.**—*Occupancy ryot in Assam.*—An occupancy ryot in Assam does not forfeit his right to a pottah from Government by not applying for it so soon as another who was not in possession of the land. MORA RABHA *v.* DHEW RABHA . . . . . **17 W. R., 158**

3. TRANSFER OF RIGHT.

117. ——— **Nature of right as to transferability.**—*Consent of zemindar to transfer.*—A right of occupancy is not transferable irrespective of the consent or otherwise of the zemindar. BUTI SINGH *v.* MURAT SINGH **[13 B. L. R., 284, note**

S. C. BOOTEE SINGH *v.* MOORUT SINGH **[20 W. R., 478**

118. ——— **Right of transferee against zemindar.**—*Consent of zemindar.*—A transfer of a mere right of occupancy gives no title to the transferee against the zemindar. DURGA SUNDARI *v.* BRINDABUN CHUNDRA SIRKAR CHOWDRY **[2 B. L. R., Ap., 37: 11 W. R., 162**

119. ——— **Power of transfer.**—*Consent of landlord.—Act X of 1858, s. 6.—Transferable tenure.*—A tenure not originally transferable without the consent of the landlord does not become so merely because the tenant has obtained a right of occupancy under section 6, Act X of 1859. *Quære per* PEACOCK, *C. J.*—Whether a right of occupancy gained under section 6, Act X of 1859, is necessarily

RIGHT OF OCCUPANCY—*continued.*

3. TRANSFER OF RIGHT—*continued.*

Power of transfer—*continued.*

heritable. AJOODHIA PERSAD *v.* EMAMBANDI BEGUM . . . B. L. R., Sup. Vol., 725 [2 Ind. Jur., N. S., 192 : 7 W. R., 528

120. ——————— *Right of zemindar as against transferee.—Mesne profits.*—A right of occupancy which is not transferable is merely a right on the part of the person entitled to it to occupy and till the soil, either by himself or by persons dependent on or subordinate to him,—*e.g.* his servants, lessees, or licensees. Therefore, where a non-transferable right of occupancy was transferred, and the transferee was in actual possession of the soil, tilling and using it for his own benefit,—*Held* that the zemindar had a right of suit against the transferee to recover possession of the land. He was also entitled to recover as damages so much of the zemindar's rents and profits as the defendant had, while in possession, been the means of preventing the zemindar from receiving. SOHODWA *v.* SMITH [12 B. L. R., 82 : 20 W. R., 139

121. ——————— *Right of heir of person with right of occupancy.*—The heir of a person with a restricted right of occupancy, though not competent to transfer that right out and out by sale, may make for sale such arrangements as he thinks fit for the cultivation and management of the tenure. MOHANUND BANERJEE *v.* SHUSHEE SHEKHUR CHATTERJEE . . 20 W. R., 132

122. ——————— *Beng. Act VIII of 1869, s. 6, Occupancy right under.—Sale in execution of decree.—Gift.*—The right of occupancy acquired by a cultivating ryot under section 6 of Bengal Act VIII of 1869 cannot be transferred either by a voluntary sale or gift, or by a sale in execution of a decree. DWARKA NATH MISSER *v.* HURRISH CHUNDER [I. L. R., 4 Calc., 925 : 4 C. L. R., 130

123. ——— **Right of transferee.**—*Purchaser at sale in execution of decree.*—The sale of a jote in execution of a decree against the jotedar does not prove it to be transferable, nor does the purchaser acquire a right of occupancy by his purchase where the right is not dependent on custom, but is a mere creature of the rent law. KRIPA NATH CHAKEE *v.* DYAL CHAND PAL [22 W. R., 169

124. ——— **Customary right of transfer.**—*Tenure of khodkast ryot.*—There is nothing unreasonable in the custom by which the tenure of a khodkast ryot, who has built a pucca house on his land, and has acquired a right of occupancy under section 6, Act X of 1859, is transferable. CHUNDER COOMAR ROY *v.* KADERMONEE DOSSEE [7 W. R., 247

125. ——— **Transfer to mokurrari tenant.**—*Dispossession by landlord.—Trespass.*—A ryot having a right of occupancy can create a mokurrari lease, but the terms of a lease granted by him to a third party can only be binding as between them both. If the landlord dispossesses the sub-lessee without the sanction of law, he is guilty of trespass. DUMREE SHAIKH *v.* BISSESSUR LALL [13 W. R., 291

126. ——— **Proof of transferability.**—*Custom.—Special stipulation.*—In order to make a right of occupancy transferable, it must be shown that it is so transferable according to the custom of that part of the country in which the tenure is situated. Where no mention is made in a dowl of any right to transfer, the existence of the power to transfer cannot be presumed. UNNOPOORNA DOSSIA *v.* OOMACHURN DOSS . . 18 W. R., 55

127. ——————— *Suit by transferee against zemindar for registration of name.*—The purchaser of a right of occupancy in certain land, suing a zemindar who has refused to register his name in the zemindari sherista for the amount of land claimed and at a specified rent, is bound to show that the tenure was one which could be transferred, and that the sale did not involve any redistribution of the rent. SHUNKURPUTTER THAKOORAIN *v.* SAIFOOLLAH KHAN . 18 W. R., 507

128. ——— **Obligation of zemindar to register a transfer.**—*Act X of 1859, s. 27.*—A right of occupancy is a transferable tenure, but the zemindar was not bound to register the transfer under section 27, Act X of 1859. TARAMONEE DOSSEE *v.* BIRRESSUR MOZOOMDAR . . 1 W. R., 86

129. ——— **Finding as to transferability.**—*Right of tenant with right of occupancy to transfer.*—Although it is the general rule in the North-Western Provinces that a tenant's holding is not transferable without the zemindar's consent, yet the exceptions are so far from rare that it is necessary in each case to come to a distinct finding on this point, and decree accordingly. HADAYET ALY *v.* LALL SINGH [1 N. W., Pt. II, p. 38 : Ed. 1873, 96

130. ——— **Transfer by ryot holding land for agricultural purposes.**—*Transfer for conversion to other purposes.*—Ryots having a right of occupancy for agricultural purposes may by custom have the right to transfer it to any person to hold for the same purpose; but that does not necessarily imply that the transferee may convert the land into a dwelling-house and appurtenances. JUGUT CHUNDER ROY CHOWDHRY *v.* ESHAN CHUNDER BANERJEE . . . 24 W. R., 220

131. ——— **Effect of transfer.**—*Sub-letting.—Right of ejectment.—Sub-tenant.*—A tenant having a right of occupancy does not determine it by sub-letting the land; therefore, where the lessees are ejected by the zemindar, they are entitled to recover possession under the terms of their leases. JAMIR GAZI *v.* GONEYE MUNDUL [13 B. L. R., 278, note : 12 W. R., 110

RIGHT OF OCCUPANCY—*continued.*

3. TRANSFER OF RIGHT—*continued.*

Effect of transfer—*continued.*

132. ——————— *Right of zemindar against transferee.*—If a ryot having a right of occupancy transfer his right to another, his right is not thereby forfeited, and the zemindar has no right to eject the transferee. GORACHAND MUSTAFI *v.* MADAN MOHAN SIKDAR

[13 B. L. R., 279, note

S. C. GORACHAND MOOSTAFEE *v.* BURODA PERSHAD MOOSTAFEE . . . 11 W. R., 94

DWARKANATH MISREE *v.* KANAYE SIRDAR

[16 W. R., 111

133. ——————— *Sub-letting tenure.—Right of sub-lessee.*—A right of occupancy under section 6, Act X of 1859, may be acquired by a tenant of land sub-let by a ryot; but not unless the ryot sub-letting has himself a right of occupancy. The acquiring the right was confined to the special cases in Act X of 1859. Where that Act was held not to apply, there was no equitable principle on which a person occupying under a grant for no specified period could acquire a right of occupancy. RAMDHAN KHAN *v.* HARADHAN PARAMANICK

[9 B. L. R., 107, note: 12 W. R., 404

134. ——————— *Sub-letting.—Act X of 1859, s. 6.—A.* sued for a declaration of right of occupancy founded on a pottah and long possession, and alleged that he had under-let to ryots the land devised by the pottah, but that *B.* had obtained a decree against them for rent. The lower Court, on appeal, held that *A.* had determined his tenancy by quitting the land. *Held* that *A.* did not, by sub-letting, transfer the right of occupancy. Decree reversed, and case remanded for trial on the merits. HARAN CHANDRA PAL *v.* MUKTA SUNDARI CHOWDHRAIN

[1 B. L. R., A. C., 81: 10 W. R., 113

135. ——— **Relinquishment of tenancy.**—*N.-W. P. Rent Act, XVIII of 1873, s. 9.—Transfer.—Per* TYRRELL, *J.*—A relinquishment by an occupancy tenant of his holding is not a "transfer" within the meaning of section 9 of the Rent Act. LALJI *v.* NURAN . . I. L. R., 5 All., 103

136. ——— **Mortgage.**—*Act XII of 1881, s. 9.—Landholder and tenant.—Usufructuary mortgage by occupancy tenant.—"Transfer."*—A mortgage with possession by an occupancy tenant of his cultivatory holding is a "transfer" within the prohibition of section 9 of the N.-W. P. Rent Act, 1881. GANGA DIN *v.* DHURANDHAR SINGH

[I. L. R., 5 All., 495

137. ——————— *Act XII of 1881 (N.-W. P. Rent Act), s. 9.—Landholder and tenant.—Right of occupancy.—Meaning of "transfer."—Held* by the Full Bench (MAHMOOD, *J.*, dissenting) that an hypothecation by an occupancy tenant of his right of occupancy was not a "transfer" within the meaning of section 9 of the N.-W. P. Rent Act, 1873. GOPAL PANDEY *v.* PARSOTAM DAS. BADRI NATH *v.* PARBAT . . . I. L. R., 5 All., 121

RIGHT OF OCCUPANCY—*continued.*

3. TRANSFER OF RIGHT—*continued.*

138. ——— **Sale in execution of decree.**—*Act XVIII of 1873, s. 9.—Restriction on sale.—Held* (by a majority of the Full Bench) that the right of an occupancy tenant is transferable by sale in execution of decree, but only as between persons who have become by inheritance co-sharers in such right. *Per* STUART, *C. J.*—That such right is transferable by sale in execution of decree without any restriction. ABLAKH RAI *v.* UDIT NARAIN RAI

[I. L. R., 1 All., 353

139. ——————— *Act XVIII of 1873, s. 9.*—Section 9 of Act XVIII of 1873 does not prevent a landholder from causing the sale, in execution of his own decree, of the occupancy right of his own judgment-debtor in land belonging to himself. *Ablakh Rai* v. *Udit Narain Rai, I. L. R., 1 All., 353,* distinguished. UMRAO BEGAM *v.* LAND MORTGAGE BANK OF INDIA

[I. L. R., 1 All., 547

Affirmed by the Full Bench (SPANKIE, *J.*, dissenting). UMRAO BEGAM *v.* LAND MORTGAGE BANK OF INDIA . . . . I. L. R., 2 All., 451

140. ——— **Rights of tenants at a fixed rate.**—*Act XVIII of 1873, s. 9.—Ex-proprietary tenant.—Occupancy tenant.—Inheritance to rights of occupancy.—Held* that the proviso to the last clause of section 9 of Act XVIII of 1873 refers only to the holdings of ex-proprietary tenants and occupancy tenants, and not to tenants at fixed rates. BHAGWANTI *v.* RUDR-MAN TEWARI

[I. L. R., 2 All., 145

141. ——— **Transfer of portion of tenure.**—*Zemindar, Right of.—Ejectment.*—The existence of a custom in a particular district by which rights of occupancy in such district are transferable, will not justify the holder of such a right of occupancy in subdividing his tenure, and transferring different parts of it to different persons; and in case of such transfer the zemindar is entitled to treat the transferees as trespassers and eject them. TIRTHANUND THAKOOR *v.* MUTTY LALL MISSER

[I. L. R., 3 Calc., 774

142. ——— **Transfer of proprietary rights.**—*Possession by conditional mortgagees.—Sír land.—Act XVIII of 1873.—Purchase of proprietary rights by mortgagees.*—The possession of sír land by conditional mortgagees must be treated as the possession of the mortgagors. *Held,* accordingly, that where the mortgagees of certain proprietary rights in a mehal, being in possession of such rights, purchased the same at an auction sale, the sír land included in the proprietary rights was held by the mortgagors, at the time of the auction sale, within the meaning of section 7 of Act XVIII of 1873, and that after the sale, in virtue of the provision of that section, they became entitled to a right of occupancy in the sír land. DAKKAL RAM *v.* WAZIR ALI

[I. L. R., 1 All., 448

143. ——————— *Mortgage.—Ex-proprietary tenant.—Act XVIII of 1873, s. 7.—*

RIGHT OF OCCUPANCY—*continued.*

3. TRANSFER OF RIGHT—*continued.*

Transfer of proprietary rights—*continued.*

Transfer of rights.—Where a person mortgaged his proprietary rights in a mehal, which rights consisted of certain lands occupied by him, covenanting to give the mortgagee possession for the purpose of cultivation and the payment of Government revenue, and being at liberty to redeem the lands at any time at the end of the month Jaith, such person could not resist a claim on the part of the mortgagee for possession of the lands on the ground that he had a right of occupancy in the lands under section 7 of Act XVIII of 1873, such section not being applicable, and contemplating something more than a mere temporary transfer of proprietary rights. BHAGWAN SINGH *v.* MURLI SINGH . I. L. R., 1 All., 459

144. ——————— *Act XVIII of 1873, ss. 7, 9.—Ex-proprietary tenant.*—The right of occupancy which a person losing or parting with the proprietary rights in a mehal acquires, under section 7 of Act XVIII of 1873, in the land held by him as sír in such mehal at the date of such loss or parting, is a saleable interest. *Held*, where such a right was sold by private sale, that it was transferable, section 9 of Act XVIII of 1873 notwithstanding. *Umrao Begam* v. *Land Mortgage Bank of India, I. L. R., 2 All., 451*, followed. A deed executed by a village proprietor purporting to transfer his share in the village including his sír land and ex-proprietary right, divests such proprietor of the ex-proprietary right conferred by section 7 of Act XVIII of 1873. MARKUNDI DIAL *v.* RAM BARAN RAI . . . . . I. L. R., 2 All., 735

145. ——— **Transfer of ryot's interest.** —*Abandonment.—Forfeiture.—Beng. Act VIII of 1869, s. 6.*—A mokurrari mirasi pottah was granted in 1838 to *A.*, who was found to have held thereunder as a ryot till 1859, when his right, title, and interest were sold in execution of a decree, and purchased by *B.*, and the latter was accepted as tenant by, and paid rent to, the zemindar for nearly twelve years. The zemindari being sold in 1871 for arrears of Government revenue, was purchased by the plaintiff, who gave *B.* notice to quit, and on his refusal brought the present suit to eject him. *Held* that the right of occupancy which *A.* had acquired under section 6 of Bengal Act VIII of 1869, at the time of the sale to *B.*, was not transferable. NARENDRA NARAYAN ROY CHOWDHRY *v.* ISHAN CHANDRA SEN [13 B. L. R., F. B., 274: 22 W. R., 22

146. ——————— *Abandonment.* —*Status of purchaser as regards zemindar.*—A tenant having a right of occupancy cannot create an intermediate tenure between himself and the zemindar. If a ryot not having a transferable tenure quits possession, makes over his interests, and gives over the land to a third person, he may be treated as having abandoned all rights formerly possessed by him in the land. When a purchaser takes possession of a non-transferable tenure, and interposes himself between the zemindar and the ryots on the land, he thereby commits a wrong, and the zemindar may

RIGHT OF OCCUPANCY—*continued.*

3. TRANSFER OF RIGHT—*continued.*

Transfer of ryot's interest—*continued.*

sue to declare that no interest is vested in such purchaser, or to restrain him from interfering with the collection of rent. HUREEHUR MOOKERJEE *v.* JODOONATH GHOSE . . . . . 7 W. R., 114

147. ——————— *Recognition of transfer by zemindar.*—The conduct and acts of a zemindar may be such as to take a case out of the purview of the Full Bench decision in *Narendra Narayan Roy* v. *Ishan Chandra Sen, 13 B.L. R., 274: 22 W. R., 22*, which declares that a right of occupancy is not transferable,—*e.g.*, where a zemindar has clearly recognised a transfer and done everything in his power in accepting the transferee as his tenant. AMEEN BUKSH *v.* BHYRO MUNDUL [22 W. R., 493

148. ——————— *N.-W. P. Rent Act, XVIII of 1873, s. 9.—Sale of occupancy rights with zemindar's consent.—Acceptance of rent by zemindar from vendees.—Contract Act, ss. 2, 23.—Estoppel.—Evidence Act, ss. 115, 116.*—Under a deed dated in 1879, the occupancy tenants of land in a village sold their occupancy rights, and the zemindars instituted a suit for a declaration that the sale deed was invalid under section 9 of Act XVIII of 1873 (the N.-W. P. Rent Act in force in 1879), and for ejectment of the vendees, who had obtained possession of the land. It was found that the zemindars had consented to the sale to the vendees, and received from them arrears of rent due on the holding by the vendors, and had recognised them as tenants. *Held* on appeal under the Letters Patent, that the sale-deed was invalid with reference to the provisions of sections 2 and 23 of the Contract Act, inasmuch as its object was the transfer of occupancy rights, which was prohibited by section 9 of Act XVIII of 1873. *Held*, also, that the zemindars having accepted the vendees as tenants and taken rent from them, a tenancy was thereby constituted under the rent law; that the vendees were therefore not trespassers; and that, therefore, the question as to ejectment did not fall within the jurisdiction of the Civil Court. JHINGURI TEWARI *v.* DURGA . I. L. R., 7 All., 878

Upholding the judgment of MAHMOOD, *J.*, in DURGA *v.* JHINGURI . . I. L. R., 7 All., 511 where OLDFIELD, *J.*, and MAHMOOD, *J.*, differed in opinion.

149. ——— **Transfer by one co-sharer.** *N.-W. P. Rent Act, 1873, s. 9.—Suit by reversioner.—Transferee by inheritance.*—The plaintiffs sued to set aside an usufructuary mortgage of a cultivatory holding by the defendant *M.* to the other defendants, on the averment that they held the same jointly with *M.'s* deceased husband, and she had no right to make the mortgage. The lower Appellate Court found that the land was held separately by *M.'s* husband, and that she had succeeded to its occupancy on the death of her son. The suit was dismissed, in special appeal, on the facts found, and also with reference to section 9 of Act XVIII of 1873. BARANJA *v.* BASDEO MISSER . . . . . 7 N. W., 241

RIGHT OF OCCUPANCY—*continued.*

3. TRANSFER OF RIGHT—*continued.*

150. ——— Transfer by proprietor in mehal.—*Ex-proprietary tenant.—Act XII of 1881 (N.-W. P. Rent Act), ss. 7, 9.*—The words of section 7 of the N.-W. P. Rent Act, "shall have a right of occupancy in the land held by him as sír," are intended by operation of law to confer upon the proprietor who has sold his proprietary rights in a mehal, irrespective of whether he claims it or not, the status of an occupancy tenant, to whom the prohibition of section 9 will apply. *Held*, therefore, that where a proprietor in a mehal holding sír land, who is selling his proprietary rights, at the same time transfers all his rights, actual, vested, or contingent, in such sír land, such transfer is one of his right of occupancy in such sír land, and as such is prohibited by section 9 of the N.-W. P. Rent Act. GULAB ROY *v.* INDAR SINGH . . I. L. R., 6 All., 54

151. ——— Right of mortgagees from tenant.—*Mortgagees, Rights of, in suit for ejectment of tenants.*—If a zemindar obtains a decree in the Revenue Court for the ejectment of tenants with a right of occupancy who have mortgaged portions of their holdings, it does not necessarily follow that the interests of the mortgagees determine with the rights of the original tenants. Where certain tenants with a right of occupancy mortgaged portions of their holdings, and the zemindar assented to the substitution of the mortgagees for the original tenants in respect of those portions of the holding of which they had respectively obtained possession, it was held that the zemindar could not destroy the interest of the mortgagees in possession by obtaining a decree from the Revenue Court ousting only the original tenants. GOBERDHUN *v.* GOKAL CHAND [7 N. W., 31

152. ——— Validity of transfer.—*Rights of mortgagees from tenant.—Lease.—"Zur-i-peshgi" lease.—Act XII of 1881 (N.-W. P. Rent Act), ss. 8, 9.*—The occupancy tenants of certain land executed a zur-i-peshgi lease in favour of certain persons, by which, in consideration of a sum of money, it was agreed that the latter should have the right of occupying and cultivating the occupancy holding as tenants for a term of years at a nominal rent. In pursuance of this agreement those persons obtained possession. The zemindar thereupon brought a suit against them for ejectment, and to have the zur-i-peshgi lease set aside. *Held* by the Full Bench that the zur-i-peshgi lease was a transfer of occupancy rights within the meaning of section 9 of the N.-W. P. Rent Act (XII of 1881), and was therefore invalid. *Per* PETHERAM, *C. J.*—A right of occupancy means nothing but the right to live on and cultivate land as one's own. *Per* STRAIGHT, *J.*—The last sentence of section 8 of the Rent Act should not be read as declaring that any occupancy tenant may sub-let his land, but that the scope of the proviso is limited to tenants who actually occupy or cultivate land under a written lease, without having acquired a right of occupancy. *Hidayatullah* v. *Ram Niwaz Rai, Weekly Notes, All., 1882, p. 80,* referred to. ABADI HUSAIN *v.* JURAWAN LAL [I. L. R., 7 All., 866

RIGHT OF OCCUPANCY—*continued.*

3. TRANSFER OF RIGHT—*continued.*

Validity of transfer—*continued.*

153. ——— *Suit for ejectment.—Act by tenant inconsistent with purpose for which land was let.—Mortgage of occupancy holding.—Cancelment of mortgage before suit for ejectment.—Act XII of 1881 (N.-W. P. Rent Act), ss. 9, 93 (b), 149.*—An occupancy tenant made an usufructuary mortgage of his holding, and afterwards had the land and the mortgage-deed returned to him, and the mortgage was cancelled. Subsequently, the landlord instituted a suit for ejectment, on the ground that by the mortgage the tenant had committed an act inconsistent with the purpose for which the land was let, within the meaning of Act XII of 1881 (N.-W. P. Rent Act), section 93 (*b*). *Held* by OLDFIELD, *J.*, that, apart from the question whether executing a mortgage of his holding was an act within the meaning of section 93 (*b*) of the Rent Act, the mortgage having been cancelled, there was no cause of action left, and the penalty should not be enforced, with reference to section 149. *Held* by MAHMOOD, *J.*, that the occupancy tenure could not be brought to an end except on grounds clearly provided by the law; and the execution of the mortgage, though illegal and void, was not "any act or omission detrimental to the land" or "inconsistent with the purpose for which the land was let" within the meaning of section 93 (*b*) of the Rent Act, and furnished no ground for ejectment. *Gopal Panday* v. *Parsotam Das, I. L. R., 5 All., 121;* and *Naik Ram Singh* v. *Murli Dhar, I. L. R., 4 All., 371,* referred to. Also *per* MAHMOOD, *J.*—The terms of section 93 (*b*) of the N.-W. P. Rent Act apply, *exempli gratia,* to cases in which land is given to a tenant for purposes of cultivation, and is used by him for building or other purposes. DEBI PRASAD *v.* HAR DAYAL [I. L. R., 7 All., 691

154. ——— *N.-W. P. Rent Act, 1881, XII, ss. 7, 9.—Sír-land.—Sale of sír land by co-sharer.—Ex-proprietary tenant.—Held* by PETHERAM, *C. J.*, and STRAIGHT, OLDFIELD, and BRODHURST, *JJ.*, that the question whether the proprietary rights of a co-sharer in the sír of a mehal are distinct and separate from the proprietary rights in the mehal itself, so as to enable the owner of one share to sell and give possession of his sír alone as against his co-sharers, must be determined with reference to the tenure and conditions under which land is held in the mehal by the coparceners, to be ascertained in each case. *Per* PETHERAM, *C. J.*, and STRAIGHT and OLDFIELD, *JJ.*—In zemindari tenures, in which the whole land is held and managed in common, a co-sharer cannot convey his right of occupancy in the sír as something distinct from his proprietary rights in the mehal. In puttidari tenures, in which the lands are divided and held in severalty, each proprietor managing his own lands, there may be lands which come within the classification of sír given in the Rent Act, but they would not seem to be on a different footing from any other land held in severalty by a proprietor. *Per* BRODHURST, *J.*—So long as a person is the sole proprietor of a mehal, he is not re-

RIGHT OF OCCUPANCY—*continued.*

3. TRANSFER OF RIGHT—*continued.*

Validity of transfer—*continued.*

strained by any law from effecting a sale of his proprietary rights in his sír land, even though he retains possession of the whole of the other lands of the mehal. *Per* MAHMOOD, *J.*—That the proprietary rights of a joint co-sharer in his sír land form an essential part of his rights in the mehal; that such proprietary rights in the sír land may be sold, but that the purchaser under such a sale could not obtain any such possession as would operate in defeasance of the exproprietary right in such sír land conferred by section 7 and secured by section 9 of the Rent Act. *Sahib Ram* v. *Kishen Singh, Weekly Notes, All., 1882, p. 19, Hazari Lal* v. *Ugrah Rai, Weekly Notes, All., 1884, p. 103; Gulab Rai* v. *Indar Singh, I. L. R., 6 All., 54;* and *Tirmal Singh* v. *Bhola Singh, Weekly Notes, All., 1884, p. 169,* referred to. SITAL PRASAD v. AMTUL BIBI . . . **I. L. R., 7 All., 633**

155. ——————— *Mortgage by conditional sale of occupancy rights to zemindar.—Act XVIII of 1873 (N.-W. P. Rent Act), s. 9.—Act XII of 1881 (N.-W. P. Rent Act), ss. 2, 9.*—The occupancy tenant of certain land, before the N.-W. P. Rent Act (XII of 1881) came into force, mortgaged his rights to his zemindars by a deed of conditional sale. The zemindars sued the heirs of the conditional vendee for foreclosure and possession of the mortgaged property. *Held* by the Full Bench that the terms of the judgment of the Full Bench in *Naik Ram Singh* v. *Murli Dhar, I. L. R., 4 All, 371,* were directly applicable to the case, and that the transaction of mortgage, which was subsequently to become a sale, was not a transaction to which section 2 of the Rent Act applied, because the sale would not have effect till after the Act came into operation. MURLI RAI *v.* LEDRI . . . **I. L. R., 7 All., 851**

156. ——————— *Effect of transfer on occupancy right.—Transfer of trees.—Act XII of 1881, s. 9.*—The presumption of law and the general rule is that property in timber on a tenant's holding rests in the landlord in the same way as, and to no less an extent than, the property in the soil itself. *Faqueer Soonar* v. *Khuderun, 2 N. W., 251; Ajudhia Nath* v. *Sital, I. L. R., 3 All., 567; Abdool Rohoman* v. *Dataram Bashee, W. R., 1864, 367; Rutonji Edulji Shet* v. *Collector of Tanna, 11 Moore's I. A., 295,* referred to. *Held,* therefore, where an occupancy tenant transferred his holding, that the transfer was not only invalid in respect of the holding, but in respect also of the trees on the holding. Where an occupancy tenant, under the impression that he was a tenant at fixed rates, sold his holding, and the landholder sued the tenant and his vendee to set aside the transfer as contrary to law, and for possession of the holding,—*Held* that the transfer could not be treated as a relinquishment by the tenant of the holding to the landholder, and that the proper decree to make was that the transfer should be cancelled, that the plaintiff was entitled to eject the vendee from the land, but the plaintiff was not entitled to take the holding from the vendor. KASIM MIAN *v.* BANDA HUSAIN . **I. L. R., 5 All., 616**

RIGHT OF OCCUPANCY—*continued.*

3. TRANSFER OF RIGHT—*continued.*

Validity of transfer—*continued.*

157. ——————— *Inquiry as to validity.*—When a ryot alleges a mokurrari right by purchase, the nature of his vendor's title ought to be inquired into, and whether it was or was not transferable. GOBIND CHUNDER MOZOOMDAR *v.* BISSUMBHUREEE DOSSEE. RAM CHUNDER MITTER *v.* RAMZANEE BEBEE . . **2 W. R., Act X, 4**

BANEE MADHUB BANERJEE *v.* JOY KISHEN MOOKERJEE . . . **4 W. R., Act X, 16**

158. ——————— *Transfer of tenure.—Ejectment of transferee.*—Where a tenure has been transferred by the tenant, and it is found that the transfer was invalid, the zemindar is entitled to eject the transferee, and look to the former tenant for his rent. SUDDYE PURIRA *v.* BOISTUB PURIRA **[12 B. L. R., 84, note: 15 W. R., 261**

RIGHT OF REPLY.

1. ——— **Witnesses not called for defence.**—Where defendant's counsel did not go into evidence, but had not intimated his intention to call witnesses, the plaintiff's counsel has a right to reply. VIRASVAMI CHETTI *v.* APPASVAMI CHETTI **[1 Mad., 375**

2. ——— **Decision on appellant's arguments after hearing respondent.**—Where an appellant had been heard at length and the respondent heard partly in answer, and the Court came to a conclusion after research into the record without any new matter being brought forward by the respondent, it was considered unnecessary to hear the appellant in reply. ROUSSRAU *v.* NUBOO KISHORE BHUDRO . . . . **12 W. R., 302**

3. ——— **Giving no opportunity for reply.**—*Ground for special appeal.*—Where an appeal was dismissed by the lower Appeallate Court, after hearing the respondent's pleader, without giving the appellant's pleader an opportunity to reply, the High Court, on that objection being made a ground of special appeal from an order of the Judge refusing to grant a review on that ground, set aside the order and sent the case back for re-trial. JARDINE *v.* TARINI MOHAN SEN . **8 B. L. R., Ap., 44**

Distinguished in RAM KOOMAR KYBURTO DASS *v.* SONATUN DASS PORAMANICK . **3 C. L. R., 23**

which was a case where, after some explanation from the appellant's vakil, the Judge said he did not think the Munsif's judgment erroneous, whereupon the vakil said he was not desirous of arguing the case further, and the Judge began writing his judgment, and refused to hear another vakil instructed by the appellant who came in and asked permission to argue the case.

4. ——— **Hearing of rule "nisi."**—*Practice.*—On the hearing of a rule *nisi* after cause had been shown against the rule, it was objected, on counsel rising to support it, that there was no right of reply, no affidavit having been used in showing

RIGHT OF REPLY.—Hearing of rule "nisi"—*continued.*

cause. The objection was overruled and a reply allowed. BAMASUNDARI DASI *v.* RAMNARAYAN MITTER . . . . . **7 B. L. R., Ap., 57**

5. ——— **Question of law.**—*Construction of will.—Evidence not called for defendants.*—In a suit for the construction of a will, a reply was allowed although the defendants called no evidence, the suit being of the nature of a special case. JUDAH *v.* JUDAH . . . . . **5 B. L. R., 439**

6. ——— **Crown's right of reply.**—*Trial of prisoners charged with distinct offences in one indictment.*—Where two prisoners were charged with distinct offences in the same indictment, the calling of evidence on behalf of one does not give the Crown a right of reply upon the other. QUEEN *v.* ABBAS . . . . . **2 Hyde, 247**

7. ——— *Use of documents in cross-examination by accused.*—The fact that the accused has, during the cross-examination of the witnesses for the prosecution, used certain documents, and that such documents have been put in as evidence on his behalf, does not entitle the prosecutor to the right of reply, if, when asked upon the close of the case for the prosecution whether he means to adduce evidence, the accused says that he does not. QUEEN-EMPRESS *v.* GREES CHUNDER BANERJEE **[I. L. R., 10 Calc., 1024**

8. ——— *Witnesses not called for defence.—Reply by prosecutor.—Criminal Procedure Code (Act X of 1882), ss. 289, 292.*—At the close of the evidence for the prosecution, the attorney for the defence, in answer to the Judge, stated that he meant to call witnesses. The Court then adjourned, and on the following day the attorney stated that, on reconsideration, he did not intend to call witnesses. The Judge allowed the prosecutor to reply. *Held* that, though the strict interpretation of sections 289 and 292 of the Criminal Procedure Code would warrant this course, it was never meant by the Legislature that the prosecutor should have a reply when no witnesses are called for the defence, the object of the law being evidently to let each side have an opportunity of commenting on the evidence of the other, and not to give an additional advantage to the prosecutor in such a case as the present. HURRY CHURN CHUCKERBUTTY *v.* EMPRESS **[I. L. R., 10 Calc., 140 : 13 C. L. R., 358**

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1. INTEREST TO SUPPORT RIGHT.

1. ——— Party without right or interest in subject-matter of suit.—A party must show due right or interest in the subject-matter of the suit to entitle him to complain of any acts injurious thereto, and a mere stranger without interest cannot maintain any suit. CHUNDUN *v.* TALIB ALI [2 N. W., 41

BHEKDHAREE SINGH *v.* KISHEN PERSHAD SINGH [15 W. R., 106

2. ——— Want of interest in suit.—*Procedure in appeal.—Stay of proceedings on application.*—The High Court will not, on the application of the defendant, stay all proceedings in the appeal, on the ground that the plaintiff has no interest in the suit, that being a question which can more properly be raised in the suit or appeal itself. IN THE MATTER OF THE PETITION OF KHODEJOONISSA [7 W. R., 486

RIGHT OF SUIT—*continued.*

1. INTEREST TO SUPPORT RIGHT—*continued.*

3. ——— Right to expose fraud in Court.—*Evasion of order for guardians of minor to account.*—Where a gross fraud is being practised on a Court, with the object of evading an order which the Court has made directing a minor's guardians to account, any person who appears before the Court and exposes the fraud, undertaking also to prove it, has a *locus standi* in Court, and has a right to be heard. HOSSEIN ALI KHAN *v.* BURKUT ALI [10 W. R., 372

4. ——— Suit on covenant by purchaser.—*Held* that the plaintiff had no right to sue for the enforcement of the promise made in favour of the person from whom she bought, who did not convey to her the right to sue upon or otherwise enforce it. KISHOREE *v.* JEY KISHORE DASS . 3 Agra, 46

5. ——— Suit by male members of family.—*Insult to women.—Held* that male members of a family cannot sue for the injury or insult which they have sustained indirectly in consequence of ill-treatment of certain female members of the family, and that if there was any remedy by suit for such grievance or dishonour, it was open to the women themselves, and not to the plaintiffs. OODAI *v.* BHOWANEE PERSHAD . . . 1 Agra, 264

6. ——— Suit to have trust fund paid into Court.—*Suit quia timet.—Want of title or interest in plaintiff.*—A suit, the sole object of which was to have a trust fund paid into Court, was dismissed on the ground that the plaintiff had no actual title to any part of the fund. When the plaintiff in a suit, seeking solely the payment into Court of a fund for the relief of poor Armenian orphans, had no interest, except as a member of the Armenian community,—*Held* that he had no such title to part of the fund as would support the suit. *Held*, also, that the consent of the defendants, the trustees of the fund, to the decree sought by the plaintiff, would not justify the Court in making it. To support a bill *quia timet* the plaintiff must have a title in possession or expectancy, and the property must be in danger. SATOOR *v.* SATOOR . . 2 Mad., 8

7. ——— Interest sufficient to maintain suit.—*Suit by representatives of testator to enforce charitable or religious trusts under will.—Plaint, Allegations in.*—The representatives of a testator are entitled to sue for the enforcement of the due performance of trusts created by him for religious and charitable purposes, and in which they are not personally interested, but their suit will be dismissed, unless upon their plaint they substantially allege a state of circumstances which, if proved, will constitute a distinct breach of trust. BROJOMOHUN DOSS *v.* HUREO LOLL DOSS . . . 6 C. L. R., 58

8. ——— *Suit by wife in absence of husband for his share of property under partition-deed.*—Plaintiff brought a suit to procure delivery to her of a share of land purchased with money subject to the provisions of a deed of partition executed by her husband and the undivided members of his family. Plaintiff's husband had been since

RIGHT OF SUIT—*continued.*

1. INTEREST TO SUPPORT RIGHT—*continued.*

Interest sufficient to maintain suit—*continued.*

1854 absent in a foreign country. *Held* that the plaintiff sufficiently represented her absent and divided husband to enable her to sue for his share. PAPAMMAL *v.* RAMASWAMI CHETTI . **2 Mad., 365**

9. ——— **Interest, as Collector of revenue, of Government.**—*Suit for accretion.*—A chur, B., formed by gradual accretion to an estate (mouzah B.), was resumed by Government, who successively made temporary settlements for it with the putnidar of B. and the putnidar of an adjoining mouzah, D., as to its ownership. Three suits were brought by the latter, claiming the second chur as an accretion to his estate, in all which suits he was successful, and in one of which Government was a party. Government then sued to set aside the decrees in the two suits in which it was not a party, and for possession of the land in dispute, and it was found in that suit that the land was continuous to chur B., and not to mouzah D. *Held* that Government, having a right to revenue, but not to actual possession, could have no *locus standi* as plaintiff in such a suit. MOOKTAKESHEE DEBEA *v.* COLLECTOR OF BURDWAN **[12 W. R., 204**

10. ——— **Interest of lumbardar.**—*Suit for sums paid as nuzzerana before resumption.*—A certain sum was paid to Government as nuzzerana during the existence of the maafee grant through a lumbardar. After the maafee was resumed, and a Government jumma assessed upon it, the nuzzerana continued to be paid until the interest of the holder of the resumed maafee was confiscated for rebellion and sold at auction. After the confiscation, Government allowed the amount to the lumbardar, by deducting it from the amount of Government revenue paid by him. *Held* that by such arrangement the Government did in effect convey to him (lumbardar), as trustee on behalf of Government, such an interest in the estate as would enable him to sue and enforce such claim. ZAHOOR HOSSEIN *v.* ASSUD ALI . . . . . **2 Agra, Pt. II, 178**

11. ——— **Interest under decree.**—*Suit for balance due on decree.—Decree for money.*—The appellant having obtained a decree for money, sued to recover the unsatisfied balance thereof from the respondents, alleging that the property of the deceased judgment-debtor (being one-seventh share in the legacy of his father) was in their possession. He prayed that, after due inquiry, adjustment of accounts, and the determination of the value of the said legacy out of the share which might be found due to the judgment debtor, the above-mentioned balance might be decreed with interest and costs. *Held* that the decree did not vest in the appellant a right to the property sued for, and consequently he could not maintain the suit. MAHOMED AGA ALI KHAN *v.* WIDOW OF BALMAKAND **[L. R., 3 I. A., 241: 26 W. R., 82**

RIGHT OF SUIT—*continued.*

1. INTEREST TO SUPPORT RIGHT—*continued.*

12. ——— **Right of remote heir.**—*Existence of near heir.*—During the existence of a near heir, a more distant heir cannot sue. BISRAM SINGH *alias* BISHEN SINGH *v.* INDURJEET KOONWAR **[6 W. R., 2**

13. ——— **Suit by widow to set aside sale of reversioner's interest.**—A suit by a widow to set aside the sale of a judgment-debtor's interest as reversioner is not maintainable. SHIB KOONWER *v.* SADHO SINGH . . **2 Agra, 255**

14. ——— **Suit by widow as representing husband.**—*Hindu widow where sons are alive.—Disclaimer by sons.*—A Hindu widow cannot sue as representative of her husband when sons are alive, nor will a petition filed by the sons in a suit brought by her as such representative (in which petition the sons state that she has always been in possession of the property and is entitled to sue) cure the defect in her title. *Held*, also, by MACPHERSON, *J.*, that, in the absence of proof that the widow was the next reversioner after the sons, even a disclaimer by the sons prior to the institution of the suit, if it did not amount to an absolute assignment to the widow, would not entitle her to sue. RAM KANNYE GOSSAMER *v.* MEERNOMOYEE DOSSEE . **2 W. R., 49**

JANNOBEE CHOWDHRAIN *v.* DWARKANATH ROY CHOWDHRY . . . . **7 W. R., 455**

15. ——— **Interest of Government after grant.**—*Suit to recover surplus land from neighbouring grantees of Government who have encroached.*—Where a certain quantity of land was granted by Government to several grantees, subject to the condition of resumption if the land were allowed to remain uncultivated for certain years, and it is subsequently found that several grantees were not in possession of the land corresponding in quantity with that originally granted to them,—*Held* that the right of suit to recover possession of such surplus land was vested in the other grantees and not in the Government, who had no remaining interest in it, except that of resumption. GOVERNMENT *v.* RAM CHARUN MISR **[2 Agra, 74**

16. ——— **Suit on behalf of deceased lunatic's estate.**—*Manager appointed by Court of Wards.—Parties.*—One *L.*, in December 1867, undertook by a security-bond to be answerable to the Court of Wards for any default in the payment of rent which might be made by *S.* in performing the stipulation of a certain lease made to *S. M.*, described as manager under the Court of Wards of the estate of *B.*, a lunatic, deceased, brought a suit on the bond against *S.* and his brother. *Held* the defendants were not liable. The suit was not properly framed. The suit should have been brought, as to arrears accruing due during the lifetime of *B.*, by his personal representative; and as to arrears accruing due after *B.'s* death, by the successor of *B.* *M.*, not being in either position, was not entitled to sue. MAHOMED ABDUL HYE *v.* LUNJEET SINGH **[13 B. L. R., Ap., 14: 22 W. R., 200**

RIGHT OF SUIT—*continued.*

2. ACCRUAL OF RIGHT.

17. ——— **Cause of action.**—*Limitation.—Misapprehension of legal rights.*—A judgment of a Court altering a pure legal misapprehension as to rights and status, and passed in a suit to which *A.* was not a party, cannot confer any fresh cause of action as against *A.* by the party who previously misapprehended his correct legal claim. LOTF ALI KHAN *v.* AFZULOONISSA BEGUM [3 W. R., 113

18. ——— *Right of unborn son.—Hindu law.—Limitation.*—The texts of Hindu law laying down the right of an unborn son to sue, only inculcate a family duty, and do not apply to the operation of the law of limitation so as to give a perpetual right of action SEETUL PERSHAD SINGH *v.* GOUR DYAL SINGH . . . 1 W. R., 283

19. ——— *Suit for pre-emption.—Mortgage.*—A pre-emptor may sue any time before the expiry of a year from the date of transfer of possession. A mortgagee's absolute right and his claim to pre-emption arise from the time the sale becomes absolute. JANKEE KOOER *v.* LEKRANEE KOOER . . . . W. R., 1864, 285

20. ——— *Suit for pre-emption.—Conditional sale.—Held per* PEARSON, *J.*, and STRAIGHT, *J* (SPANKIE, *J.*, dissenting).—That the cause of action of a person claiming the right of pre-emption in the case of a conditional sale arises when the conditional sale takes place, and not when it becomes absolute; and therefore, where a conditional sale took place in 1867, and after it had become absolute a person sued to enforce his right of pre-emption in respect of the property sold, basing his claim upon a special agreement made in the interval between the date of the conditional sale and the date that it became absolute, and alleging that his cause of action arose on the latter date, that the suit was not maintainable, the plaintiff having no right of pre-emption at the time of the conditional sale. LACHMAN PRASAD *v.* BAHADUR SINGH [I. L. R., 2 All., 884

21. ——— *Suit for pre-emption.—Mortgage.—Conditional sale.*—The cause of action of a person claiming a right of pre-emption in respect of a mortgage by way of conditional sale arises on foreclosure of such mortgage,—that is to say, on the expiration of the year of grace without payment by the mortgagor of the mortgage-money, inasmuch as on the expiration of such period the mortgagee acquires a proprietary title to the mortgaged property. Such person can therefore sue to enforce his right of pre-emption on the expiration of such period, and need not wait to do so until the mortgagee has obtained proprietary possession of the mortgaged property. HAZARI RAM *v.* SHANKAR DIAL . . . . I. L. R., 3 All., 770

22. ——— *Conditional sale.—Pre-emption.—Wajib-ul-urz.*—On the 12th May 1871, *B.* mortgaged, by way of conditional sale, a share of a village to *A.*, a stranger. Such mortgage having been foreclosed, *A.* sued *B.* for possession of such share, and obtained a decree on the 16th April 1878, in execution of which he obtained possession of such share on the 9th September 1878. On the 1st September 1879, *S.*, a co-sharer, sued *A.* and *B.* to enforce his right of pre-emption in respect of such share, founding his suit upon the following clause in the administration paper of the village: "When a shareholder desires to transfer his share, a near relative shall have the first right; next the shareholders of the other pattis; if all these refuse to take, the vendor shall have power to sell and mortgage, &c., to whomsoever he likes." *Held* (PEARSON, *J.*, dissenting), having regard to the terms of the administration paper, that a cause of action accrued to *S.* when such mortgage was foreclosed. *Per* SPANKIE, *J.*, OLDFIELD, *J.*, and STRAIGHT, *J.* (STUART, *C. J.*, dissenting), that a cause of action also accrued to *S.* when such share was mortgaged by way of conditional sale to *A.* ALU PRASAD *v.* SUKHAN . . . . I. L. R., 3 All., 610

23. ——— *Suit for pre-emption.—Mortgage by conditional sale.*—The wajib-ul-urz of a village provided that the right of pre-emption should accrue "not only in respect of absolute sales, but also in regard to conditional sales, mortgages, and ticca leases." *Held* that under its terms the right of pre-emption accrued on a mortgage by conditional sale becoming absolute. The *ratio decidendi* in *Alu Prasad* v. *Sukhan, I. L. R., 3 All., 610,* relied on. The pre-emptor, in the case of a mortgage by conditional sale which has become absolute, is bound to pay as the price of the property the entire amount due on such mortgage at the time it became absolute. ASHIK ALI *v.* MATHURA KANDU . . . . I. L. R., 5 All., 187

24. ——— *First and second mortgagees.—Dispossession of second mortgagee.—Limitation.—Interest.*—*Z.* being indebted to *A*, executed in his favour a written mortgage of certain lands, in which it was agreed that if the debt was not repaid within a fixed time, *A.* should be put into possession of the lands. Subsequently *Z.* executed in favour of *P.*, to whom also he owed money, a second mortgage of the same land subject to the same condition. *P.* not receiving payment within the stipulated time, sued *Z.* on the mortgage and obtained a decree for possession of the lands, under which he was put into possession in the year 1846. After *P.* had obtained his decree, *A.*, whose debt had likewise remained unpaid, brought a suit as first mortgagee against *Z.* and *P.* for the possession of the lands, and obtaining a decree, recovered possession in the year 1847, dispossessing *P.* In the year 1870, the heirs of *Z.*, having paid off the debt due to *A.*, resumed possession, whereupon the heirs of *P.* applied to be restored to possession in execution of the decree obtained by *P.* in 1846. This application having been rejected on the ground that that decree had been fully executed when *P.* obtained possession

RIGHT OF SUIT—*continued.*

2. ACCRUAL OF RIGHT—*continued.*

Cause of action—*continued.*

under it, the heirs of *P.* instituted a suit against the heirs of *Z.* to recover possession and for interest during the time they were dispossessed. *Held* by their Lordships of the Judicial Committee, reversing the decision of the High Court, that the heirs of *P.* were entitled to possession on *A.'s* mortgage being paid off, and that their cause of action accrued and limitation ran against them from the time when the heirs of *Z.* resumed possession. *Held*, also, that they were not entitled to a decree for the interest accruing during the time they were dispossessed. NARAIN SINGH *v.* SIMBHOO SINGH . **I. L. R., 1 All., 325 [L. R., 4 I. A., 15**

25. ——————— *Suit by purchaser for possession.—Sale for arrears of revenue.—Limitation.*—In suits instituted by a purchaser to recover possession of an estate sold for arrears of Government revenue due in respect of such estate, the period of limitation cannot be calculated, under any circumstances, from a day anterior to the date of purchase. NARAIN CHUNDER *v.* TAYLER **[I. L. R., 4 Calc., 103: 3 C. L. R., 151**

26. ——————— *Suit to recover compensation for land taken for public purposes and paid by Government to wrong party.*—In a suit to recover money paid by Government to the defendant as compensation for land taken for public purposes which the plaintiff alleged to belong to him and not to the defendant,—*Held* that the plaintiff's right of action against the defendant accrued at the time when the defendant first took the money from Government, and that the ignorance of the plaintiff in regard to the accrual of his right did not prevent the time from running against his suit, unless it had been brought about by the fraud of the defendant. AZEOAL SINGH *v.* LALLA GOPEENATH **[8 W. R., 23**

27. ——————— *Possession of lands not capable of occupation.—Khal.*—When lands which are not in their nature capable of actual occupation (such as a khal) appertain to lands which are occupied, the possession of the former in point of law necessarily follows that of the latter; but when a khal dries up and becomes culturable, if any one to whom it does not belong takes actual possession of it, a cause of action accrues to the person in possession of the land to which the khal appertains from the time of the wrongful possession, and not from the time of the khal becoming culturable or cultivated. SUNNUD ALI *v.* KURIMOONISSA **[9 W. R., 124**

28. ——————— *Promise to pay "when I am able."*—In a written promise to pay "when I am able," those words are not to be treated as mere surplusage, but as a binding part of the contract. The promisee's cause of action does not accrue until the promisee is in circumstances to pay. WATSON & CO. *v.* BLECHYNDEN . **1 W. R., 368**

RIGHT OF SUIT—*continued.*

2. ACCRUAL OF RIGHT—*continued.*

Cause of action—*continued.*

29. ——————— *Suit for lost property discovered.—Jurisdiction.*—Where property lost in one district is found in another, in the possession of a party who refuses to restore it, the owner's cause of action arises from the date of such refusal; and a suit to recover possession of the property must be instituted in the district in which it is found RAM PERTAP SINGH *v.* BHOLABUTTY KOONWAR . . . . **9 W. R., 586**

30. ——————— *Service watan land.—Successive life-tenants.*—Where land belonging to a service watan held on a tenure of successive life-estates had passed out of the possession of the watandars, it was held that a cause of action to recover such land accrued to each successive life-tenant upon the death of his predecessor KURIA BIN HANMIA *v.* GURURAV . . **9 Bom., 282**

31. ——————— *Redemption.—Constructive payment.*—Where an assignee of land covenants with his assignors to repay all the moneys which they have at any time actually or constructively paid to Government for redemption, a suit against him, where money has not been actually paid, is premature, unless there is some definite agreement with Government as to the amount which Government can enforce. WOODROW *v.* SCHILLER **[1 Ind. Jur., N. S., 90**

32. ——————— *Repudiation by tenant of landlord's title.*—The repudiation of a tenant's title by his landlord can only form one cause of action, however often that repudiation is repeated. NUND KISHORE SINGH *v.* HUREE PERSHAD MUNDUL **[13 W. R., 64**

3. SURVIVAL OF RIGHT.

33. ——— **Trustee and cestui que trust.**—*Survival in representative of cestui que trust of right to sue.*—If the money due on a bond belonged to *A.*, and *B.*, the nominal plaintiff in a suit on the bond, was a trustee for him,—*Held* that *A.'s* son might sue to get the benefit of the decree obtained by *B.* JUGGOBUNDHOO COONDOO *v.* NIL COMUL SURMAH . . . . **W. R., 1864, 190**

34. ——— **Revival of suit in favour of minor.**—*Suit for partition.*—A suit for a partition of family property was, upon the death of the plaintiff, revived on behalf of his minor sons with the permission of the Court of first instance, and a decree for a partition given. The Appellate Court reversed the decree, upon the ground that, as a partition can be enforced on behalf of minors only when it can be proved to be necessary for the protection of the minors' interest, the cause of action did not survive to the minors. *Held* by the High Court that this was not a universal rule, and the Court of first instance having allowed the suit to be revived, considering that it had been brought on grounds which entitled the minors to the partition, the competency of the

RIGHT OF SUIT—*continued.*

3. SURVIVAL OF RIGHT—*continued.*

Revival of suit in favour of minor—*continued.*

plaintiff to proceed with the suit was not open to objection in the lower Appellate Court. PARVATHI *v.* MANJAYAKARANTHA . . . **5 Mad., 193**

35. ———— **Suit against agent for account.**—*Death of agent.—Act X of 1859, s. 20.*—A right of suit accruing against an agent for money received and accounts kept, falling within the class mentioned in section 24, Act X of 1859, survives the death of the agent. HILLS *v.* SHOKHEE MONEE DOSSEE . . . . . **10 W. R., 59**

4. SUIT BROUGHT IN TWO COURTS.

36. ———— **Suit simultaneously brought in different Courts on same cause of action.**—*Bar to maintenance of suit.—Election.*—A suit brought in a District Munsif's Court, filed on the same day as a suit for the same amount brought on the same cause of action in the Small Cause Court, is not a bar to the maintenance of the Small Cause suit; but the plaintiff must elect which suit he will proceed with. SUBBRAMANYIAN *v.* GANAPATHI **[I. L. R., 2 Mad., 123**

5. ACTS DONE IN EXERCISE OF SOVEREIGN POWERS.

37. ———— **Suit for damages for refusal of license by Excise authorities.**—*Liability of Government.—21 & 22 Vict., c. 106.—Matter of revenue.—21 Geo. III., c. 70, s. 8.*—The plaintiff, for some years before and up to 31st March 1874, carried on the business of a retail dealer in ganja and sidhi in Calcutta, and occupied for that purpose certain shops and godowns duly licensed under the Government regulations with respect to such sales. The license had to be renewed annually, and might, for sufficient cause, be withdrawn at any time within the year which terminated on 31st March. On 4th March 1874, while the plaintiff was carrying on his business, the Superintendent of Excise for Calcutta put the right to sell ganja and sidhi for the year commencing the 18th April 1874 up to the public competition, which was the usual way of distributing the yearly licenses. The sale notification contained a list of the shops with the localities where they were situated, but the right was reserved, in case of combination or for other cause, to transfer, before settlement, any shop from the locality specified, to some locality in the neighbourhood; and the conditions of sale were stated to be "that the Collector does not bind himself to accept the highest bid; that the settlement with the accepted auction-purchasers will be contingent on the approval by the police authorities of the proposed locality of the shop, and the character of the applicant for license; that the person accepted as the auction-purchaser shall deposit at once a sum equal to the license fee payable for two months, and shall at the same time state in writing in what building his shop will be opened, it being

RIGHT OF SUIT—*continued.*

5. ACTS DONE IN EXERCISE OF SOVEREIGN POWERS—*continued.*

Suit for damages for refusal of license by Excise authorities—*continued.*

understood that the above deposit will be returned to any person whose license is subsequently refused for police reasons." At the sale the plaintiff was the highest bidder for the licenses for five shops for the sale of ganja and sidhi, and his bids were recorded; and he also paid the deposit due in respect of the licenses amounting to R968. Subsequently the Excise authorities refused licenses to the plaintiff for the five shops, and failed to return the deposit made in respect thereof. In a suit brought by the plaintiff against the Secretary of State in Council for India, in which he alleged that the Government had accepted his bid, and thereby contracted with him to give him the licenses and allow him to carry on his trade in ganja and sidhi, and that by their not giving him licenses, and so forcing him to close his godowns and shops, they had committed a breach of contract for which he was entitled to damages,—*Held*, on the evidence, *per* PHEAR, *J.*, that there was no contract between the plaintiff and the Government. *Held*, also, both in the Court below and on appeal, even assuming there was a contract, that the suit was not maintainable, being in respect of acts done by the Government in the exercise of sovereign powers. Suits such as might, previous to the passing of 21 and 22 Victoria, Cap. 106, have been brought against the East India Company, and subsequently against the Secretary of State in Council, are limited to suits for acts done in the conduct of undertakings which might be carried on by private individuals without sovereign powers. NOBIN CHUNDER DEY *v.* SECRETARY OF STATE FOR INDIA **[I. L. R., 1 Calc., 11: 24 W. R., 309**

38. ———— **Suit for illegal levy of import duties by Collector.**—In 1877 *H.* shipped salt from Bombay to Malabar ports, having conformed to the provisions of the Bombay Salt Act, 1873, and paid R1-13-0 per maund, the full duty then leviable under the Tariff Act, 1875. By a notification under clause B, section 6, of the Tariff Act, the Governor General in Council had exempted salt which paid the excise duty at Bombay from liability to pay more than the difference between what was so paid and the import duty leviable under the Tariff Act. While the salt was in transit, the Salt Act of 1877, which raised the import duty to R2-8-0 a maund, came into force. The Collector of Malabar levied 11 annas a maund on the salt imported, in the belief that he was so authorised by law, and his action was ratified by Government. *Held* that, assuming the Collector's acts to be illegal, a suit to recover the amount so levied would lie against the Secretary of State for India in Council. *Held*, also, that the payment at Bombay was not a payment of import duty by anticipation, and that the plaintiff was not excused by the notification of the Governor General from paying the amount levied by the Collector. *Nobin Chunder Dey* v. *The Secretary of State for India, I. L. R., 1 Calc., 11*, dissented from. *Held*, on appeal, that the acts of State of which the Municipal Courts of Bri-

RIGHT OF SUIT—*continued.*

5. ACTS DONE IN EXERCISE OF SOVEREIGN POWERS—*continued.*

Suit for illegal levy of import duties by Collector—*continued.*

tish India are debarred from taking cognisance, are acts done in the exercise of sovereign powers which do not profess to be justified by municipal law. Where an act complained of is professedly done under the sanction of municipal law, and in the exercise of powers conferred by that law, the fact that it is done by the sovereign power, and is not an act which could possibly be done by a private individual, does not oust the jurisdiction of the Civil Courts. HARI BHANJI *v.* SECRETARY OF STATE FOR INDIA [I. L. R., 4 Mad., 344

S. C. on appeal, SECRETARY OF STATE FOR INDIA *v.* HARI BHANJI . I. L. R., 5 Mad., 273

39. ——— **Suit for breach of contract by Government to grant proprietary rights in land.**—*Contract entered into or acts done in the exercise of sovereign powers.*—The plaintiff in this suit, alleging that the Government had granted him a lease of certain land with the rights of a proprietor, promising to confer on him the proprietary rights in such land if he did certain things; that he had done such things; that the Government had refused to perform such promise and had conferred the proprietary rights in such land on another person, claimed by virtue of the contract between him and the Government, and as against the Government and such person, proprietary possession of such land. *Held per* SPANKIE, *J.*, that, assuming that the Government had entered into such a contract with the plaintiff as alleged, the suit would not lie, inasmuch as such contract was entered into, and the refusal of the Government to confer the proprietary rights in such land on the plaintiff, and the grant by it of such rights to such person, were acts done in the exercise of sovereign powers. *Held per* STUART, *C. J.*, that the Government had entered into the contract alleged by the plaintiff; that the suit would lie, as the Government had not entered into such contract in the exercise of sovereign powers, but in the capacity of a private owner; but that the plaintiff's case failed, as he had not performed his part of such contract. KISHEN CHAND *v.* SECRETARY OF STATE FOR INDIA [I. L. R., 3 All., 829

6. ATTACHMENT, SUIT TO SET ASIDE—

40. ——— **Suit by mortgagee.**—*Mortgagee not claiming through judgment-debtor.*—A mortgagee claiming title otherwise than from the execution-debtor is competent, on behalf of himself and his mortgagor, to sue to raise an attachment on the property of which he is mortgagee. WAIGANKAR *v.* WADEKAR . . 5 Bom., A. C., 194

41. ——— *Mortgagor and mortgagee.*—*A.* and *B* borrowed money from *D.*, with *C.* as their surety, mortgaging their house to *C.* to secure him from loss. The same house having been previously given to *D.*, *C.* had to pay the debt

RIGHT OF SUIT—*continued.*

6. ATTACHMENT, SUIT TO SET ASIDE—*continued.*

Suit by mortgagee—*continued.*

to *D.*, but the house was attached by *E.* in execution of a decree against *A.* and *B.* *C.* sued *D.* and *E.* to raise the attachment. *Held* that the action did not lie. SHIVLAL BIN KHUBCHAND *v.* BALVANTRAV VINAYAK . . 2 Bom., 75: 2nd Ed., 70

42. ——— **Suit for attached property.**—*Property collusively attached by one defendant against another.—Cause of action.*—In a suit to establish a claim to property which had been attached in execution of a decree obtained by one defendant against another, which the plaintiff alleged to be collusive,—*Held* that the plaint disclosed a cause of action. MAHOMED GAZEE CHOWDHRY *v.* SHUMBHOONATH MISSER . . 22 W. R., 389

7. AWARDS, SUITS CONCERNING—

43. ——— **Suit on award made ultra vires.**—A suit on an award made in which the arbitrators have exceeded their powers is not maintainable. DURJAN SINGH *v.* SIBIA [7 N. W., 329

44. ——— **Suit to enforce private award.**—*Refusal of Court to file award under s. 327, Act VIII of 1859.*—A suit lies to enforce an award made without the intervention of a Court of Justice where an application has been made to file it as an award and has been refused. KOTA SEETAMMA *v.* KOLLIPURLA SOOBBIAH . 8 Mad., 81

PALANIPPA CHETTY *v.* RAYAPPA CHETTY [4 Mad., 119

45. ——— *Award made on submission by person professing to represent community in religious matters.*—The Courts will not interfere to enforce performance of an award made under a submission to arbitration entered into by a few persons, without the consent of the entire community, in respect of a religious quarrel relating to a state of things which has been in force at a mosque for fifty years, by the common consent of all the worshippers having an interest therein. ZAHID *v.* PEEREE . . . . . 3 N. W., 92

See also MUZHUR ALI *v.* GANESH KOOER [3 N. W., 46

46. ——— *Suit for compensation awarded by punchayet in accordance with caste custom.*—The plaintiff sued the defendants, his wife and her father (first and second defendants) to recover damages for the non-performance of a contract whereby the defendants agreed to deliver to the plaintiff a specified quantity of grain. The plaintiff and the first defendant appeared before a punchayet composed of members of their caste, and the first defendant having refused to live any longer with the plaintiff the punchayet awarded the compensation claimed, and the defendants promised to deliver the grain. It was found that the award of the punchayet was in accordance with the custom of the

RIGHT OF SUIT—*continued.*

7. AWARDS, SUITS CONCERNING—*continued.*

Suit to enforce private award—*continued.*

caste in cases in which the wife refused to live with the husband. *Held* that the plaintiff was entitled to maintain the suit. SOOBBA TEVAN *v.* MOOTHOOKOODY . . . . . **6 Mad., 40**

47. ———— Suit to set aside award.—*Beng. Reg. IX of 1833, ss. 6, 7, and 9.—Consent to arbitration.—Held* that a suit for cancelment of an award made under sections 6 and 7, Regulation IX of 1833, where it was not alleged that the proceedings were contrary to law, but that the plaintiff did not consent to it, was not maintainable under section 9 of the said enactment; the consent of the parties not being necessary under the provisions of those sections. IKRAMOOLLAH *v.* SHEO PERSHAD **[2 Agra, 340**

48. ———— *Award as to settlement.—Beng. Reg. IX of 1833, s. 9.—Necessity to set aside award.*—It was held that a suit to obtain possession of a moiety of certain lands, by establishment of the title of the plaintiffs as purchasers and the cancelment of an award of arbitrators, was not barred by section 9 of Regulation IX of 1833. The award was brought about, not under that Regulation, but owing to an application of the plaintiff for a partition of the share under Regulation VII of 1822, which application was rejected in reference to the award declaring the plaintiff's vendors were not in possession at the time of the sale. It was not necessary that the award should be set aside prior to an adjudication on the claim, as it determined no question of title. If the dispossession of the vendors did not take place at a period more remote than twelve years before the commencement of the suit, the plaintiffs were entitled to a decree for possession on establishment of their right, even if there was no sufficient reason to set aside the award. GUNGA BAKSH *v.* WALI BAKSH . . . **7 N. W., 169**

8. BOUNDARIES.

49. ———— Suit to compel neighbouring landholders to fix boundary.—*Absence of hostile act.*—A proprietor of land has no right to bring a suit to compel his neighbours to agree to a particular line of boundary being marked out between his lands and theirs where he does not venture to say that they have by any overt act transgressed that boundary. AMEEROONNISSA BEGUM *v.* GOPAL SAHOO . . . . . **22 W. R., 134**

9. BUILDING, SUIT TO RESTRAIN—

50. ———— Suit to restrain owner of land from building.—*Interference with easement or right.*—A suit will not lie to restrain an owner of land from erecting buildings on his land, unless by doing so he is interfering with some easement acquired by the owner of the neighbouring land, or interfering with the free enjoyment of his land. RAM ROOCH CHOWDREE *v.* DEOKEE NUNDUN **[2 N. W., 169**

RIGHT OF SUIT—*continued.*

9. BUILDING, SUIT TO RESTRAIN—*continued.*

Suit to restrain owner of land from building—*continued.*

KASIM ALI KHAN *v.* BIRJ KISHORE **[2 N. W., 182**

JOOGUL LAL *v.* JASODA BEBEE **[3 N. W., 311**

51. ———— Erection of buildings by owners of adjoining sites under agreements with Government.—*Government surveyor made arbiter in case of dispute.—Party wall, Liability of owners for costs of.—Suit before obtaining Government surveyor's certificate.*—Under separate agreements made by them respectively with Government, the plaintiff and defendant held adjoining plots of land for building. The agreements contained the same terms and stipulations, among which were the following: "(*a*) The buildings to be continuous, with party walls common to both adjoining houses. (*b*) All disputes regarding the cost and maintenance of party walls to be decided by the Government surveyor, whose decision shall be binding on both parties." The plaintiff employed a contractor to erect a house upon his plot of land. The house was completed in 1870, the north wall of which was built as a party wall in pursuance of the condition contained in the agreement with Government. Disputes subsequently arose between the plaintiff and his contractor, which were not settled until the 26th August 1878, on which date the plaintiff paid the contractor a sum of R20,515-4-11, which included the cost of the party wall. After the plaintiff's house had been completed, the defendant built his house upon the adjoining land, and in so doing he used a large portion of the party wall as the southern wall of his house. He paid the plaintiff half the cost of the portion so used by him. The rear portion of the said wall was not used by the defendant, as his house did not extend so far to the rear as the house of the plaintiff. The plaintiff demanded payment of half the cost of that part of the wall not used by the defendants, but the defendants refused to pay. The plaintiff then claimed that part of the wall as his own property, and proceeded to open windows in it. The defendants objected. The plaintiff subsequently filed the present suit, claiming from the defendants payment of half the cost of the said portion of the wall not used by the defendants, and, in the event of such payment not being awarded, he prayed for a declaration that he was the sole owner of the said portion of the wall, and for an injunction restraining the defendants from disturbing him in the sole enjoyment thereof. Both the defendants pleaded limitation, and denied their liability to pay any part of the cost of that part of the wall which they did not use. The first defendant further alleged that he had paid the whole cost of the foundation and other parts of the said wall, and claimed to set off this payment against the claim of the plaintiff. At the original hearing, SCOTT, *J.*, held that the part of the wall in dispute, although not used by the defendants, was a party wall, having regard to the terms of the agreement under which the said wall was erected; and that the

RIGHT OF SUIT—*continued.*

9. BUILDING, SUIT TO RESTRAIN—*continued.*

Erection of buildings by owners of adjoining sites under agreements with Government—*continued.*

suit was not barred, but that there was no right of action for the cost of the party wall independently of the award of the Government surveyor, in whose decision lay all disputes as to such cost; and that, until his decision was given, there was no complete cause of action. SCOTT, *J.*, accordingly, on 11th December 1882, decreed that the defendants were severally liable to pay the half of whatever sum the Government surveyor might certify to be due for the cost of the disputed part of the said wall, and that the defendants were entitled to set off, in the calculation of what was due from them, the cost of any work or materials which the Government surveyor might find had been contributed by the first defendant. The case was thereupon adjourned, in order that the certificate of the Government surveyor might be obtained. The Government surveyor subsequently gave his certificate as to the cost of the unused portion of the said wall, but stated that on the evidence before him he was unable to decide as to the ownership of the foundations, &c., of the wall. The case came on again before SCOTT, *J.*, who decided to take evidence on the points left undetermined by the Government surveyor. Witnesses were accordingly examined, and on 11th December 1883 the Court disallowed the defendant's claim of set-off, and gave judgment for the plaintiff for half the sum certified by the Government surveyor as the cost of the disputed part of the wall. The defendants appealed. *Held* that, having regard to the terms of the agreement under which the plaintiff and defendants respectively held their property, the Court was not competent to determine the question of the defendant's set-off or the other points raised by the pleadings. These were matters to be decided by the Government surveyor, whose certificate was a condition precedent to the plaintiff's right to sue, and upon which the Court might give judgment. COVERJI LUDDHA *v.* MORARJI PUNJA **[I. L. R., 9 Bom., 183**

52. ———— Suit for removal of obstruction in building.—*Alteration in building.*—The alteration of any building does not give the right to a suit to remove it or restore it to its original condition, unless the building in consequence of such alteration obstructs or impedes the access to the plaintiff's premises improperly, or takes away any frontage right from him. KOODBUT ALI *v.* GHOLAM ALI . . . . . **3 Agra, 71**

53. ———— Suit for removal of encroachment.—*Fear of acquiescence.*—A suit for the removal of an encroachment is maintainable without actual damage having occurred or the immediate prospect of damage, if it can be shown that some damage may arise from the encroachment hereafter, when, from the plaintiff's right to interfere for a series of years, the opposite party would possibly have acquired a right which would bar the plaintiff's

RIGHT OF SUIT—*continued.*

9. BUILDING, SUIT TO RESTRAIN—*continued.*

Suit for removal of encroachment—*continued.*

remedy. JUDOONATH MULLICK *v.* KALEE KRISTO TAGORE . . . . . **22 W. R., 73**

S. C. after remand, JUDOONATH MULLICK *v.* KALEE KISTO TAGORE . **25 W. R., 524**

10. CASTE QUESTIONS.

54. ———— Suit for damages for withholding a customary present from a member of a caste.—*Omission from distribution of funeral presents.*—The plaintiff complained that on the occasion of the distribution of certain funeral presents by the defendant's father, in which as a member of the caste the plaintiff was entitled to share, he had been omitted, and had received nothing. He sued the defendants to recover damages for the injury to his character and reputation caused by such omission. *Held* that there was no legal right in the plaintiff to the funeral presents, and the slight which the omission to give such presents to the plaintiff might imply was to be regarded as the result of a breach of social etiquette, with which the caste was exclusively competent to deal. MAYASHANKAR *v.* HARISHANKAR **[I. L. R., 10 Bom., 661**

55. ———— Claim to be chalvadi of Lingayet caste.—*Intrusion in office.—Office to which no fees are appurtenant.*—Plaintiff was the hereditary holder of the office of chalvadi or bearer on public occasions of the insignia or symbols of the Lingayet caste at Bagalkot in the district of Belgaum: no fees as of right were appurtenant to that office, but voluntary gratuities might be given to the chalvadi. In an action brought by plaintiff against defendant as an intruder upon his (the plaintiff's) office,—*Held* that the plaintiff's claim to be chalvadi of the Lingayet caste at Bagalkot was a caste question, within the meaning of the unrepealed portion of clause 1, section 21, of Bombay Regulation II of 1827. SHANKARA *v.* HANMA **[I. L. R., 2 Bom., 470**

11. CESS.

56. ———— Suit to establish right to cess.—*Order of settlement officer refusing to record cess.*—A suit may be maintained by a zemindar to establish his right to a cess, and to question the validity of an order of the settlement officer refusing to record the cess. MAHOMED ALI KHAN *v.* OOMRAO SINGH . . . . . **2 N. W., 425**

12. CHARITIES.

57. ———— Suit to recover trust property.—*Advocate General.—Dedication of lands for charitable use.—Illegal sale.—Suit to set aside sale and recover trust property.—Code of Civil Procedure, 1882, s. 539.*—The plaintiff's grandfather dedicated certain lands in a village, of which he was

RIGHT OF SUIT—*continued.*

12. CHARITIES—*continued.*

Suit to recover trust property—*continued.*

the jaghirdar, to the expense of celebrating an annual fair in honour of a saint, and of lighting a lamp at his shrine. He reserved the paramount authority over, and management of, the said lands to his family, of which the plaintiff was the representative. The lands were sold illegally, as alleged by the plaintiff, to the defendant at an auction in execution of a decree obtained against one *N.*, who with his predecessors had, as was alleged, been employed to worship at the shrine. The plaintiff accordingly sought to have the sale set aside, and to be put into possession of the lands. *Held* that the object of the suit being merely to recover the trust property from outsiders, did not fall within section 539 of the Code of Civil Procedure, and it could be proceeded with without making the Advocate General a party to it. LAKSHMANDAS *v.* GANPATRAV [I. L. R., 8 Bom., 365

58. ——— **Suit for declaration that property is wakf.**—*Act XX of 1863, ss. 14, 15, 18.—Civil Procedure Code, s. 539.—Act I of 1877 (Specific Relief Act), s. 42.*—A Mahomedan brought a suit against a person in possession of certain property for a declaration that the property was wakf. He did not allege himself to be interested in the property further or otherwise than as being a Mahomedan. He stated as his cause of action that the defendant had, in a former suit between the same parties, filed a written statement, in which he denied that the property now in question was wakf. *Held* that, unless it could be shown that the suit was maintainable under some statutory provision, it could not be maintained. *Held*, also, that inasmuch as no permission ha dbeen given to the plaintiff to bring the suit, it was not maintainable under Act XX of 1863, or under section 539 of the Civil Procedure Code. *Held*, further, that the suit was not maintainable under the provisions of section 42 of Act I of 1877 (Specific Relief Act). *Held*, therefore, that the suit was not maintainable. WAJID ALI SHAH *v.* DIANAT-ULLAH BEG . I. L. R., 8 All., 31

59. ——— **Suit by worshipper for breach of trust of funds dedicated to idol.**—*Civil Procedure Code (Act X of 1877), s. 539.*—Worshippers or devotees of an idol are entitled to bring a suit complaining of a breach of trust with reference to the funds or property belonging to the idol or appendant to its temple. *Quære*,—Whether, if the suit had been brought after the Civil Procedure Code (Act X of 1877) came into force, section 539 of that Act could be held applicable to the devasthan of an idol or temple, dedicated merely to the purposes of such idol or temple. RADHABAI KOM CHIMNAJI SALI *v.* CHIMNAJI BIN RAMJI SALI [I. L. R., 3 Bom., 27

60. ——— **Suit on account of interference with right of devotion of mosque.**—*Religious endowment.—Form of suit.—Civil Procedure Code, 1882, ss. 30, 539.*—Every Mahomedan who has a right to use a mosque for purposes of devotion

RIGHT OF SUIT—*continued.*

12. CHARITIES—*continued.*

Suit on account of interference with right of devotion of mosque—*continued.*

is entitled to exercise such right without hindrance, and is competent to maintain a suit against any one who interferes with its exercise, irrespective of the provisions of sections 30 and 539 of the Civil Procedure Code. Section 30 of the Civil Procedure Code applies only to cases in which many persons are jointly interested in obtaining relief, and not to cases in which an individual right has been violated. *Zafaryab Ali v. Bakhtawar Singh, I. L. R., 5 All., 497*, referred to. *Jan Ali v. Ram Nath Mundul, I. L. R., 8 Calc., 32*, dissented from. JAWAHRA *v.* AKBAR HUSAIN . . I. L. R., 7 All., 178

61. ——— **Suit to set aside mortgage of endowed property.**—*"Wakf" property.—Suit relating to public charity.—Civil Procedure Code, s. 539.—"Religious institution."—Act VI of 1871, s. 24.—Mahomedan law.—Endowment.*—Certain Mahomedans sued to set aside a mortgage of endowed property belonging to a mosque, the decree enforcing the mortgage, and the sale of the mortgaged property in execution of that decree, and for the demolition of buildings erected by the purchaser, and the ejectment of the purchaser. *Held* that the plaintiffs, as Mahomedans entitled to frequent the mosque and to use the other religious buildings connected with the endowment, could maintain the suit, and section 539 of the Civil Procedure Code had no application to the case, the endowment being a religious institution within the meaning of section 24 of Act VI of 1871, and therefore governed by Mahomedan law. ZAFARYAB ALI *v.* BAKHTAWAR SINGH . I. L. R., 5 All., 497

62. ——— **Suit by members of a caste and worshippers at caste temple against trustees of caste and temple property.**—*Civil Procedure Code (Act X of 1877), ss. 30 and 539.—Right to manage caste and temple funds.—Public charity.—Private charity.—Parties.—Trustees.—Negligence.—Wilful default.—Acquiescence of majority of caste in unauthorised use of trust funds.—Rights of minority.*—In or about the year 1839 a temple to the god Shri Ananinathji was erected in Bombay by the Dossa Oswall Bania caste, the religion of which caste is the Jain religion. A large portion of the funds required for building the temple was advanced by one *N. N.*, at that time the leading man in the caste; the rest was obtained from the caste by subscription. The firm of *N. N.* acted as the bankers to the caste and to the temple, received all the gifts and offerings made by the worshippers, and for many years administered all the affairs of the temple. The sums advanced by *N. N.* were gradually but entirely repaid to him out of the gifts and offerings. There were three separate funds, of which separate accounts were kept in the books,—*viz.*, (1) the darasa fund, which was devoted to the temple purposes, such as maintenance of priests, repairs, &c., and gifts to poorer temples; (2) the sadaran fund, which was more extended in its objects, but still limited to religious and charitable

RIGHT OF SUIT—*continued.*

12. CHARITIES—*continued.*

Suit by members of a caste and worshippers at caste temple against trustees of caste and temple property—*continued.*

purposes, such as payments to poor devotees irrespective of their caste, &c.; and (3) the mahajan fund, which was devoted to caste purposes, such as purchase of caste utensils, &c. All three funds were collected at the temple. Gifts and offerings were made by all worshippers at the temple, whether members of the caste or not. Subscriptions were made only by members of the caste. All the regular subscriptions came from the caste exclusively, and the great bulk of the gifts and offerings came from the caste also. Only about R12,000 had been given by outsiders up to the date of the suit, while nearly six lakhs had been given by the caste. *N. N.* died in 1842, and his adopted son *V.* became head of the firm, which continued to manage the funds of the temple under the name of *V. N. & Co.* *V.* died in 1852, and *H.* (defendant No. 1) succeeded him. The firm meanwhile had invested the funds of the temple in eight lots of immoveable property. In 1867 the caste determined to appoint trustees of the temple property, and in September 1867 a trust-deed was executed whereby *H.*, *K.*, and *G.* (defendants Nos. 1, 2, and 3), together with three others who were dead at the time of this suit,—*viz.*, *J. R.*, *T. W.*, and *M. T.*,—were appointed trustees of all the immoveable property belonging to the temple. The deed set forth the objects to which the income of the property should be applied, and provided that the surplus should be invested in Government securities, in corporation shares or in landed property, but in no other shares of any description whatsoever. It also authorised the trustees to invest surplus moneys in the firm of *V. N. & Co.* It was admitted that, subsequently to June 1869, the trustees managed the temple, and not only the immoveable property, but all the funds. A debt of R2,40,000 was due from the firm of *V. N & Co.* to the temple and caste when the trustees took over the management. In 1870 the firm of *V. N. & Co.* became insolvent, and in their schedule the trustees were entered as creditors in respect of darasa account, R1,57,649; on mahajan account, R68,017; on sadaran account, R22,597. It was admitted that the trustees knew of this entry in the said schedule. They, however, received no dividend, although other creditors, including *K.* (defendant No. 2), were paid two annas in the rupee. This sum of R2,40,000 due to the temple was wholly lost. In April 1867, R15,000 of the temple funds were invested—it did not appear by whom—in the name of *G.* (defendant No. 3), and in August 1868 a sum of R15,000 was advanced to one *J. P.* In 1869 a sum of R10,000 was advanced by the trustees to *N. K. & Co.*, which was never repaid, nor was any interest received upon it. It was lost on the failure of that firm in 1879. The principal partner of that firm (*N. K.*) was the only son of *K.* (defendant No 2), who also had an interest in it. In 1877-78 various loans were made by the trustees to three mills in which one or more of the trustees was interested. Of R55,000 lent to the mills and to *N. K. & Co.*, R12,000 were lost. Half a lakh of

RIGHT OF SUIT—*continued.*

12. CHARITIES—*continued.*

Suit by members of a caste and worshippers at caste temple againt trustees of caste and temple property—*continued.*

outstanding gifts to the temple remained uncollected owing to the negligence of the trustees. Two suits brought by another caste against the trustees were defended out of the temple funds. All the defendants (trustees), with the exception of *K.*, were in needy circumstances. In 1880 a hundred members of the caste protested against the management of caste and temple affairs by the defendants. The plaintiffs, six in number, took part in the protest, and filed the present suit in 1881. Thereupon there was a caste agitation in favour of the defendants, who were all shettias of the caste. A meeting of the caste was held, and a series of resolutions, supporting the defendants' management and approving of their conduct, was passed, and a document to that effect was signed by 1,468 persons—the whole caste in Bombay numbering only 1,500. The plaintiffs sought to make the defendants liable in respect of the moneys lost to the caste and temple funds, and prayed for the appointment of new trustees and for the settlement of a scheme. The defendants denied the charges of negligence, and pleaded that the suit was not properly constituted, not having been brought under section 30 or 539 of the Civil Procedure Code of 1877, and that it was in contravention of Regulation II of 1827, chapter II, section 21. They relied upon the fact that the caste had approved of their conduct and had allowed them to defend this suit at the expense of the caste. They contended that under these circumstances the plaintiffs were not entitled to maintain the suit, and that the Court would not interfere with or control the decision of the majority of the caste in matters relating to the internal management of its affairs. *Held* that section 30 of the Civil Procedure Code (Act X of 1877) did not apply. If the plaintiffs had any right of action, it was a complete right of action vested in each of them, and not a mere joint right shared with others and incomplete unless they united themselves with others. They sued as subscribers to the temple and devotees of the idol, and, as such, each had a right to complain of maladministration. They were entitled to sue in their own right and in their own name without permission of the Court or notice to other parties interested. *Held*, also (following *Thanga Karuppa* v. *Arumuga Nadan*, *I. L. R., 5 Mad., 383*), that section 539 of Act X of 1877 did not apply. The three funds administered by the defendants were different in character. The mahajan fund was a purely secular fund; the other two funds were religious and charitable funds. Even if the case came under the Civil Procedure Code (XIV of 1882), section 539 would not apply, that section being permissive or directory, and not mandatory. Any person interested in the proper observance of a religious endowment may sue in his own name to have the trust properly administered. The section does not prohibit a private suit, and does not make the sanction of the Advocate General a condition precedent. The gifts to the temple comprised in the darasa and sadaran funds were irrevocably dedi-

RIGHT OF SUIT—*continued.*

12. CHARITIES—*continued.*

Suit by members of a caste and worshippers at caste temple against trustees of caste and temple property—*continued.*

cated to a public charity, and therefore the approval by the caste of the conduct of the trustees was no bar to the suit. They were also dedicated to the idol, who was a public, not a mere private household, divinity. The ideal personality of such an idol is well recognised, and in case of misappropriation of the property he is entitled to the protection of the public authorities, on the ground that it has been devoted to public religious purposes, and must not be wasted even by the donors. The management of the temple belonged to the Dossa Oswall Bania caste, and not to the whole Jain community. Although the donations were irrevocably dedicated to public purposes, the donors had never lost the right, which was attached to the caste from the beginning, of managing the temple which they had founded, and their management could only be interfered with as a public charitable trust on proof of maladministration. On the evidence,—*Held* that the defendants were not liable for losses prior to 1867. It was not clearly proved that they were managers of the temple funds before that date. *Held*, also, that the defendants were liable for the losses incurred subsequently to 1867. They assumed the management on the execution of the trust-deed in that year, and ought to have taken steps to recover the moneys which had been improperly advanced on loan or otherwise negligently invested. Not having done so they were guilty of wilful neglect, and were liable to refund the moneys which had been lost. The liability was, however, confined to the first three defendants, it not being proved that the remaining defendants had ever acted as trustees. The negligence of the trustees in not taking steps to recover the R2,40,000 due from the firm of *V. N. & Co.* was a clear breach of trust. The evidence showed that although the whole sum could not have been recovered at any time during the trusteeship of the defendants, yet that some portion of the money might have been obtained if due diligence had been used, and that other creditors of the firm had actually been paid 2 annas in the rupee. The first three defendants were therefore liable to refund 2 annas in the rupee of such portion of the R2,40,000 as belonged to the darasa and sadaran funds. As to the mahajan fund, it belonged to the caste, and the caste had condoned its misapplication, which it had power to do. The defendants were also held liable to refund such other sums as had come into their hands and had been lost in consequence of their negligence. The Court removed the defendants from the trusteeship and ordered a scheme to be settled. THAKERSEY DEVRAJ *v.* HURBHUM NARSEY

[I. L. R., 8 Bom., 432

63. ———— Suit for possession of endowed property.—*Religious trust.—Charitable trust.—Civil Procedure Code (Act XIV of 1882), ss. 30, 539.—Act XX of 1863.*—The plaintiff sued to recover possession as mutwalli of certain parcels of land, alleging that they were dedicated as wakf, and that the profits were "applied to the feeding of wayfarers and travellers, to lighting the mosque and shrine in the evening, and to meeting the expenses of repeating prayers on the occasion of Id and Bakhrid, and that the said profits were never spent for personal purposes." The plaintiff based her right to sue upon the fact that her deceased husband had been mutwalli, and she prayed that the property in suit might be declared wakf, and that certain alienations made by her step-son since her husband's death might be set aside. *Held* that the trust to which the suit related was one partly for charitable and partly for religious purposes. As far as it related to the former, it was governed by section 539 of the Civil Procedure Code, and if viewed in the light of the latter, by Act XX of 1863; and that the suit, not being properly framed in compliance with the provisions of either of those enactments, was not maintainable. *Held*, further, that even supposing the endowment alleged was neither a public charity within the meaning of section 539 of the Civil Procedure Code, nor a religious endowment to which Act XX of 1863 applied, the plaintiff was not entitled to sue alone, as it was clear upon the face of the plaint that she was not alone interested in the subject-matter of the suit, and therefore that she could only sue on behalf of all who were so interested, having first obtained the leave of the Court and otherwise complied with the provisions of section 30 of the Civil Procedure Code. LUTIFUNISSA BIBI *v.* NAZIBUN BIBI . . **I. L. R., 11 Calc., 33**

64. ———— Suit in respect of religious endowment.—*Civil Procedure Code (Act X of 1877), ss. 30, 539.—Beng. Reg. XIX of 1810.—Act XX of 1863.*—In a suit by two of the worshippers at a certain mosque, instituted after having obtained the sanction of the Advocate General under section 539 of the Civil Procedure Code, against the mutwalli of the mosque and two other persons to whom the mutwalli had mortgaged part of the endowed property to secure the repayment of a loan, it appeared that one of the mortgagees had sold some of the wakf property in execution of a decree which he had obtained upon his mortgage, and the property had been purchased by the other mortgagee. The plaintiffs prayed that the property purchased might be declared to be wakf; that the sale in execution might be declared to be invalid; that a mutwalli might be appointed by the Court; and that the costs of doing the acts of the wakf might be defrayed from the profits of the property belonging to the endowment. *Held* that, so far as regarded that portion of the prayer which fell within the provisions of section 539 of the Code, the plaintiffs were not entitled to sue, as they were not "persons having a direct interest in the trust" within the meaning of the section, and that the suit should have been instituted under section 14 of Act XX of 1863 after sanction obtained under section 18. *Held*, also, that though the plaintiffs might possibly have obtained leave to sue under section 30 of the Code on behalf of themselves and the other persons attending the mosque, they not

RIGHT OF SUIT—*continued.*

12. CHARITIES—*continued.*

Suit in respect of religious endowment —*continued.*

having obtained such leave were not entitled to institute the suit for the purpose of obtaining the relief asked for in the other prayers of the plaint. JAN ALI *v.* RAM NATH MUNDUL . I. L. R., 8 Calc., 32

S. C. JAN ALI *v.* ATAWUR RUHMUN [9 C. L. R., 433

65. ——— **Suit to restrain use of property for other than purposes of endowment.**—*Injunction.—Property dedicated to religious purposes.*—The plaintiff's ancestor built a temple, a bathing-ghât, a room called "Gungajatri ghur," and a ghât close to it, to which persons on the point of death were removed, and certain ceremonies were performed. The defendants used the last-mentioned ghât for the purpose of landing goods. *Held* that if, when the plaintiff's ancestor erected the buildings, he intended to grant to the Hindu community merely a right of easement over the property, and not to transfer the ownership therein to the community, the plaintiff was entitled to maintain a suit to restrain defendants from using the ghât for trading purposes. JAGGAMONI DASI *v.* NILMONI GHOSAL . I. L. R., 9 Calc., 75 : 11 C. L. R., 502

13. COMPENSATION.

66. ——— **Suit for compensation for expenses of releasing cattle.**—*Cattle seized under Cattle Trespass Act, 1871.*—A suit for compensation for expenses incurred in releasing cattle which were wrongfully impounded by the defendant will not lie in a Civil Court. The Legislature, when establishing pounds by Act I of 1871, gave a special remedy in cases of illegal seizure, and that is the only one available. ASLEM *v.* KALLA DURZI . 2 C. L. R., 344

14. CONTRACTS OR AGREEMENTS.

67. ——— **Special agreement under which one party has received benefit.**—*Implied contract.*—Where there is a special agreement between two parties, and that agreement has been performed, and one of them has had all the benefit to which he is entitled thereunder, the other may sue him either upon the special agreement or upon what has been called the implied contract which arises out of the receipt of the benefit. OOMABUTTY *v.* PURESHNATH PANDEY . . 12 W. R., 521

68. ——— **Suit to recover difference of exchange against assignee of shipping order.**—An action will lie for the recovery of the difference in the rate of exchange against the assignee of a shipping order under which part of the freight was to be paid on delivery at specified rates of exchange. GLADSTONE *v.* JOAKIM . COR., 148

69. ——— **Suit for damages for omission to certify payments to Court.**—*Fraud.*—A suit will lie in the Civil Court to recover damages for breach of contract by defendant to certify, or

RIGHT OF SUIT—*continued.*

14. CONTRACTS OR AGREEMENTS—*continued.*

Suit for damages for omission to certify payments to Court—*continued.*

for his fraudulently omitting to certify, in consequence of which, on an execution fraudulently issued against the plaintiff, his property was seized. SOOJUN MUNDUL *v.* WOOZEER MUNDUL [6 W. R., Civ. Ref., 20

70. ——— **Suit for a receipt for goods as being partnership goods.**—*Suit for dissolution of partnership.*—Plaintiff and defendant entered into a contract with a view to trade, by which each was to contribute a certain sum either in cash or goods. A trading concern was opened accordingly, but after a very short time the parties fell out. Defendant then obtained through the Magistrate the return of certain goods which, as he alleged, he had placed with the plaintiff independent of the partnership speculation. Plaintiff thereupon sued for a declaration that the goods were partnership goods, and to obtain a receipt for them as such. *Held* that there was no cause of action, and a suit for a receipt did not lie. In the absence of books and accounts or any other evidence the suit could not be converted into one for dissolution of partnership. ELIJAH *v.* ARATOON BROTHERS . 14 W. R., 47

71. ——— **Suit on agreement to take over decrees.**—*Subsequent compromise by payment of fixed sum.*—Plaintiff took a putni from defendants, and as a part of the consideration of the lease agreed to be responsible for certain decrees outstanding at the time against the defendants. Thereupon was executed a second contract between the parties, by which that particular responsibility of paying the decrees was compromised and got rid of by plaintiff paying down a certain sum of money. Subsequently the defendants successfully contested payment of one of the decrees, after which plaintiff sued to recover the money of which payment had been thus withheld *Held* that as the second contract had absolved plaintiff from all responsibility as regards the decrees, he was not entitled to recover the money claimed in the suit. SEEENATH CHOWDHRY *v.* GREY . . 13 W. R., 114

72. ——— **Suit to set aside putni granted in breach of agreement.**—Where the proprietors of a mehal had agreed with an ijaradar that in the event of their granting a putni to anybody he should have the refusal, and, notwithstanding their agreement, gave a putni to another ijaradar,—*Held* that the latter, having been no party to the stipulation, was not bound thereby, and that a suit would not lie by the first ijaradar to set aside the putni granted to the second. KOMUL LOCHUN DASS *v.* DWARKANATH CHOWDHRY [10 W. R., 254

Held, however, on review, that where *A.*, taking a putni to the prejudice of *B.*, had notice of an agreement existing between *B.* and the zemindar, he could not in equity maintain the lease which he had obtained, but *B.* would be entitled to relief against him; and the case was remanded to try if *A.* took with

RIGHT OF SUIT—*continued.*

14. CONTRACTS OR AGREEMENTS—*continued.*

Suit to set aside putni granted in breach of agreement—*continued.*

notice of the agreement with *B.* DWARKANATH CHOWDHRY *v.* KOMUL LOCHUN DOSS

[10 W. R., 414

73. ——— Suit on agreement not to mortgage or sell except after offer to plaintiff.—*Right of pre-emption.—Hypothecation, Suit to recover property after.*—The plaintiff alleged that certain property was the hereditary property of himself and his brother *N.*, that it had been determined by an award that if the plaintiff or *N.* desired to mortgage or sell their respective shares, they should, in the first instance, mortgage or sell to one another, and, if one party declined to take on mortgage or purchase, that the other should be at liberty to alienate elsewhere; that *N.* had, however, executed a bond in favour of *R.*, in which he had hypothecated the property and stipulated that the debt should only be recoverable from the property hypothecated; that *N.* had confessed judgment in a suit brought against him by *R.* on the bond, and had allowed a decree to be passed against the property; and that, as the bond had the effect of a deed of sale, and had been executed with an intent to defraud him, he sued to obtain possession of the property and a declaration of his title thereto as purchaser. The lower Courts decreed the plaintiff's claim. *R.*, on special appeal, pleaded that the plaintiff had no cause of action, the property not having been sold. *Held* by PEARSON and SPANKIE, *JJ.*, that the mere hypothecation of the property did not give the plaintiff a title to it as purchaser, and that the suit as brought must be dismissed. *Held* by STUART, *C. J.*, that as the plaint stated matter sufficient to enable the Court to consider the validity of the claim made by the suit, and on the facts and merits to do justice between the parties to the award, the objection to the form of the suit ought not to stand in the way of the plaintiff being decreed his rights under the award. PIRTHEE SINGH *v.* DYA KISHUN

[5 N. W., 226: Agra, F. B., Ed. 1874, 278

74. ——— Suit to recover loan for Government revenue due from zemindari.—*Suit against zemindar for debt.—Beng. Regs. of 1781 and 1787.*—When money was borrowed to pay the revenue due from a zemindari, and paid to the Government on that account, the bond given by the vakils and managers of the zemindari to the trustee for the lenders in the English form, for the purpose of enabling them to enforce the personal engagements of the vakils and managers in the Supreme Court, was held not to deprive the lenders of their right, under the law prevailing among the natives in matters of contract, to sue the zemindar in the Courts of the mofussil. *Held*, also, that the laws of 1781 and 1787 were repealed by the laws of 1796 when this action was brought, and there was nothing in those two former Regulations which made it illegal for the zemindar to contract a debt, or for any other native to take an obligation from a zemindar without the consent of the officers of revenue; but

RIGHT OF SUIT—*continued.*

14. CONTRACTS OR AGREEMENTS—*continued.*

Suit to recover loan for Government revenue due from zemindari—*continued.*

that such an obligation, if founded on a valuable consideration, would be equally binding upon the conscience of the zemindar, and the demand and the payment would be equally legal as if such consent had been obtained and registered, though no Court of Justice might have jurisdiction to enforce the right. GOPEE MOHUN THAKOOR *v.* RADHANATH

[5 W. R., P. C., 72

75. ——— Transfer of Property Act, IV of 1882, ss. 10, 11.—*Contemporaneous "ikrarnamah."—Condition restraining alienation—Restriction repugnant to interest created.—Lumbardar and co-sharer.—Collection of rents by co-sharer.—Suit by lumbardar for money had and received.*—*M.*, a co-sharer in a village, transferred to *A.*, another co-sharer, a 2 annas share by deed of sale. Upon the same date *A.* executed an ikrarnamah in which he agreed that he would not collect the rents of the 2 annas transferred to him, that he would not ever demand partition of that share, and that he would not alienate or mortgage it or otherwise exercise proprietary rights over it. It was further provided that in the event of *A.* committing any breach of covenant the sale should be avoided, and the proprietary rights in the 2 annas share should revest in *M.* A suit was subsequently brought by *M.* upon the allegation that, in breach of the covenants of the ikrarnamah, *A.* had collected the rents of the share; that, in consequence of his action in collecting the rents, the plaintiff had been compelled to sue the tenants; that in these suits the tenants exhibited receipts given by *A.*, on the basis of which the suits were dismissed; and that he had been subjected to various costs and expenses. He therefore claimed by way of damages from *A.* certain sums of money realised by *A.* as rent from the tenants, and further, by reason of the ikrarnamah, to avoid the sale-deed which preceded it. *Held* that provisions of this kind which absolutely debar the person to whom the proprietary rights have passed from exercising these rights, impose conditions which no Court ought to recognise or give effect to; that a covenant in a sale-deed the effect of which is to disable the vendee from either alienating or enjoying the interest conveyed to him, is not only contrary to public policy, but in violation of the principle of sections 10 and 11 of the Transfer of Property Act; and that, therefore, as the agreement on the basis of which the plaintiff asked for relief was one which no Court should assist him in enforcing, the suit must fail. *Holman* v. *Johnson, 1 Cowp., 543; Anantha Tirtha Chariar* v. *Nagamuthu Ambalagaren, I. L. R., 4 Mad., 200; Bradley* v. *Peixoto, Tudor's L. C., R. P., 968;* and *Aminuddaula Muhammad Kakya Hussain* v. *Nateri Srinivasa Charlu, 6 Mad., 356,* referred to. *Balaji J. Rahalkar* v. *Narayanbhat, 3 Bom., A. C., 63,* distinguished. *Held* by MAHMOOD, *J.*, with reference to the sums realised by the defendant as rent, that whatever may be the rights of a lumbardar in reference to the collection of rents, the defendant, being a co-sharer in the village, and having, though

RIGHT OF SUIT—*continued.*

14. CONTRACTS OR AGREEMENTS—*continued.*

Transfer of Property Act, IV of 1882, ss. 10, 11—*continued.*

perhaps irregularly, realised sums of money from the tenants, could not, in a Civil Court and in a suit of this nature, be made to repay the lumbardar; and the latter's only remedy was to deduct the items when the bujharat or rendition of accounts between the co-sharers and himself took place. MAHARAM DAS *v.* AJUDHIA . . . I. L. R., 8 All., 452

76. ——— **Suit for value of goods covered by bill of exchange.**—*Payee for honour.*—A payee for honour, though entitled to the same remedies upon the bill as the party for whom payment was made, is not entitled to bring a suit in his own name and in his own behalf for the value of the goods for which the bill was drawn. CARMICHAEL *v.* BROJONAUTH MULLICK [1 Hyde, 274

15. CO-SHARERS.

77. ——— **Suit by one co-sharer for value of personal property alienated by another.**—If a co-sharer of personal property sells the property without the consent and authority of the other owner, that other owner may sue the purchaser for the price of his share. RADHANATH SHAHA *v.* KAMINEE SOONDEREE DOSSEE . . 2 W. R., 37

78. ——— **Suit by one co-sharer for value of wood removed.**—*Tenancy in common.—Co-owners of a forest.—Mortgage by one co-tenant.—Mortgagee in possession.—Licensees from mortgagor and co-tenant.—Cutting and removing produce.—Rights of licensees.—Remedy of mortgagee.—Damages.—Account.*—The first defendant, *G.* and *A.*, were co-owners of a forest. *G.* mortgaged his interest in the forest to the plaintiff and put him into possession. The mortgage was registered. Subsequently *G.* and *A.* joined in a license to the second and third defendants to cut and take wood in the forest, which the latter accordingly did. The plaintiff sued *G.* and the other two defendants to recover, as damages, the value of the wood removed, and for an injunction restraining the defendants from removing more wood. *Held* that the claim would not lie, neither for the whole of the damages claimed, nor for such part of them as was equivalent to *G.'s* interest in the value of the wood removed,—the only remedy open to the plaintiff being a suit against *A.*, his co-tenant, for an account. Though *G.*, being out of possession to the knowledge of the licensees, could convey to them no right, yet *A.* could; and a license from *A.* gave a right to cut wood in the whole of the forest, since a co-tenant may lawfully enjoy the whole property in any way not destructive of its substance so as to amount to an ouster of the other co-tenants, and whatever a co-tenant may do himself he may license another to do. The licensees, therefore, did no wrong in acting on their license, and no suit lay against them; nor did *G.'s* joining in the license do the plaintiff any distinct injury for which an action for damages would lie against him. *Quære,*—Whether

RIGHT OF SUIT—*continued.*

15. CO-SHARERS—*continued.*

Suit by one co-sharer for value of wood removed—*continued.*

plaintiff might not, however, have a right of action against *G.* to recover any sum which *G.* had obtained by assuming falsely a position and rights belonging to the plaintiff. BALVANTRAV OZE *v.* GANPATRAV JADHAV . . . . I. L. R., 7 Bom., 336

79. ——— **Suit by one coparcener against the others for declaration of right to Government allowance forming part of joint estate.**—One member of an undivided family cannot sue his coparceners for a declaration that he is entitled to recover the whole of a family varshasan. The only mode in which, as between the members of the joint family, a declaration of right to the varshasan can be properly obtained is by one of the coparceners bringing a suit for partition of the whole of the family estate, including the varshasan and for a declaration of the shares of the respective coparceners. TRIMBAK DIXIT *v.* NARAYAN DIXIT [11 Bom., 69

16. COSTS.

80. ——— **Suit for costs incurred in resisting a claim to attached property.**—*Civil Procedure Code, 1859, s. 246.*—A suit cannot be maintained for costs incurred by the plaintiff in resisting a claim made by the defendant, under section 246 of the Code of Civil Procedure, the greater part of which was disallowed. It is only when the costs are made a part of the order, and then by execution under it, that a party can in such cases enforce the payment of costs. ANONYMOUS . 3 Mad., 341

81. ——— **Suit for costs incurred in possessory suit.**—*Bom. Act V of 1864.*—No action lies for the recovery of costs incurred by a defendant in defending himself in a possessory suit brought against him in a Mamlatdar's Court under Bombay Act V of 1864. JALAM PUNJA *v.* KHODA JAVRA . . . . . 8 Bom., A. C., 29

82. ——— **Claim for costs incurred in another suit.**—*Suit in Revenue Court.—Damages.*—In a suit for damages for breach of a covenat in an ikrarnamah not to collect the rents of a certain share in a village, and not to sue for the partition of that share, the plaintiff claimed (*inter alia*) some costs and expenses incurred in a suit brought by the defendant in the Revenue Court for partition of the share. *Held* by MAHMOOD, *J*, with reference to the costs incurred by the plaintiff in the Revenue Court, that such Court in the former suit was entitled to deal with the question of costs, and dealt with it, and the costs could not be made the subject-matter of fresh litigation, and therefore could not be claimed in this suit by way of damages. *Chengulva Raya Mudali* v. *Thangatchi Ammal, 6 Mad., 192; Jalam Punja* v. *Khoda Javra, 8 Bom., A. C., 29; Kabir* v. *Mahadu, I. L. R., 2 Bom., 360;* and *Pranshankar Shivshankar* v. *Govindhlal Parbhudas, I. L. R., 1 Bom., 467,* referred to MAHRAM DAS *v.* AJUDHIA . . . . I. L. R., 8 All., 452

RIGHT OF SUIT—*continued.*

16. COSTS—*continued.*

83. ——— Suit by Commissioner for his costs.—*Civil Procedure Code, 1859, ss. 180, 182.*—Where a Commissioner was appointed by a Court under section 180 of Act VIII of 1859 to take accounts, at the request of the plaintiffs, and his costs were not prepaid under section 182, and the defendant was by the decree ordered to pay the costs of the suit, but the costs of the Commissioner were not entered in the decree,—*Held*, in a suit by the Commissioner against the plaintiffs for remuneration for his labour, that the plaintiffs were liable. GOPALARATNAMAYYAR *v.* BUPALA NARASIMMA NAYUDU [I. L. R., 4 Mad., 399

84. ——— Suit for costs incurred in criminal case.—As to recovery of costs of a criminal case in a subsequent civil action, *see* RAM LAL *v.* TULA RAM . . I. L. R., 4 All., 97

17. CUSTOMARY RIGHTS.

85. ——— Suit to restrain the use for tazias of land used for the purposes of the Holi.—*Easement.—Cause of action.*—*A.* a Mahomedân, purchased a house adjacent to a piece of waste land, on which after such purchase he caused a tazia to be erected at the time of the Mohurram. *J.* and others, Hindus, instituted a suit against *A.*, alleging in their plaint that, for a long time previously, they had been in the habit of going upon the land at the time of the Holi festival, for the purpose of burning the Holi and celebrating the ceremonies incident thereto, and praying that the defendant "be restrained from improper interference, and that the plaintiffs be put in possession, by maintaining observance of the Holi rights, according to the ancient usage, on the land." It was found that the plaintiffs had, for a period of twenty years prior to the institution of the suit, exercised the right of going on to the land at the time of the Holi festival, without interruption or interference. It was also proved that neither the plaintiffs nor the defendant had any proprietary right in the land, and that it belonged to the zemindars of the kasba, who did not appear to object to its use by the defendant and other Mahomedans at the time of the Mohurram, for the erection of tazias. *Held* that the plaintiffs' claim appeared to be a claim to a right by custom of the nature described in *Mounsey* v. *Ismay, 34 L. J. Ex., 52*, and *Abbôt* v. *Weekly, 1 Lev., 176*, and could not strictly be regarded as for an easement, the right not being set up in respect of any dominant tenement to which it was appurtenant over a servient tenement subject to it. *Held*, further, that inasmuch as the nature of the right claimed was to come on the land for a few days at one period of the year, it by no means followed that the plaintiffs were entitled to object to the defendant's use of the land at another period; and that, looking to the extent and nature of the said right, and to the form in which the plaint was shaped, the laying of a tazia upon the land at the Mohurram could not be held to be any interference with such right sufficient to afford a cause of action on which to come into Court. ASHRAF ALI *v.* JAGAN NATH [I. L. R., 6 All., 497

RIGHT OF SUIT—*continued.*

17. CUSTOMARY RIGHTS—*continued.*

Suit to restrain the use for tazias of land used for the purposes of the Holi—*continued.*

86. ——— Suit to enforce payment of dues for performance of marriage ceremonies.—*Cause of action.*—No suit lies to enforce payment of murjada (respect-money) alleged to be a customary payment by persons of the Kassary caste who have marriage ceremonies or shrads performed in their house to members of the community. NOBEEN CHUNDER DUTT *v.* MADHUB CHUNDER MUNDUL . . . . . 5 W. R., 225

87. ——— Suit to recover fees for use of temple.—*Custom.*—A suit to recover the amount of marriage fees which the defendant, it was alleged, became liable to pay for the use of a temple upon his marriage with a woman residing in the village where the temple was situated, is not maintainable unless on proof of a well-established custom to that effect. MAADAN *v.* ERLANDI . . 5 Mad., 147

88. ——— Suit for right to use ghat for religious purpose.—*Abstract right.—Cause of action.—Costs.*—A Hindu brought a suit in which he alleged that the Hindu community had acquired by long-established custom an exclusive right to use for religious purposes a ghât situate on the River Ganges, but that the Mahomedans were in the habit of interfering with the exercise of such right by bathing at the ghât. He prayed for a declaration of the right, and for a perpetual injunction to be issued to the Mahomedans generally forbidding them to resort to the ghât. No act of trespass was charged against any of the defendants. The defence was that the Mahomedans were entitled to use the place, and that their use of it did not cause any inconvenience to the plaintiff. *Held* that the suit was not maintainable, since the Court had no power to pass a decree against persons who had never interfered with the property in dispute, or to issue an injunction against the whole Mahomedan world; but that, inasmuch as the defendants had fought the case all along as if the suit were maintainable, and upon a false issue, both sides must pay their own costs. SHAH MUHAMMAD *v.* KASHI DAS [I. L. R., 7 All., 199

89. ——— Suit for right to use ghat for collecting religious offerings.—*Right to land of ghât.—Cause of action.*—Certain Brahmans, on the allegation that a custom existed whereby they had an exclusive right to use a ghât for the purpose of collecting alms, the land of which did not belong to them, sued for a declaration of their exclusive right to the use of the ghât for that purpose. *Held* that, as the plaintiffs had no right of any kind in the land of the ghât, the suit was not maintainable. HUSAIN ALI *v.* MATUKMAN [I. L. R., 6 All., 39

RIGHT OF SUIT—*continued.*

17. CUSTOMARY RIGHTS—*continued.*

90. ——— Suit for perquisites.—*Suit by mahar of village against other mahars to establish his right to share in mahar's perquisites.*—A suit by one of the mahars of a village against his fellow-mahars to establish his right to share in the mahar's perquisites, such as the carcasses of dead animals, &c., will lie, though such a claim be not tenable against the ryots who may have owned such animals when alive. YELLAPA VALAD BHIMAPA *v.* MANKIA . . . **8 Bom., A. C., 27**

18. DEBTOR AND CREDITOR.

91. ——— Suit by debtor to compel creditor to accept money due.—*Suit on bond.—Refusal to accept instalments on bond.*—A bond having been executed, whereby it was stipulated that a debt should be paid by instalments, subject to the condition that if any one instalment were not paid within a certain time after it became due, the whole amount remaining due should become payable at once, the creditor evaded the debtor's attempts to pay the instalments as they became due, and the debtor brought a suit to compel the creditor to accept an instalment due,—*Held* that such a suit would not lie. KRISTAYA *v.* KASIPATI . . **I. L. R., 9 Mad., 55**

19. DECREES, SUITS ON—

92. ——— Suit to enforce execution of decree in another suit.—A suit will not lie to enforce execution of a decree in another suit. TAREKNARAIN SINGH *v.* PUNCHA SINGH **[W. R., 1864, 376**

93. ——— Suit to enforce execution of decree.—*Mode of enforcing right.*—The proper mode of enforcing a decree is that pointed out by the Code of Civil Procedure, 1859,—namely, by execution and sale, or by execution and attachment, and the appointment of a receiver under section 243 to collect the property. Where the Legislature has prescribed a particular mode of enforcing a right created by a decree, the possessor of that right is bound to follow the procedure prescribed and no other. MAHOMED AGA ALI KHAN *v.* WIDOW OF BALMAKUND **[L. R., 3 I. A., 241 : 26 W. R., 82**

94. ——— Suit on decree of High Court.—*Civil Procedure Code, 1877.*—There is nothing in Act X of 1877 which prevents a suit from being instituted on a decree of the High Court. ATTERMONEY DOSSEE *v.* HURRY DOSS DUTT **[I. L. R., 7 Calc., 74 : 9 C. L. R., 357**

95. ——— Suit on decree pending appeal.—*Quære,*—Whether a new suit will lie upon a decree pending an appeal. IMAMUN *v.* HURDYAL SINGH . . . . . **5 W. R., 277**

96. ——— Suit for amount due on decree lost in Mutiny.—A suit was held to lie for the amount of an unsatisfied claim adjudged by a decree which was destroyed during the Mutiny, and

RIGHT OF SUIT—*continued.*

19. DECREES, SUITS ON—*continued.*

Suit for amount due on decree lost in Mutiny—*continued.*

the cause of action to date from the lost decree. EMAMUN *v.* HURDYAL SINGH . **W. R., 1864, 301**

See contra, NUZUR BANOO *v.* HOSSEIN ALI KHAN . **[W. R., 1864, 378**

97. ——— Suit on decree where there were no means of enforcing it by execution.—A decree in a suit upon a bond against the heir of the deceased obligor awarded to the plaintiff the amount of the bond from the property of the obligee, and directed that "the defendant be released from the claim in this suit." An order for execution of the decree was set aside, on the ground that the decree did not warrant the issue of an attachment, since it was not against any person. *Held* that a suit was maintainable by the plaintiff upon the decree recovered in the former suit, there being no other means of enforcing the former decree or recovering his debt. ANUND ROY *v.* MUNORUT SINGH **[Marsh., 611**

98. ——— Suit for balance after execution of decree for rent.—*Suit under Rent Act to recover sum due after sale in execution of decree under Beng. Reg. VII of 1799.*—A suit was held to be not maintainable under the Rent Act to recover a sum due under a decree for rent obtained under Regulation VII of 1799, and remaining unsatisfied after sale of the tenure. DHEERAJ MAHTAB CHAND *v.* DENO NATH ROY **[Marsh., 340 : 2 Hay, 445**

99. ——— Suit on foreign judgment.—*Suit on judgment of Small Cause Courts.*—A suit will not lie in the Courts of India upon the judgment of any Court in British India. The only exception to this rule is in the case of judgments of a Court of Small Causes on which suits are permitted to be brought in the High Court in order to obtain execution against immoveable property. *Quære,*—Whether suits on foreign judgments are maintainable in the Civil Courts of India. BHAVANISHANKAR *v.* PARSADRI **[I. L. R., 6 Bom., 292**

100. ——— *Native Court's decree.— Code of Civil Procedure (Act X of 1882), s. 434.*—A suit cannot generally be maintained in any British Court upon the judgment of a Native Court. *Quære,*—Whether it could where there had been a notification by the Governor General of India under section 434 of the Civil Procedure Act, X of 1882. HIMMATLAL *v.* SHIVAJIRAV **[I. L. R., 8 Bom., 593**

101. ——— Suit on decree of Small Cause Court.—*Decree unsatisfied by execution.*—Where plaintiff had obtained a decree in the Small Cause Court, and execution had been issued, but defendant had not moveable property sufficient to satisfy the decree,—*Held* that a suit in the High Court, on the decree of the Small Cause Court, would lie for the balance, but costs will not be given to the

RIGHT OF SUIT—*continued.*

19. DECREES, SUITS ON—*continued.*

Suit on decree of Small Cause Court—*continued.*

successful plaintiff in such a suit, nor interest on the judgment be obtained in the High Court. MOHENDRONATH ASH *v.* BEEDOBODUN DUTT [1 Ind. Jur., N. S., 220

102. ——— *Suit in High Court.*—A suit can be brought in the High Court on a decree of the Small Cause Court. KHOBLALL BABOO *v.* RAMCHUNDER BOSE [I. L. R., 2 Calc., 434

103. ——— *Decree unsatisfied by execution.*—In a suit to recover R777, due on a decree of the Small Cause Court, which decree had been obtained by the plaintiff against the defendant as executor of the estate of one *R.*, deceased, the defendant had appeared in the Small Cause Court and had denied assets of the deceased, and the decree was wholly unsatisfied, as appeared from the certificate of the First Judge. The plaintiff proved by the evidence of the defendant himself that he was in possession of immoveable property of the deceased out of which the decree could be satisfied. The plaint prayed that the defendant, as executor, might be ordered to pay the amount with interest and costs, and if he should deny assets, then for administration of the estate of the deceased. The defendant did not enter appearance. The Court granted a decree for the amount with interest and costs No. 1; in default of payment for six months from date of decree, the estate to be administered in due course. MODOOSOODUN PAUL *v.* DOYAL CHAND MULLICK [10 B. L. R., Ap., 35

104. ——— *Stat. 9 and 10 Vict., c. 95.*—No suit will lie in the High Court on a decree of the Small Cause Court. *Mohendronath Ash* v. *Beedobodun Dutt, 1 I. J., N. S., 220; Madan Mohun Bose* v. *Laurence, 1 B. L. R., O. C., 66;* and *Khoblall Baboo* v. *Ramchunder Bose, I. L. R., 2 Calc., 434,* dissented from. GOLAM ARAB *v.* CURREEMBOX SHAIKJEE [I. L. R., 5 Calc., 294: 4 C. L. R., 477

105. ——— *Insufficiency of immoveable property to satisfy decree.*—A suit may be brought in the High Court of Bombay upon a judgment obtained in the Court of Small Causes of Bombay. The execution of the decree in such suits is rigorously confined to immoveable estate. The ground of the interference of the High Court in such cases is that, practically, the judgment-creditor could not recover his debt except by process against the immoveable estate of the debtor. In such cases the plaint must contain an averment and the plaintiff must establish to the satisfaction of the High Court that there is not any sufficient moveable property of the defendant against which the decree of the Court of Small Causes can be fully executed, and that he has immoveable property situated within the original jurisdiction of the High Court against which execution can be had. FAKIRAPPA *v.* PANDURANGAPA [I. L. R., 6 Bom., 7

RIGHT OF SUIT—*continued.*

19. DECREES, SUITS ON—*continued.*

Suit on decree of Small Cause Court—*continued.*

106. ——— *Suit in Small Cause Court.*—A suit will not lie in a Small Cause Court on a decree of that Court. SANDES *v.* JOMIR SHAIKH . . . . . 9 W. R., 399

107. ——— *Suit in Small Cause Court.—Presidency Small Cause Courts Act (XV of 1882), ss. 1, 4, 94.*—A judgment-creditor in the Court of Small Causes had not before the 1st July 1882 the right to sue in that Court on his judgment. MERWANJI NOWROJI *v.* ASHABAI [I. L. R., 8 Bom., 1

108. ——— **Suit on decree barred by limitation.**—*Quære,*—Whether a suit could be maintained on a decree that was held to be barred by lapse of time. LAKSHMAMMA *v.* VENKATARAGAVA CHARIAR . . . . . 4 Mad., 89

109. ——— *Neglect to execute decree in suit for possession.*—Where a party brings a suit for possession and obtains a decree which he neglects to execute, no subsequent suit on the same cause of action will lie. GOPI MOHUN DASS *v.* TINCOURI GUPTA . 1 C. L. R., 254

NUBO DOORGA *v.* SEETAMONEE [23 W. R., 407

110. ——— *Neglect to execute decree.*—Where persons by their own neglect have lost the remedy by process of execution to which they became entitled by an adjudication in a former suit, they cannot be permitted to revert to the position which they held prior to the institution of that suit, and to bring a fresh suit. GOLAM HOSSEIN *v.* ALLA RUKHEE BEEBEE [3 N. W., 62: Agra, F. B., Ed. 1874, 248

HOSSEIN BUKSH *v.* MUSUND HOSSEIN [18 W. R., 260

NURSINGH DOSS *v.* KUMROODDEEN [20 W. R., 412

111. ——— *Neglect to execute decree.—Effect of barred decree.—Former suit relating to land.*—By SPANKIE and TURNBULL, *JJ.*—When the nature of a decree is such that it admits of execution, the decree-holder cannot, after allowing the limitation period to elapse without issuing process of execution, seek by a fresh suit to obtain the relief he should have sought by execution. By TURNER, *Offg. C. J.*—Although by reason of the limitation law process of execution may be barred, the decree is not altogether void. Its effect in ascertaining the rights of the parties is unaffected by any of the provisions of the limitation law. In respect of landed property which has been the subject of a decree, a plaintiff need not necessarily found his suit on the decree. He may assert, as his cause of action, the continued trespass of the defendants subsequently to the decree, which gives him a new cause of action. RAM JUS RAE *v.* RAM NARAIN [2 N. W., 382: Agra, F. B., Ed. 1874, 226

RIGHT OF SUIT—*continued.*

19. DECREES, SUITS ON—*continued.*

Suit on decree barred by limitation— *continued.*

112. ——————— A suit will not lie upon a decree the execution of which is barred by the provisions of the Limitation Act. FAKIRAPPA *v.* PANDURANGAPA . . . **I. L. R., 6 Bom., 7**

113. ——————— *Omission to enforce decree by execution till barred.*—When a decree is merely declaratory and does not require to be carried into effect by process of execution, the right thereby declared and ascertained exists independently of any process for enforcing it. But when the nature of the decree requires that it should be executed, a decree-holder cannot, after allowing the limitation period to elapse without issuing process of execution, seek by a fresh suit on the decree to obtain that which he should have sought for by executing it. DOOBEE SINGH *v.* JOWKEE RAM

[3 Agra, 381: Agra, F. B., Ed. 1874, 172

YAKOOB ALI *v.* UBDOOLRAHMAN . **3 Agra, 383**

[S. C. Agra, F. B., Ed. 1874, 172

JUGURNATH *v.* BALGOBIND

[1 N. W., 105: Ed. 1873, 154

114. ——————— *Suit to enforce declaratory decree for maintenance.*—A decree-holder having obtained in 1874 a decree entitling her to a certain sum to be paid annually by the judgment-debtor, applied for execution of the decree on the 11th of March 1875, but made no further application until July 1882. *Held*, though the application was barred by lapse of time, yet the decree being a declaratory one, a suit to enforce the annual right to maintenance would lie. SABHANATHA DIKSHATAR *v.* SUBBA LAKSHMI AMMAL

[I. L. R., 7 Mad., 80

20. DIGNITIES.

115. ——————— **Suit for declaration of right to receive marks of distinction.**—A suit for a declaration of a right to receive marks of recognition and honour at idol-festivals, or for damages from priests for withholding the same, is not cognisable by a Civil Court. GOSSAIN DOSS GHOSE *v.* GOOROO DOSS CHUCKERBUTTY .

[16 W. R., 198

116. ——————— **Suit to establish right to mere dignity.**—*Dignity unconnected with emolument.*—Plaintiff sued for a declaration of his right to take a cupola to a certain temple, and to place it upon the car of the idol, and to take a nandicpla (bamboo) with tom-toms from his house to the temple, and to offer the first cocoanut to the idol at the annual festival held in honour of a certain Lingayet saint. *Held* that the suit was not maintainable, as it was brought to vindicate plaintiff's right, not to an office, but to a mere dignity unconnected with any fees, profits, or emoluments. SANGAPA BIN BASLINGAPA *v.* GANGAPA BIN NIRANJAPA

[I. L. R., 2 Bom., 476

RIGHT OF SUIT—*continued.*

20. DIGNITIES—*continued.*

Suit to establish right to mere dignity —*continued.*

117. ——————— *Suit to establish right to parade bullock on the Pola.—Damages.—Dignity.*—A suit does not lie in a Civil Court for a declaration that the plaintiffs have the right of parading their bullock on the Pola (the last day of the month of Shravan) of one year, and the defendants on the Pola of the next; for damages for the invasion of the plaintiffs' right in a given year; and for an injunction restraining the defendants from interfering with the said right. RAMA *v.* SHIVRAM

[I. L. R., 6 Bom., 116

118. ——————— *Suit claiming right to have palki carried crossways.—Quære,*—Whether a suit lies in the Civil Courts against the Chief Priest of the Lingayats by the Swami or Chief Priest of the Smartava sect of Brahmins claiming, by grant from the supreme power of the State, the privilege of adavi palki, of being carried, on ceremonial occasions, in a palanquin borne crossways, so that the poles traverse the line of march. SUNKUR BHARTI SWAMI *v.* SIDHA LINGAYAH CHARANTI

[6 W. R., P. C., 39: 3 Moore's I. A., 198

119. ——————— *Mans, Suit for right to.—Perpetual injunction against invasion of these mans.—Right to worship.—Small gifts by presents of rice, cocoanuts, vida and vension, attached to such mans, how far considered as emoluments.*—The plaintiffs and the defendants, as members of a family of Ganvkars, claimed to be entitled to certain mans, consisting of the right to be the first to worship the deity on certain occasions, and to receive gifts of rice, cocoanut, and vida and vension made by the priest on certain religious ceremonies and other occasions. The plaintiff being obstructed by the defendants in the enjoyment of the mans, sought to obtain a perpetual injunction against the defendants. The Court of first instance dismissed the plaintiff's claim as being one for mere dignities unaccompanied with emoluments, and, as such, not cognisable by a Civil Court. The plaintiff thereupon appealed, and the lower Appellate Court reversed the lower Court's decree, and granted a perpetual injunction against the defendants, prohibiting them from interference with the plaintiff's enjoyment. On appeal by the defendants to the High Court,—*Held*, restoring the decree of the Court of first instance, that the plaintiff's suit was not maintainable. The mans were mere dignities to which no profits or emoluments were attached. The trifling gifts made by the priest, of rice, a cocoanut and vida, on the occasion of worshipping the deity, and of a piece of vension on other occasions, could not be regarded as emoluments, being merely symbols of recognition and marks of respect of and to the holders of the mans. *Rama* v. *Shivram, I. L. R., 6 Bom., 116*, followed. NARAYAN VITHE PARAB *v.* KRISHNAJI SADASHIV

[I. L. R., 10 Bom., 233

120. ——————— *Cause of action.—Civil right.—Precedence at religious festival.*—

RIGHT OF SUIT—*continued.*

20. DIGNITIES—*continued.*

Suit to establish right to mere dignity —*continued.*

The plaintiff alleged that he and his ancestors had possessed for 300 years the privilege of receiving before others sacred ashes, sandal, betel and nut, flowers, &c., at certain pagodas on festival and other days, and that the defendants had disputed his claim to precedence and created a disturbance, whereby the plaintiff was prevented from enjoying this privilege. The plaintiff prayed that his claim to receive first honours might be established, and that the defendants should be perpetually restrained from preventing him from receiving the same. *Held* that no cause of action was disclosed by the plaint. KARUPPA GOUNDAN *v.* KOLANTHAYAN

[I. L. R., 7 Mad., 91

21. DOCTORS' FEES.

121. ——— Suit for doctor's fees.—*Right of doctor to recover fees.*—The fact of a doctor treating a patient before being paid is no bar to his suit to recover his fees in a Court of law. HURISH CHUNDER SURMAH *v.* BROJONATH CHUCKERBUTTY . . . . . **13 W. R., 96**

22. DOCUMENTS, LOSS OR DESTRUCTION OF—

122. ——— Suit on lost cheque.—*Cause of action.—Civil Procedure Code, 1877 s. 61.*—The indorsees of a cheque sued the indorser, stating in their plaint that the cheque had been lost and that the defendant refused to give them a duplicate of it, and claiming a duplicate of it, or the refund of the money they had paid the defendant on the cheque. *Held* that the plaint disclosed a cause of action against the defendant. BALDEO PRASAD *v.* GRISH CHANDRA BOSE . **I. L. R., 2 All., 754**

123. ——— Suit to compel execution of another document where one has been destroyed before registration.—A suit will lie to compel the defendant to execute another instrument of sale where the first one has been destroyed by fire soon after its execution, and has on that account, though compulsorily registrable, become incapable of being registered. NYNAKKA ROUTHEN *v.* VAVANA MAHOMED NAINA ROUTHEN

[5 Mad., 123

23. ENDOWMENT, COMMITTEE OF—

124. ——— Suit to prevent Committee under Act XX of 1863 from illegal interference.—*Decision as to validity of testamentary paper.*—The khaleefa of an endowment having, by a will or testamentary paper, appointed a successor, and given various directions respecting the endowed property, sent a copy of the paper to the Committee appointed under Act XX of 1863 for their information. The Committee having thereupon expressed their opinion that the document was of no effect, the

RIGHT OF SUIT—*continued.*

23. ENDOWMENT, COMMITTEE OF—*continued.*

Suit to prevent Committee under Act XX of 1863 from illegal interference —*continued.*

khaleefa sued "to prevent the Committee from illegal interference, and to reverse their order respecting the will." *Held* that such a suit was not maintainable, and that no legal cause of suit appeared. HISAM-OOD-DEEN KHAN *v.* KHALEEFA UNWAR-OOLLAH . . . . . **2 N. W., 400**

24. ENHANCEMENT, NOTICE OF—

125. ——— Suit to set aside notice of enhancement.—*Act X of 1859, ss. 13 and 14.*—Where notice of enhancement of rent has been served, under section 13, Act X of 1859, upon a ryot who has no right of occupancy, and whose rent has not been fixed by agreement with his landlord, such ryot cannot maintain a suit to set aside the notice of enhancement. His remedy in case the rent is excessive is under section 14. MOHEEM *v.* RAHEEMOTOOLLAH

[Marsh., 341 : 2 Hay, 433

25. EXECUTION OF DECREE.

126. ——— Suit after adverse order in execution.—*Civil Procedure Code, 1877, s. 283.*—Section 283 of Act X of 1877 enables a party against whom an order has been made in execution proceedings to bring a suit to establish his rights, whatever they may be, but it says nothing as to the nature of the suit or the Court in which it is to be brought. Whether the party is to sue in the Civil Court or in the Small Cause Court depends entirely upon the nature of the claim and the right which is sought to be enforced. A person whose goods are illegally sold under an execution does not lose his right to them though he may have claimed them unsuccessfully in the execution proceedings. He may follow them into the hands of the purchaser, or of any other person, and may sue for them or their value without reference to anything which has taken place in the execution proceedings. SHIBOO NARAIN SINGH *v* MUDDEN ALLY. NATABAR NANDI *v.* KALI DASS PALI . **I. L. R., 7 Calc., 608 : 9 C. L. R., 8**

127. ——— *Order striking off objection to attachment.—Suit for damages for wrongful attachment.—Suit to establish right.—Civil Procedure Code, 1877, s. 283.*—An order striking off an objection to the attachment of property attached in execution of a decree for default of prosecution is not "conclusive," as regards the right which the objector claimed to the property, within the meaning of section 283 of Act X of 1877. *Held,* therefore, where a person objected to the attachment of certain moveable property attached in execution of a decree, claiming it as his own, and his objection was struck off for default of prosecution, that such person might sue for damages for the wrongful attachment of such property without suing to establish the right which he claimed thereto. KALLU MAL *v.* BROWN . . . . **I. L. R., 3 All., 504**

RIGHT OF SUIT—*continued.*

25. EXECUTION OF DECREE—*continued.*

Suit after adverse order in execution—*continued.*

128. ——————— *Money-decree against mortgagor.—Sale of equity of redemption by mortgagor.—Mortgaged land attached and sold in execution.—Claim by purchaser of equity of redemption.—Civil Procedure Code (Act VIII of 1859), s. 246.—Civil Procedure Code (Act XIV of 1882), ss. 278 to 283.*—In 1870 *B.* mortgaged to *N.*, with possession, a certain piece of land. On 17th June 1871 *M.* and *T.* obtained a money-decree against *B.* On 9th March 1872 the defendants bought from *B.* his equity of redemption. In July 1872 *M.* and *T.* attached the land in execution of their decree. The defendants objected to the attachment under section 246 of the Civil Procedure Code (Act VIII of 1859), but on investigation of their claim an order was made disallowing their claim on the 23rd December 1872. In June 1873 the defendants paid off the mortgage-debt and were put into possession by the mortgagee. In October 1873 *M.* and *T.* put up the land for sale in execution of their decree, and the plaintiff became the purchaser. On seeking to obtain possession, the plaintiff was resisted by the defendants, whose claim was allowed by the Subordinate Judge after inquiry. The plaintiff, therefore, brought this suit under section 335 of the Civil Procedure Code, Act XIV of 1882. The lower Courts rejected his claim. On appeal to the High Court,—*Held* that where, under section 246 of the Civil Procedure Code, Act VIII of 1859, or the corresponding sections (278 to 283) of the Civil Procedure Codes of 1877 and 1882, an order has been passed against any person making a claim to property under attachment, such person may bring a suit to establish his title to the property within one year from the date of such order; but in default of his bringing such suit within the prescribed time, he is precluded from asserting his title against the auction-purchaser, whether as plaintiff or defendant. In the present case an order had been passed against the defendants under section 246 of the Civil Procedure Code, 1859, on the 23rd December 1872; and as they had brought no suit within a year from that date, they could not now contest the plaintiff's title to the property. The defendants, however, having, since the date of the said order, paid off the mortgage,—*Held* that it would be contrary to justice, equity, and good conscience for the Court to assist the plaintiff in obtaining possession unless he paid the defendants the amount paid by them to the mortgagee to free the property from the incumbrance. NILO PANDURANG *v.* RAMA PATLOJI

[I. L. R., 9 Bom., 35

129. ——————— *Decree against father.—Family property attached.—Objection by sons.—Release of sons' shares.—Suit to contest order of release.—Cause of action.*—Certain land, the property of an undivided Hindu family, having been attached in execution of a decree against the father upon a bond, whereby the said land was hypothecated to secure the repayment of the debt, the sons intervened, objecting to the attachment of their shares in the said land, and their shares were released from attachment. The decree-holder then sued the sons to have it declared that their shares were liable to be sold in execution of the decree against the father. *Held*, overruling *Chockalinga* v. *Subbaraya, I. L. R., 5 Mad., 133*, that the suit was maintainable. RAMAKRISHNA *v.* NAMASIVAYA . **I. L. R., 7 Mad., 295**

130. ——————— *Civil Procedure Code (Act XIV of 1882), s. 283.—Hindu law, Alienation.—Mitakshara.—Mortgage by father.—Liability of sons not made parties.*—The *L.* Bank advanced money to *C.*, a Hindu governed by the Mitakshara school of law, upon mortgage of ancestral property. *S.*, who was stated to be *C.'s* only son, joined in the mortgage. Subsequently the Bank obtained a decree against *C.* and *S.* for the amount due on the mortgage. On attempting to sell the mortgaged property other sons of *C.* objected. This objection was allowed, and the mortgagees referred to a regular suit. They then sued all the sons of *C.* to establish their lien on the mortgaged property. *Held* that the suit was maintainable under section 283 of the Civil Procedure Code. *Nuthoo Lall Chowdhry* v. *Shoukee Lall, 10 B. L. R., 200;* and *Dhaee* v. *Hurry Prosad*, unreported, distinguished. SITANATH KOER *v.* LAND MORTGAGE BANK OF INDIA

[I. L. R., 9 Calc., 888: 12 C. L. R., 574

131. ——— **Execution of decree, suit for wrong done in.**—*Suit for wrong done under colour of decree.*—The execution of an imperfect decree does not involve the doing of a wrong unless the decree is wrongly interpreted. An action will lie in the Civil Court where a wrong is committed under colour of a decree of another Court. DALMIAH *v.* RADHA PERSHAD SINGH . **19 W. R., 188**

132. ——— **Suit to remove obstruction to execution of decree.**—A suit may be brought for the removal of an obstruction to the execution of a decree. TAKHUROODDEEN MAHOMED ESHAN CHOWDHRY *v.* KURIMBUX CHOWDHRY

[3 W. R., 20

133. ——— **Suit to stay execution of decree.**—*Suit to stay execution against certain property until judgment-creditor had proceeded against other property.—Res judicata.—Suit for land.—Jurisdiction.—Letters Patent, cl. 12.*—One *K. C.* was entitled to a share in pergunna Alumpore. Before he obtained possession, Government revenue on the whole estate fell due. *K., C.* failed to pay his share, and his co-sharer, *K.*, to save the estate, mortgaged her share of the estate to one *H. B.*, and with the amount so borrowed paid the whole sum due, and subsequently sued *K. C.* for the amount, eventually obtaining a decree. Subsequently this decree became vested in one *R.*, and the pergunna Alumpore came into the possession of one *K. G.*, who in 1874 took an assignment of the mortgage executed by *K.* in favour of *H. B.* The plaintiffs also alleged that since the execution proceedings had commenced they had discovered a secret arrangement

RIGHT OF SUIT—*continued.*

25. EXECUTION OF DECREE—*continued.*

Suit to stay execution of decree—*continued.*

made in 1877 between *K. G.*, *R.*, and *H. B.*, by which it was agreed that *R.* should not execute the decree against Alumpore, but would release *K. G.* from all liability in respect of the charge on that property, and in consideration *K. G.* executed a putni lease to *H. B* of a portion of Alumpore at a small rent. *R.* obtained an order for execution against the property of *K. C.*, and, having transferred his decree to the High Court, proceeded to enforce the decree against the plaintiff, the widow of *K C.*, and her son, by attaching the family dwelling-house in Calcutta. The widow and son then brought this suit against *K. G.*, *R.*, and *H. B.* to have the share of *K. C.* in Alumpore ascertained, and praying for a decree calling upon *K. G.* to pay the amount of the value of the share of Alumpore in satisfaction of *R.'s* decree. *Held* that the suit could not be maintained so far as it attempted to make the decree a charge against Alumpore. *Held*, on appeal, that the suit was rightly dismissed; that, as far as *R.* was concerned, it had already been decided that *R.* was entitled, if he so chose, to execute his decree against the Calcutta property; and that, therefore, that question was *res judicata*; and that as regards the plaintiff's claim that the putni given by *K. G.* to *H. B.* should be treated as part-payment to *R*, such a question could only be decided in execution proceedings: that the mere existence of the agreement between *K. G.*, *R.*, and *H. B.* did not entitle the plaintiff to join them as co-defendants in the suit: and that, as far as *K. G.* was concerned, the suit brought against him could only be treated as a suit to establish a charge or lien on land out of Calcutta, and therefore the Court had no jurisdiction to try it. KRISTO MOHINEE DOSSEE *v.* KALIPROSONO GHOSE . . . **I. L. R., 8 Calc., 402**

26. FERRY, SUIT RELATING TO—

134. ——— Suit to prevent establishment of ferry.—*Infringement of ferry rights.—Right to restrain person starting a second ferry.*—*A.*, the owner of a ferry granted him under a Government settlement, brought a suit to restrain *B.* from running another ferry over the same spot where *A.'s* ferry plied for hire. It appeared on the evidence that *B.* levied no tolls on his ferry, but it was not shown that it was used only for the conveyance of his own servants and ryots. *Held* that such suit was maintainable. LUCHMESSUR SINGH *v.* LEELANUND SINGH

[I. L. R., 4 Calc., 599: 3 C. L. R., 427

27. FRESH SUIT.

135. ——— Suit after dismissal of suit instituted in incompetent Court.—*Act XXII of 1872, Effect of.—Decrees made before Act came into operation.*—No provision of Act XXII of 1872 sets aside decrees passed by Appellate Courts before the date on which it came into operation, or

RIGHT OF SUIT—*continued.*

27. FRESH SUIT—*continued.*

Suit after dismissal of suit instituted in incompetent Court—*continued.*

restores decrees of the Court of first instance which had been annulled by the Appellate Court; nor is there any provision which debars a plaintiff, whose suit has been dismissed on the ground of its institution in a Court incompetent to receive it, from re-instituting his suit in a competent Court. CHOONEE LALL *v.* KUDHAIRA . . **6 N. W., 34**

136. ——— Suit for possession after failure to obtain it in execution.—*Auction-purchaser, Suit by, for possession.—Execution proceedings.—Possession, Application for, by auction-purchaser.—Civil Procedure Code (Act XIV of 1882), s. 318.*—A suit by an auction-purchaser to obtain possession of land, the subject-matter of his purchase, will lie when it is shown that an attempt has been made to obtain possession in execution proceedings, and that such attempt has been unsuccessful. In the case of *Lalit Coomar Bose* v. *Ishan Chunder Chuckerbutty, 10 C. L. R., 258*, it was not intended to hold that under no circumstances would such a suit lie, but that so long as the means provided by section 318 of the Civil Procedure Code are open to a purchaser, he is bound to have recourse to that section rather than to bring a fresh suit. ISWAR PERSHAD GURGO *v.* JAI NARAIN GIRI

[I. L. R., 12 Calc., 169

137. ——— *Suit to obtain possession of land sold in execution of a decree.—Possession, Application for, by auction-purchaser.—Execution proceedings.—Subsequent suit for possession of land sold in execution of decree.*—In execution of a decree certain land belonging to the judgment-debtor was sold; subsequently the auction-purchaser, who had not got possession, re-sold the land to a third party and gave him the certificate. The latter then applied to the Court to be put into possession, but having failed in those proceedings, owing to some irregularity in the description of the boundaries of the property, he instituted a regular suit against the judgment-debtor to obtain possession. On a plea that such suit would not lie, as the plaintiff could have got possession in the miscellaneous proceedings,—*Held* that, having regard to the provisions of article 138 of schedule II of Act XV of 1877, and of section 11 of Act XIV of 1882, such suit was maintainable. SERU MOHUN BANIA *v.* BHAGOBAN DIN PANDEY

[I. L. R., 9 Calc., 602

138. ——— *Obstruction to execution of decree.—Merger of cause of action.—Civil Procedure Code, 1882, s. 328.*—*S. A.*, *R.*, and *S. B.* were members of an undivided Hindu family. *S. B.* died, leaving him surviving several sons. Subsequently *S.*, *R.*, and *M.*, the eldest son of *S. B.*, mortgaged the family house to the plaintiff. In 1877 the plaintiff brought a suit on the mortgage against *S. R.* and *M.*, and obtained a decree for possession of the house until payment of the mortgage-debt. In execution of this decree he was obstructed by the widow and *B.* and *L.*, other sons of *S. B.*, but the Court on 14th

RIGHT OF SUIT—*continued.*

27. FRESH SUIT—*continued.*

Suit for possession after failure to obtain it in execution—*continued.*

January 1879 overruled their objections and directed possession to be given to the plaintiff. On 28th January 1879 the plaintiff complained that he was prevented from obtaining possession of one of the rooms in the house; *B.* appeared and admitted that he had locked up the room, and he refused to give up possession, contending that he was not bound by the mortgage, as he was not at the time joint with *M.* and the other sons of *S. B.*, and that the loan was not one required for family necessity. The plaintiff's application was dismissed. In 1882 the plaintiff brought a suit against *B.*, in which he prayed for a decree giving him possession of the room on the terms of the decree in 1877. By the defendant it was (*inter alia*) contended that the previous suit on the mortgage had exhausted the plaintiff's cause of action, and that the plaintiff had no further right against the defendant. *Held* that the decree in the former suit could not affect the defendant, as he was not a party to it, nor was he represented. If he had been represented, he could not have resisted the execution of the decree. Not having been represented, he could on principle be exempted from liablity in the present suit only if the cause of action was merged in the judgment against his uncles and brother. Here, however, there was no such merger. The previous decree had awarded possession of the whole house to the plaintiff. The existence of that decree could not be a reason for not awarding part of the same house when detained by the defendant. He avowed himself a stranger to the defendants against whom the previous decree was obtained, and his act might be regarded as constituting a separate cause of action. *Held*, also, that section 328 of the Civil Procedure Code, 1882, does not make it obligatory on a decree-holder, who is obstructed in execution of the decree, to pursue his remedy under that section. Accordingly the omission of the plaintiff to avail himself of the remedy under that section did not prevent him from proceeding against the defendant by a regular suit. BALVANT SANTARAM *v.* BABAJI BIN SAMBHAPA . . . **I. L. R., 8 Bom., 602**

28. GOVERNMENT SCHOOL, SUIT FOR BENEFIT OF—

138. ——— Suit by secretary and manager of Government aided school.—*Improvements, Damages for removal of.*—In a suit by the secretary and manager of a Government aided school for damages against the owner of the school premises for breaking down the building and removing the materials belonging to plaintiff,—*Held* that the plaintiff, as secretary and manager, could maintain the action for the benefit of the school; that on the facts the plaintiff was not entitled to greater damages than had been awarded to him for the value of the materials removed by the defendant, or to compensation for the improvements made by him to the building; and that there was no presumption of gift in the case. SREEHURY ROY *v.* HILLS **[6 W. R., Civ. Ref., 21**

RIGHT OF SUIT—*continued.*

29. IDOLS, SUITS CONCERNING—

139. ——— Suit to establish right to deal with Hindu idols.—*Property.—Jurisdiction of Civil Court.*—Hindu idols being property, the right to deal with such property is a right cognisable by Civil Courts. SUBBARAYA GURUKAL *v.* CHELLAPPA MUDALI . . . . **I. L. R., 4 Mad., 315**

140. ——— Suit for damages on account of omission to offer food to idol.—*Cause of action.*—The plaintiff, alleging that he was a member of a family of Guravs holding a vatan attached to a temple, complained that the defendant was the holder of an inam allowance, granted in consideration of his daily offering to the idol some rice and cake, and burning a lamp; and that he had omitted to make such offering for one year. The plaintiff claimed R15 damages. *Held* that the plaintiff had no cause of action. The defendant's obligation, if any, was towards the idol; and, if that obligation had not been performed, it could only be enforced by some person claiming to have a right to insist that the worship of the idol should be properly performed. DHADPHALE *v.* GURAV . . . **I. L. R., 6 Bom., 122**

141. ——— Suit to establish right to remove idol for turn of worship.—When a plaintiff and defendant are jointly entitled to the profits from an idol in the defendant's temple, and the plaintiff is obstructed by the defendant in the use and worship of the idol, a suit will lie for a declaration that the plaintiff is entitled to have the idol removed to his own house during the period he is entitled to the profits of it. DWARKANATH ROY *v.* JANNOBEE CHOWDHRAIN . . . **4 W. R., 79**

30. INCOME TAX.

142. ——— Suit for refund of income tax.—*Income Tax Act, XXXII of 1860, s. 137.*—A person seeking a refund of income tax illegally assessed upon him may, under section 137, Act XXXII of 1860, apply to the Commissioner,—*i.e.*, it is "lawful" for him so to apply, but there is no law that he must do so. He may legally sue in a Civil Court to recover the illegal assessment. COLLECTOR OF FURREEDPORE *v.* GOBOO DOSS ROY . **11 W. R., 425**

31. INJURIES, SUITS BY AND AGAINST REPRESENTATIVES OF DECEASED FOR—

143. ——— Suit for damages for destruction of life.—*Son adopted by widow after death of deceased, Right of, to sue.—Damages.*—A son adopted by the widow of a deceased Hindu (in respect of whose estate no probate, letters of administration, or certificate of heirship, has been granted) is the legal representative of the deceased, and as such was entitled to maintain a suit, under Act XIII of 1855, for the benefit of the persons, if any, entitled to compensation for the injury occasioned to them, by the death of the deceased against those

RIGHT OF SUIT—*continued.*

31. INJURIES, SUITS BY AND AGAINST REPRESENTATIVES OF DECEASED FOR—*continued.*

Suit for damages for destruction of life—*continued.*

whose negligence caused that death. Such an adopted son was not, however, entitled to have any portion of the damages awarded in the suit allotted to him as a child of the deceased. *Quære,*—Whether a son, if adopted by deceased in his lifetime, would be entitled to damages under that Act. VINAYAK RAGHUNATH *v.* GREAT INDIAN PENINSULA RAILWAY COMPANY . . . . **7 Bom., O. C., 113**

144. ——— Suit for wrong done by deceased person.—*Act XII of 1855.—Defamation.*—A suit was maintainable under Act XII of 1855 against personal representatives for a wrong done by the deceased within a year of his death, although such wrong be of a purely personal character,—as, for example, defamation. GOKUL CHUNDER *v.* BUREEK BEGUM . **Marsh., 344 : 2 Hay, 325**

145. ——— *Act XII of 1855.—Survival of cause of action.*—Act XII of 1855 did not apply to wrongs which do not survive to the representatives of a deceased person. A widow who is the heir of her deceased husband is liable to make good the wrong committed by the husband. The plaintiff's right of suit does not abate by the death of the husband, but survives against his heir. CHUNDER MONEE DASSEE *v.* SANTO MONEE DASSEE **[1 W. R., 251**

146. ——— Suit against representative of agent of Official Assignee.—*Act XII of 1855.—Suit for money and for delivery of bonds and papers.*—Act XII of 1855 applied to suits for wrongs which, according to the law then in force, did not survive to or against executors or administrators. A suit for recovery of moneys due by an agent of the Official Assignee of an insolvent debtor's estate, and for delivery of certain papers and documents belonging to such insolvent estate, will lie against the legal representative of such agent after his decease, and the right of action will not expire on his death. NUJUF ALI *v.* PATTERSON **[2 N. W., 103**

32. INJURY TO ENJOYMENT OF LAND.

147. ——— Suit for removal of trees.—*Contingent damage.—Cause of action.*—The plaintiff claimed the removal of certain trees, planted by the defendant on his own land, on the ground that the trees had been planted so near his land that when they grew up they would injure his crops. *Held* that until the plaintiff's enjoyment of his own land was directly and immediately interfered with by the growth of the defendant's trees, he had no right to ask for their removal, and he had therefore no cause of action. RAM LALL *v.* DALGANJAN **[I. L. R., 5 All., 369**

RIGHT OF SUIT—*continued.*

33. INSTIGATING PROCEEDINGS, SUIT FOR—

148. ——— Suit against party for instigating proceedings in false name.—*Form of suit.*—The plaintiffs sued for the reversal of a summary award and for restitution of the money they had paid under it, alleging that the proceedings before the Collector had been promoted entirely by the defendant using the false name of *B.*, a person never in existence; and obtained a decree in the lower Courts. The point taken in special appeal was that the defendant not being a party on the record of those proceedings, the plaintiffs could not recover in this form of action. *Held* that, though the proper and more prudent course would have been to sue the defendant for damages, yet this being a mere matter of form, the Court refused to interfere with the decision of the Courts below. KHELARAM DOSS MISTREE *v.* DHUREE DOSS **[1 Hay, 4**

34. INTEREST, SUITS FOR—

149. ——— Suit for interest on money deposited under decree afterwards reversed.—A suit will not lie for interest in respect of money deposited under a decree subsequently reversed on appeal. ASHRUFFUNNISSA BEGUM *v.* KHANUM JAUN . . . . **6 W. R., 285**

150. ——— Suit for interest on money for period defendant obstructed the plaintiff in his attempts to obtain it.—Plaintiffs in execution of a decree against *A.* attached certain money deposited in the Collectorate to which *A.* was entitled, but were opposed by *B.* alleging that *A.'s* rights in the money had been transferred to him. The plaintiffs finally succeeded in obtaining the money, and then sued *B.* for interest upon it during the time he prevented them from obtaining it. *Held* the suit was maintainable and the plaintiff was entitled to recover. PARBUTTY CHURN SOOR *v.* PROMOTHONATH GHOSE . . **W. R., 1864, 174**

35. JOINT RIGHT.

151. ——— Suit by one of several heirs against creditor for share of debt.—*Contract.—Joint obligation.—Act XXVII of 1860.—Contract Act, ss. 42, 45.—Held* by the Full Bench (MAHMOOD, *J.* dissenting) that when, upon the death of the obligee of a money-bond, the right to realise the money has devolved in specific shares upon his heirs, each of such heirs cannot maintain a separate suit for recovery of his share of the money due on the bond. KANDHIYA LAL *v.* CHANDAR **[I. L. R., 7 All., 313**

36. JUDICIAL OFFICERS, SUITS AGAINST—

152. ——— Suit against Government for acts of Magistrate.—A suit did not lie against Government for the proceedings of a Magistrate under Chapter XX of the Criminal Procedure Code, 1861. BAGAISHREE DYAL *v.* GOVERNMENT **[2 Agra, 81**

RIGHT OF SUIT—*continued.*

36. JUDICIAL OFFICERS, SUITS AGAINST—*continued.*

153. ——— Suit to have land declared private property.—*Criminal Procedure Code, 1861, ss. 308, 311.—Order of Magistrate declaring land to be public.*—The concluding clause of section 311 of the Code of Criminal Procedure, though it prevents the Civil Courts from entertaining a suit to restrain a Magistrate from carrying out an order made under section 308, or a suit for damages against the Magistrate or any other person in carrying out such order in the manner provided by law, does not bar a person against whom such an order has been carried into effect from instituting a suit to prove that land declared by the Magistrate to be public is his private property. LALJI UKHEDA *v.* JOWBA DOWBA . . **8 Bom., A. C., 94**

154. ——— Suit against Judge for maliciously issuing illegal order.—*Want of jurisdiction.—Knowledge of want of jurisdiction.*—A plaint against a Judge, averring that the Judge, knowingly and maliciously, issued an illegal order to the plaintiff's injury, does not disclose a sufficient cause of action against the Judge. It must not only aver that the Judge had no jurisdiction, but also that he had no reasonable and probable cause for supposing that he had jurisdiction. PRAHLAD MAHARUDRA *v.* WATT . . . **10 Bom., 346**

155. ——— Suit against Collector for illegal proceedings.—*Entry of name in Collector's books.—Improper action of Collector.*—The mere entry of the name of one parcener in immoveable property in the Collector's books as the occupant or owner is not sufficient ground for an action by a coparcener against the Collector, inasmuch as the Collector's books are kept for purposes of revenue and not for purposes of title. But if the Collector improperly enjoin the plaintiff from taking, or other parties from paying, to the plaintiff his share of the rents or profits, an action may be maintained against the Collector. COLLECTOR OF POONA *v.* BHAVANRAV BALKRISHNA . . . . **10 Bom., 192**

156. ——— *Entry of name in Collector's books.—Bom. Reg. XVI of 1827, s. 19.*—Although the entry by a Collector of a particular person's name as "occupant" affords, however mistaken, no ground for an action against the Collector, yet where there is an apparent and reasonable ground for apprehending legal injury from the Collector's proceedings,—as when the Collector affirms one person's title to the exclusion of another by entering his name in the register of "watans" (compiled under Regulation XVI of 1827, section 19), or where damage to a person's right is likely to arise from the Collector's act,—it is not improper to join the Collector as a party to a suit. SANGAPA MALAPA *v.* BHIMANGOWDA MARIAPA **[10 Bom., 194**

37. KING OF OUDH, SUIT AGAINST—

157. ——— Suit against King of Oudh before Act XIII of 1868.—*Consent of Governor General.*—A suit against the King of Oudh, commenced without the consent of the Governor General in Council, was held to be null and void, even though it had been instituted, and judgment had been given, before the passing of Act XIII of 1868. BEGUM BIBEE *v.* KING OF OUDH . . **11 W. R., 116**

RIGHT OF SUIT—*continued.*

37. KING OF OUDH, SUIT AGAINST—*continued.*

Suit against King of Oudh before Act XIII of 1868—*continued.*

38. LANDLORDS AND TENANTS, SUITS CONCERNING—

158. ——— Suit for use and occupation.—*Suit by Receiver.—Suit to recover money payable under agreement.*—A suit was brought by the plaintiff and Receiver of the Tanjore Estate to recover from the first defendant, a farmer, a sum of money alleged to be rent due to the Tanjore Estate under a written agreement executed in August 1866 by the first defendant to the second defendant, who then claimed to be owner of the estate. The Judge of the Court of Small Causes considered that the subject-matter of the plaint did not constitute a cause of action to the plaintiff, and dismissed the plaint, subject to the opinion of the High Court. *Held* that the suit was maintainable by the Receiver to recover the fair rent payable for the use and occupation of the land under the muchalka, which was good evidence of what was the fair amount of rent. The second defendant, having been held to possess no title to the property, could not afterwards maintain an action for the non-payment of the rent of a portion of such property, due according to the terms of the muchalka. *Held*, also, that the right of suit did not extend to recover anything as interest on the rent due. MORRIS *v.* MUTHUSAMI PILLAI **[6 Mad., 363**

See MORRIS *v.* SAMBAMURTHI RAYAR **[6 Mad., 122**

159. ——— Suit to recover arrears of rent paid to Government under certificate.—*Money payable to zemindar.*—At the time when a zemindari came under the khas management of a settlement officer, arrears of rent were due by the plaintiff to the zemindar. The settlement officer issued a certificate against the plaintiff, under section 19 of Bengal Act VII of 1868, requiring him to pay these arrears. The plaintiff, at first objected, but subsequently withdrew his objection and paid a portion of the money into Court, and presented a petition stating that the amount paid in was partly due to the Government, and asking that his property might be released from attachment. On payment of the balance claimed under the certificate and costs, the certificate was discharged. *Held* that a suit to recover the amount paid to Government, brought on the ground that that amount was really payable to the zemindar, would not lie. *Quære,*—Whether such a suit would lie if the plaintiff were compelled to pay

RIGHT OF SUIT—*continued.*

38. LANDLORDS AND TENANTS, SUITS CONCERNING—*continued.*

Suit to recover arrears of rent paid to Government under certificate—*continued.*

again to the zemindar. BEPIN BEHARI SINGH *v.* GOVERNMENT . . . I. L. R., 5 Calc., 325

160. ——— **Suit as to validity of rent-free grant.**—*Suit for arrears of rent.—Suit for assessment.*—A suit for "arrears of rent" is not maintainable in order to raise the question as to the validity of an alleged rent-free grant. The question should be raised by a suit to assess the holding. HUREE CHUND *v.* BRIJ KOMAR SINGH [1 Agra, Rev., 35

161. ——— *Omission to make deductions from rent.—Suit for excess payment.*—Where a person has a right to make deductions of rent payable to the surburakar under his kabuliat on account of rent due from ryots or others, and pays his full rent without making any deduction, his not doing so gives him no right of action against the zemindar or his representatives. CHUNDER SEEKUR ROY *v.* GHOLAM SHUREEF *alias* LOOPAN MEEAH [1 Ind. Jur., N. S., 146

162. ——— **Suit for excess payment of rent.**—*Receipt by one landlord of rents that ought to have been paid to another.*—Where a landlord receives rents which exceed the rents properly payable to himself, the party to whom the excess is payable is entitled to recover it directly from him by a civil suit, and need not sue the tenants who made the payment. GOOROO CHURN NAG *v.* GOBIND CHUNDER GOOHO . . . . . 24 W. R., 352.

163. ——— **Suit for rents collected by unauthorised person without title.**—*Cause of action.*—Where *A.* without title has collected rents due to *B.*, *B.* may sue *A.* for the recovery from him of the rents so received. RAM CHURN BANERJEE *v.* MUDDUN MOHUN TEWAREE [Marsh., 269: 2 Hay, 198

164. ——— **Suit complaining that defendants have dissuaded tenants from paying rent.**—*Cause of action.*—It is not an actionable wrong to dissuade a tenant from paying his rents to his landlord, who can recover them by law. DALGLEISH *v.* JEEBUN MAHTO *alias* JHAW MAHTO [25 W. R., 230

165. ——— **Suit to enforce acceptance of pottah.**—*Jurisdiction of Civil Courts.*—A regular suit in the Civil Courts to enforce the acceptance of a pottah is maintainable. KARIM *v.* MUHAMMAD KADAR . . . . . I. L. R., 2 Mad., 89

166. ——— **Suit by lessor against person injuring land leased.**—*Suit for damages.*—A lessor may sue a third party for damages for injury sustained by reason of excavations made by such party on lands leased out by the plaintiff to a lessee. DHEERMONEY DOSSEE *v.* CROFT [3 W. R., S. C. C. Ref., 20

RIGHT OF SUIT—*continued.*

39. LOSS OF SERVICE.

167. ——— **Suit by Hindu father for compensation for the loss of his daughter's services in consequence of her abduction.**—*Compensation for costs of prosecution.*—A Hindu sued for compensation for the loss of his daughter's services in consequence of her abduction by the defendant, and for costs incurred by him in prosecuting the defendant criminally for such abduction, for which he was convicted. The daughter was a married woman, who had been deserted by her husband, and at the time of her abduction was living with the plaintiff, her father. *Held* by STUART, *C. J.*, that the suit by the father for compensation for the loss of his daughter's services in consequence of her abduction was under the circumstances maintainable, and that the plaintiff was entitled to recover the costs of the criminal prosecution. *Held* by OLDFIELD, *J.*, that a suit by a Hindu father for the loss of his daughter's services in consequence of her abduction is not maintainable. RAM LAL *v.* TULA RAM [I. L. R., 4 All., 97

40. MAINTENANCE.

168. ——— **Suit by Mahomedan woman against Hindu for maintenance of her illegitimate child.**—Where a suit was brought against a Hindu by a woman who was a Mahomedan and the wife of a Mahomedan, for maintenance of her illegitimate child, of which she alleged the defendant to be the father, it was held that such a suit would not lie. ADDOYTO CHUNDER DASS *v.* WOOJAN BEEBEE . . . . . 4 C. L. R., 154

41. MESNE PROFITS.

169. ——— **Suit for mesne profits.**—The party in possession is the only person legally competent to sue for mesne profits. KHETTER MONEE DOSSEE *v.* GOPEEMOHUN ROY [1 Ind. Jur., O. S., 83 S. C. 1 Hay, 178

42. MISREPRESENTATION.

170. ——— **Suit for loss by misrepresentation.**—*Bonâ fide communication.*—Where defendants were asked to obtain information from a railway company as to the probable cost of carriage of coal, which they were about to sell to plaintiff, and they did so, communicating in good faith to plaintiff the result, no right of suit could arise against defendants, although plaintiff was ultimately compelled to pay to the railway company a much larger sum than defendant had represented. BENGAL COAL COMPANY *v.* ELGIN COTTON COMPANY . . 2 N. W., 13

171. ——— *Suit against an attesting witness to a security-bond for appearance of an insolvent judgment-debtor.*—The plaintiff held

RIGHT OF SUIT—*continued.*

42. MISREPRESENTATION—*continued.*

Suit for loss by misrepresentation—*continued.*

a money-decree against *M.*, who was arrested in execution of it. On being brought to the Court, however, *M.* applied for his discharge as an insolvent under section 273 of the Civil Procedure Code (Act VIII of 1859). He was released on the security of *G.*, who executed a bond for the appearance of *M.* at the inquiry into his insolvency. The defendant attested the bond, and wrote in the attestation that *G.* was a solvent person. In consequence of the non-appearance of *M.*, the plaintiff sought to execute his decree against the surety, *G.*, who on his arrest also applied for his discharge on the ground of his insolvency, and was discharged after inquiry. The plaintiff thereupon sued the defendant for the amount of his decree and cost of execution, on the ground of his representation in the attestation that *G.* was solvent. The Subordinate Judge rejected, but the District Judge on appeal allowed, the plaintiff's claim. *Held* by the High Court, on second appeal, that the plaintiff had no cause of action against the defendant, whether the suit was considered as brought upon a covenant or misrepresentation, as the defendant was neither a co-obligor in the security bond of *G.*, nor did he make any promise in the attestation of it to compensate the plaintiff for the non-appearance of *M*, nor any representation to the plaintiff. *Quære,*—Whether the nazir was liable to the plaintiff for negligence in not taking a proper surety? NAGO MAHADEV *v.* NARAYAN RAMCHANDRA

[I. L. R., 4 Bom., 465

43. MONEY HAD AND RECEIVED.

172. ——— Suit for pay received and not given.—*Mad. Police Act, XXIV of 1859, s. 53.*—The plaintiff, a head constable of police, sued the defendant, an inspector of police, for money had and received to the plaintiff's use. The defendant had received the pay of the plaintiff, but failed to give it to the plaintiff. *Held* that the right of suit was not taken away by section 53 of Act XXIV of 1859 (Madras Police Act), and that the plaintiff was entitled to recover the amount sued for. GUNDAM VENKATASAMI *v.* CHINNAM PURUSHOTTAMA

[5 Mad., 466

44. MONEY PAID.

173. ——— Suit for money paid before pupil was allowed to remain in Government school.—*Right of Government to make rules and regulations as to admission to schools.*—The Government has a right to make rules and regulations as to the terms on which pupils should be admitted into, and allowed to remain in, their schools. Where it is necessary, according to the rules, that a sum of money should be paid in order to a pupil remaining in a Government school, and such sum is paid, and the pupil allowed to remain, a suit will not lie to recover the money so paid. HURRO MOHUN GAEN *v.* BONOMALEE MITTER . **11 W. R., 359**

RIGHT OF SUIT—*continued.*

45. MUNICIPAL OFFICERS, SUITS AGAINST—

174. ——— Suit against Municipal Commissioners to recover assessment illegally levied under Mad. Act X of 1865.—*Cause of action.*—A suit cannot be maintained to recover assessment unlawfully levied by Municipal Commissioners under (Madras) Act X of 1865. BHIMAVARAPU BALARAMAYA *v.* HODSON

[3 Mad., 370

175. ——— Suit for injury by Municipal Commissioners under Act XXVI of 1850.—*Remedies given by Government rules.*—Where a party was injured by an order of Municipal Commissioners under Act XXVI of 1850, issued in respect of a subject within their jurisdiction, he was debarred from bringing a suit in the Civil Court to annul such order, until he had exhausted the remedies afforded to him by the rules framed by Government in accordance with the provisions of the Act. SAKHARAM SHRIDHAR GADKARI *v.* CHAIRMAN OF THE MUNICIPALITY OF KALIYAN .

[7 Bom., A. C., 33

176. ——— Suit against trustees for distress for unpaid rates.—*Bom. Acts II of 1865 and IV of 1867.—Liability of Municipal Commissioners.*—No suit can be maintained against the Justices of the Peace of the City of Bombay in respect of an alleged wrongful distress for unpaid rates levied by the Municipal Commissioner of that city, either under the provisions of Act II of 1865 (Bombay) or Act IV of 1867 (Bombay). In such a suit the Municipal Commissioner himself or the actual tortfeasor is the proper defendant. SHIVSHANKAR GOVINDRAM *v.* JUSTICES OF THE PEACE FOR BOMBAY

[5 Bom., O. C., 145

177. ——— Suit in respect of act done under Beng. Act III of 1864.—*Attachment and sale of property for non-payment of fine.—Suit for damages.—Liability of Municipality.*—The Howrah Municipality prosecuted plaintiff under Bengal Act III of 1864, section 67, and bye-laws, and procured the infliction upon him of a fine which was realised by attachment and sale of moveable property. Plaintiff then brought a suit against the Corporation for the value of the goods sold and damages. *Held* that the suit was not maintainable against the Municipal Corporation. MOTEE LALL BOSE *v.* HOWRAH MUNICIPALITY . . . . **23 W. R., 222**

46. OBSTRUCTION TO PUBLIC HIGHWAY.

178. ——— Suit for obstruction of highway.—*Special damage, Proof of.*—The rule of English law that no action can be maintained by one person against another for obstruction to a highway without proof of special damage should be enforced in British India as a rule of "equity and good conscience." ADAMSON *v.* ARAMUGAM

[I. L. R., 9 Mad., 463

RIGHT OF SUIT—*continued.*

46. OBSTRUCTION TO PUBLIC HIGHWAY —*continued.*

179. ——— Suit for removal of obstruction.—*Proof of special injury.*—In all civil suits for the removal of a public obstruction the plaintiff must show that he himself has suffered some particular inconvenience or injury resulting from the obstruction. GEHANAJI BIN KES PATIL *v.* GANPATI BIN LAKSHUMAN . **I. L. R., 2 Bom., 469**

180. ——— Suit to establish right of access to public thoroughfare.—*Easement.*—*Act XV of 1873, ss. 27, 32, 38.*—*Special damage.*—*Municipal Committee.*—While certain land formed part of a certain public thoroughfare, *F.* had immediate access to such thoroughfare and the use of a certain drain. The Municipal Committee sold such land to *M.* and constructed a new thoroughfare. *M.* used and occupied such land so as to obstruct *F.'s* access to the new thoroughfare and his use of the drain. *F.* therefore sued him to establish a right of access to the new thoroughfare over such land and a right to the use of such drain. *Held* that, having suffered special damage from *M.'s* acts, *F.* had a right of action against him, and that such right of action was not affected by the circumstance that *M.* had acquired his title to the land from the Municipal Committee, inasmuch as the Municipal Committee could not have dealt with the old thoroughfare to the special injury of *F.*, and had it closed the same, would have been bound to provide adequately for his access to the new thoroughfare and for his drainage. FAZAL HAQ *v.* MAHA CHAND . **I. L. R., 1 All., 557**

181. ——— Suit against persons preventing conduct of procession on public highway.—*Right to conduct procession.*—The right to conduct a marriage procession along the public highway can only be questioned by the Magistrate, and an action will lie against private persons forcibly stopping such a procession even, *semble*,—where it is unusual for persons of the plaintiff's caste to conduct one. SIVAPPACHARI *v.* MAHALINGA CHETTI . . . . **1 Mad., 50**

182. ——— Suit to establish right to carry tabuts along public road.—*Obstruction to public road.*—*Special damage.*—*Public inconvenience.*—Plaintiffs, who were Mussulmans, sued to establish their right to carry tabuts in procession along a certain road to the sea, and alleged that the defendants (also Mussulmans) obstructed them in doing so. The plaint, however, did not allege any personal loss or damage to the plaintiffs arising from the obstruction. Both the lower Courts found as a fact that the road along which plaintiffs desired to carry their tabuts to the sea was a public road. *Held* on special appeal that plaintiffs could not maintain a civil suit in respect of such obstruction, unless they could prove some particular damage to themselves personally, in addition to the general inconvenience occasioned to the public. The mere absence of the religious or sentimental gratification arising from carrying tabuts along a public road, is not any such particular loss or injury as would be sufficient, according to English and Indian precedents, to sustain

RIGHT OF SUIT—*continued.*

46. OBSTRUCTION TO PUBLIC HIGHWAY —*continued.*

Suit to establish right to carry tabuts along public road—*continued.*

a civil action. Authorities as to what constitutes special damage sufficient to sustain a civil suit in such cases, referred to. SATKU VALAD KADIR *v.* IBRAHIM VALAD MIRZA . **I. L. R., 2 Bom., 457**

183. ——— Suit for abatement of nuisance.—*Suit after refusal of Magistrate to interfere.*—A person injured by the erection of an obstruction on a public highway is not precluded from suing the person by whom it has been caused by the circumstance that he has previously applied to the Magistrate for an order for its removal, and that the Magistrate had refused to make any order. RAM TUNNOO *v.* SREENATH DOSS **[Marsh., 537 : 2 Hay, 659**

184. ——— Suit to restrain procession in honour of idols.—*Right to conduct processions.*—Persons of whatever sect are entitled to conduct religious processions through public streets, so that they do not interfere with the ordinary use of such streets by the public, and subject to such directions as the Magistrate may lawfully give to prevent obstruction of the thoroughfare or breaches of the public peace. PARTHASARADI AYYANGAR *v.* CHINNAKRISHNA AYYANGAR . **I. L. R., 5 Mad., 304**

See SUNDRAM CHETTI *v.* QUEEN. PONNUSAMI CHETTI *v.* QUEEN . **I. L. R., 6 Mad., 203**

47. OFFICE OR EMOLUMENT.

185. ——— Suit to recover right to officiate at funeral ceremonies.—*Transfer of right to officiate.*—A Birth Moha Brahminy, or right to officiate at funeral ceremonies, is incapable of transfer, and therefore a suit to recover it will not lie. JHUMMUN PANDEY *v.* DINONATH PANDEY **[16 W. R., 171**

186. ——— Action for interfering with right of performing ceremonies.—*Right of jujmans to select purohit.*—An action is not maintainable by a purohit against another purohit for interfering with an alleged exclusive right of performing religious ceremonies at a particular place, there being no legal obligation upon the jujmans to abstain from employing another. DAMOODUR MISSER *v.* ROODURMAR MISSER . **Marsh., 161**

S. C. ROODURMUN MISSER *v.* DAMOODUR MISSER **[1 Hay, 365**

187. ——— Suit for right to perform pujari duties.—*Right to proceeds of mundar.*—An action will lie to obtain a binding declaration of a person's right to perform the duties of pujari, and to receive the proceeds of a mundar. PRANSHANKAR *v.* PRANNATH MAHANAND . **1 Bom., 12**

188. ——— Suit by vendee of office to compel trustees to admit him and give him the emoluments.—The vendee of a karaima right

RIGHT OF SUIT—*continued.*

47. OFFICE OR EMOLUMENT—*continued.*

Suit by vendee of office to compel trustees to admit him and give him the emoluments—*continued.*

cannot bring a suit to compel the trustees of a pagoda to admit him to the office and give him the emoluments. KRYAKE-ILATA KOTEL KANNI *alias* GRANI *v.* YADATTIL VELLAYANGOT ACHUDA PISHARODI . . . . . **3 Mad., 380**

189. ——— Suit for damages for disturbance in religious office emoluments.—*Right to perform religious worship.—Damages for loss of honours and voluntary offerings.*—Although it is not the duty of a Civil Court to pronounce on the truths of religious tenets nor to regulate religious ceremony, yet, in protecting persons in the enjoyment of a certain status or property, it may incidentally become the duty of the Civil Court to determine what are the accepted tenets of the followers of a creed, and what is the usage they have accepted as established for the regulation of their rights *inter se.* A claim to the exclusive right to perform certain portions of the religious worship in a Hindu temple, and to restrain a rival sect from joining in such worship otherwise than as ordinary worshippers, can be enforced by the decree of a Civil Court. A claim to damages for the loss of honours and voluntary offerings which would have been made by worshippers at a temple to the holders of a religious office therein had the latter not been disturbed by the defendants in the performance of the duties of such office, is not enforceable by law. KRISHNASAMI TATACHARYAR *v.* KRISHNAMA CHARYAR **[I. L. R., 5 Mad., 313**

190. ——— Suit to establish privilege of administering purohitam to pilgrims.—*Alienability of such right.*—A suit will lie for the exclusive right to the privilege of administering purohitam to pilgrims resorting to Ramaswaram. The privilege claimed was admitted to be capable of alienation or delegation, and was therefore no longer the subject of religious sentiment, but a mere proprietary right. On the merits the plaintiffs were held to have failed to support their claim. RAMASAWMY AIYAN *v.* VENKATA ACHARI **[2 W. R., P. C., 21: 9 Moore's I. A., 344**

191. ——— Suit to establish right to receive fees from pilgrims resorting to shrine.—The plaintiff sued to establish his exclusive right to receive fees paid to the purohit by the pilgrims resorting to a temple, and to recover a sum of money received by the defendants as fees. *Held* that in the absence of any contract between the parties or of any such proof of long and uninterrupted usage as in the absence of a documentary title would suffice to establish a prescriptive right, the plaintiff's suit must be dismissed. KRISHNA AIYAN *v.* ANANTARAMA AIYAN . . . . . **2 Mad., 330**

192. ——— Suit for confirmation of possession of land on which places of worship are erected.—*Alleged hostile intention.*—In a suit for confirmation of possession of a hill, with

RIGHT OF SUIT—*continued.*

47. OFFICE OR EMOLUMENT—*continued.*

Suit for confirmation of possession of land on which places of worship are erected—*continued.*

the places of worship appertaining thereto, and the idols set up thereon, the alleged cause of action being that defendant intended to lay claim to the offerings made, and proposed to call in question plaintiff's possessory right,—*Held* that the plaint disclosed no cause of action whatever. POORUN CHAND GALEECHA *v.* PARESH NATH SINGH . **12 W. R., 82**

193. ——— Suit for damages for disturbance of office of village priest.—*Suit for fees not received.*—A suit for damages may be brought by a person holding the office of village priest by prescription against an intruder who deprives him of the exercise and benefits of that office. VITHAL KRISHNA JOSHI *v.* ANANT RAMCHANDRA **[11 Bom., 6**

194. ——— Suit for pecuniary benefits from performance of religious services.—A claim to certain pecuniary benefits and payments in kind, which a plaintiff alleges himself to be entitled to receive from the defendants in respect of the performance of certain religious services, is a claim which the Courts of Justice are bound to entertain; and if, in order to determine the plaintiff's right to such benefits, it becomes necessary to determine incidentally the right to perform the services, the Courts must try and must decide that right KRISHNAMA *v.* KRISHNASAMI . **I. L. R., 2 Mad., 62**

S. C. TIRU KRISHNAMA CHARIAR *v.* KRISHNA SAWMI TATA CHARIAR . **L. R., 6 I. A., 120**

See also KAMALAM *v.* SADAGOPA SAMI **[I. L. R., 1 Mad., 356**

And CHINNA UMMAYI *v.* TEGARAI CHETTI **[I. L. R., 1 Mad., 168**

195. ——— Suit for damages for intrusion on office of chalvadi.—*Suit to recover gratuities received by intruder in office.—Caste question.—Bom. Reg. II of 1827, s. 21.—Suit to establish right to office.*—Plaintiff was the hereditary holder of the office of chalvadi, or bearer, on public occasions, of the insignia or symbols of the Lingyet caste at Bagalkot, in the district of Belgaum. No fees, as of right, were appurtenant to that office, but voluntary gratuities might be given to the chalvadi. In an action brought by plaintiff against defendant as an intruder upon his (plaintiff's) office,—*Held* that the action would not lie, if brought merely for the gratuities as moneys alleged to be received by defendant to the use of plaintiff. SHANKARA BIN MARABASAPA *v.* HANMA BIN BHIMA **[I. L. R., 2 Bom., 470**

196. ——— Suit for loss of fees received by Kazi of Bombay.—*Intruder on office.*—The sums received by the Kazi of Bombay in respect of his office of Kazi are not mere gratuities, but are fixed and certain payments annexed to the discharge of official duties, and are therefore sums in

RIGHT OF SUIT—*continued.*

47. OFFICE OR EMOLUMENT—*continued.*

Suit for loss of fees received by Kazi of Bombay—*continued.*

respect of the privation whereof by a wrongful intruder an action either for money had and received or for disturbance in the office will lie. MUHAMMAD YUSSUB *v.* AHMED . . . . **1 Bom., Ap., 18**

SITARAMBHAT *v.* SITARAM GANESH **[6 Bom., A. C., 250**

197. ——— Suit for declaration of exclusive right to receive fees in office of chowdhry.—In a suit for the establishment of the plaintiffs' exclusive right to the office of chowdhry of boats, and for the maintenance of their possession of that office, with which the defendants interfered by obstructing the plaintiff in the collection of fees,—*Held* that, as the payments were voluntary, and there was no obligation to pay them exclusively to the plaintiff, the suit could not be maintained. RAM DEKHUL *v.* CHUKHOO **1 N. W., 208: Ed. 1873, 291**

198. ——— Suit by dismissed holder of land for service.—*Hereditary village office.—Title to emoluments.*—Where an hereditary village officer, who had been dismissed from his office, sued to recover the land which had formed the emoluments of the office, and which had been enfranchised and granted to the person holding the office at the time of the enfranchisement,—*Held* that the suit would not lie. SRINIVASAYYAR *v.* LAKSMAMMA **[I. L. R., 7 Mad., 206**

BADA *v.* HUSSU BHAI . **I. L. R., 7 Mad., 236**

199. ——— Suit for land appertaining to hereditary office but enfranchised.—*Mad. Reg. VI of 1831.—Act IV of 1866 (Mad.).—Karnam's inam land.—Inam Commissioner's title-deed.—Title to emoluments of office.*—The lands forming the emoluments of an hereditary village office having been separated from the office by Government, were enfranchised and granted by the Inam Commissioner to *V.*, who had been appointed to, and at the date of enfranchisement held, the office without possessing any hereditary claim thereto. In a suit by *R.*, who claimed to be of the family of the hereditary office-holders, to recover the land from *V*,—*Held* by the Full Bench (HUTCHINS, *J.*, dissenting) that *R.* could not recover. VENKATA *v.* RAMA . . . . **I. L. R., 8 Mad., 249**

48. ORDERS, SUITS TO SET ASIDE—

200. ——— Order in contested application.—*Improper procedure.*—*A.* has no right of suit against *B.* to set aside an order of Court on an application in a suit, which application has been contested between them and decided in favour of *B.* Such a mode of procedure for the purpose of getting an order of Court reversed is not allowed by law. NORROTOM SIKDAR *v.* JUGGERNATH SHAW **[Bourke, O. C., 371**

SHIBESHUREE DEBIA *v.* MOTHOORANATH ACHARJEE **[5 W. R., 202**

RIGHT OF SUIT—*continued.*

48. ORDERS, SUITS TO SET ASIDE—*continued.*

201. ——— Order under s. 63, Beng. Act VIII of 1869.—*Order releasing property from attachment.*—A suit will lie to set aside an order passed under section 63 of Bengal Act VIII of 1869, releasing property from attachment. WOOMA CHURN CHATTERJEE *v.* KADUMBINI DABEE **[3 C. L. R., 146**

202. ——— Order refusing to entertain objection.—*Resumption by Government.—Objection by party whose lands have been wrongly resumed.*—The property of the plaintiff having been included among the lands to which certain resumption proceedings between the Government and a third party related, the plaintiff preferred an objection, which was disallowed by the Collector. The Special Commissioner on appeal declined, for want of jurisdiction, to entertain the objection. *Held* that the order of the Special Commissioner could not constitute any cause of action, either against the Government or a third party. SHIBOO SOONDUREE DEBEA *v.* SECRETARY OF STATE . **7 W. R., 373**

203. ——— Order setting aside sale.—*Civil Procedure Code, 1859, ss. 256, 257.*—A suit will lie to contest an order setting aside a sale not warranted by the provisions of sections 256 and 257 of Act VIII of 1859, where the legal rights of the person bringing the suit have been injuriously affected by such order. AMRIT MISSER *v.* GURDA PARDAN **[7 N. W., 183**

204. ——— Order passed in execution of decree of Small Cause Court.—*Order as to liability to attachment.*—An order passed in execution of a decree of a Small Cause Court with respect to the liability of property to attachment and sale is not final, but may be questioned in a regular suit in the same manner as a like order might be questioned when passed in execution of a decree of an ordinary Civil Court. RAMESHUR KULWAR *v.* BEHAREE SETH **[3 N. W., 208: Agra, F. B., Ed. 1874, 254**

205. ——— Order of Court setting aside a will and vesting minor's property in manager.—*Suit to direct widow to make adoption.—Order made with jurisdiction.*—There exists no right of suit to set aside an order of the Court which has jurisdiction deciding that a will is not sufficiently proved, and vesting the management of a minor's widow's property in her guardian. No suit can be maintained for an order directing such widow to make an adoption. The Court declined to make a declaratory decree declaring such direction to be a valid direction. PEAREE DAYEE *v.* HURBUNSEE KOOER **[19 W. R., 127**

206. ——— Order granting certificate under Act XXVII of 1860.—*Suit to annul certificate.—Procedure.*—A suit does not lie to annul a certificate for the collection of debts granted under Act XXVII of 1860, the mode of proceeding provided by the Act being the only remedy. PAYYAYINDA AVIDATHA PERINGADI IBRAYI *v.* PUDIYA MADATHUMAL PERINGADI AMANATHA . **5 Mad., 283**

RIGHT OF SUIT—*continued.*

48. ORDERS, SUITS TO SET ASIDE—*continued.*

Order granting certificate under Act XXVII of 1860—*continued.*

RUGHOOBUR DYAL SINGH *v.* RAM NARAIN KOLYA [22 W. R., 312

207. ——— Suit to set aside order of Criminal Court.—*Suit to set aside order of Magistrate under Act XXI of 1841.*—The proper course for a party dissatisfied with the order of a Magistrate, passed with jurisdiction under Act XXI of 1841, to pursue, was to appeal against that order, and not to bring a civil suit for its reversal. OMOOLA KOOWUR *v.* GOHUN PATUCK [1 Ind. Jur., O. S., 36

S. C. OMOOLA KOOWUR *v.* SOHUN PATUCK [1 Hay, 29

S. C. SOHUN PATUCK *v.* OMOOLA KOOWUR [Marsh., 7

KEDAR NATH MOOKERJEE *v.* PARBUTTY PEISHKAR [2 W. R., 267

PRANKISHEN SURMA *v.* RAMBOODER SURMA [Marsh., 214

S. C. RAMBOODER SURMA *v.* PRANKISHEN SURMA [2 Hay, 86

RAMKISHORE BHUTTACHARJEE *v.* BISESHUR BHUTTACHARJEE . . . Marsh., 231

S. C. BISESHUR BHUTTACHARJEE *v.* RAMKISHORE BHUTTACHARJEE . . . 1 Hay, 559

49. POSSESSION, SUITS FOR—

208. ——— Suit for possession or dispossession after obtaining peaceable possession without execution of decree.—If a party in whose favour a decree for possession has been passed, peaceably obtains possession without the aid of the Court, and is subsequently dispossessed, he can maintain an action against the persons who have dispossessed him, although he has not taken out execution of the decree. RAM NEWAZ SINGH *v.* KISHUN RAI . . . . 6 N. W., 137

See GOPAL DAS *v.* THAN SINGH [I. L. R., 4 All., 184

209. ——— Suit for possession of land taken away in execution of decree in boundary suit.—A party has no right to bring a civil suit to get possession of land which has been taken from him, and awarded to his adversary in the execution of a decree in a boundary suit. WATSON *v.* BEJOY GOBIND BURAL. SHAMASOONDERY DEBEA *v.* BEJOY GOBIND BURAL . . W. R., 1864, 331

210. ——— Suit for possession after dispossession under decree obtained by mortgagees.—*Cause of action.*—In the year 1839 the defendants' ancestor had mortgaged a share in a mouzah to the ancestor of the plaintiffs. The mortgagee sued to foreclose the mortgage and obtained a decree, in execution of which he obtained possession of the share. After this, some prior mortgagees obtained a decree in the Sudder Court in 1847, to the effect that the disputed property should be taken away from the plaintiff's ancestor and given to the prior mortgagees till their lien was satisfied, when he should obtain possession as before. The lien of the prior mortgagees was satisfied in 1870, when the defendants obtained possession. The plaintiffs sued to recover possession. *Held* that no right of action accrued to the plaintiffs by reason of the satisfaction of the decree of the prior mortgagees, and the recovery of the possession of the estate by the defendants. SHIMBHOO *v.* NARAIN SINGH . 5 N. W., 153

RIGHT OF SUIT—*continued.*

49. POSSESSION, SUITS FOR—*continued.*

Suit for possession after dispossession under decree obtained by mortgagees—*continued.*

211. ——— Suit for separate possession of share of estate.—A suit will lie for the separate possession of a share of an estate in proportion to the plaintiff's share. GOLOKE CHUNDER CHUCKERBUTTY *v.* KALLEE KINKUR CHUCKERBUTTY [1 W. R., 164

212. ——— Suit by holder under dur-putnidar for share of estate.—A putni estate was the inheritance of five brothers, two of whom appropriated the whole of it. *Held* that the holder under a kaimi pottah from the dur-putnidar of the three ousted brothers could sue to obtain possession of his share of the estate. TARA SOONDERY DEBIA *v.* SHAMA SOONDERY DEBIA . . 4 W. R., 58

213. ——— Suit by minor for his share of undivided property.—A suit cannot be brought on behalf of a Hindu minor to secure his share in undivided family property, unless there is evidence of such malversation as will endanger the minor's interests if his share be not separately secured. CHOKKALINGAM PILLAI *v.* SVAMIYAR PILLAI. SVAMIYAR PILLAI *v.* CHOKKALINGAM PILLAI . 1 Mad., 105

214. ——— Suit by minor for partition.—*Prejudice of interests of minor.*—A suit on behalf of a minor for partition will lie, if the interests of the minor are likely to be prejudiced by the property being left in the hands of the coparceners from whom it is sought to recover it. KAMAKSHI AMMAL *v.* CHIDAMBARA REDDI . 3 Mad., 94

ALIMELAMMAH *v.* ARUNACHELLAM PILLAI [3 Mad., 69

215. ——— Suit by tenant having right to possession, but not right of occupancy.—*Act X of 1859, s. 6, and s. 23, cl. 6.*—If a tenant has the right to the possession, he may sue under clause 6, section 23, Act X of 1859, although he may not have a right of occupancy under section 6 of the Act. WATSON & Co. *v.* DWARKANATH SIRCAR . . Marsh., 415 : 2 Hay, 533

DHAJAH ROY *v.* SUKHAWUT HOSSEIN [Marsh., 492

S. C. SUKHAWUT HOSSEIN *v.* DHAJAH ROY [2 Hay, 597

RIGHT OF SUIT—*continued.*

49. POSSESSION, SUITS FOR—*continued.*

216. ——— Suit for possession by unregistered purchaser after ejectment.—*Beng. Act VIII of 1869, ss. 26, 64.—Effect of sale of tenure by shareholder in zemindari.—Onus of proof.*—*K.*, the recorded tenant of a mirasi mokurrari tenure, died leaving *G.*, his son and heir, who sold the tenure, which eventually came into the hands of the plaintiffs' father, and afterwards on his death became vested in the plaintiffs, but neither they nor their father, though they made attempts to do so, ever obtained the registration of their names as tenants. *R.*, one of the two shareholders in the zemindari, brought a suit for arrears of rent of the tenure against *G.*, and in execution of the decree he obtained in that suit the tenure was sold and purchased by the other zemindar, by whom the plaintiffs were dispossessed. *Held* that the plaintiffs were not precluded by the fact that their names were not registered as tenants, under section 26 of the Rent Act, from bringing a suit to recover possession of the tenure. The holder of the decree, in execution of which the tenure was sold, assuming him to be only a shareholder in the zemindari right, had no right under section 64 to sell the tenure, but only the interest of the person against whom the decree was passed. The onus was on the defendant to show that the sale under the decree for rent was of such a nature as to give him priority over the plaintiffs. KRISTO CHUNDER GHOSE *v.* RAJ KRISTO BANDYOPADHYA **[I. L. R., 12 Calc., 24**

50. PUBLIC WORSHIP, SUITS REGARDING RIGHT OF—

217. ——— Suit to remove place of worship.—*Right to erect place of worship.—Right of way.—Allegation of injury.*—In India the members of a sect are at liberty to erect a place of worship on their own property, although it is more or less contiguous to a place already occupied by a place of worship appertaining to another sect. The people of any sect are at liberty to erect, on their own property, places of worship, either public or private, and to perform worship, provided that, in the performance of their worship, they do not cause material annoyance to their neighbours. SESHAYYANGAR *v.* SESHAYYANGAR . . **I. L. R., 2 Mad., 143**

MADARY *v.* GOBERDUN HULWAI **[I. L. R., 7 Calc., 694: 9 C. L. R., 303**

PARTHASARADI AYYANGAR *v.* CHINNA KRISHNA AYYANGAR . . **I. L. R., 5 Mad., 304**

218. ——— Suit founded on sanctity of place of public worship.—*Suit to restrain procession in public streets.*—No sect is entitled to deprive others for ever of the right to use the public streets for processions, on the plea of the sanctity of their place of worship, or on the plea that worship is carried on therein day and night. SUNDRAM CHETTI *v.* QUEEN. PONNUSAMI CHETTI *v.* QUEEN **[I. L. R., 6 Mad., 203**

RIGHT OF SUIT—*continued.*

50. PUBLIC WORSHIP, SUITS REGARDING RIGHT OF—*continued.*

219. ——— Suit to restrain superintendent of mosque from using it for other purposes or obstructing worshippers.—*Suit by worshipper.*—The worshippers at a public mosque can maintain a suit to restrain the superintendents of such mosque from using it or its appurtenant rooms for purposes other than those for which they were intended to be used, and from doing acts which are likely to obstruct worshippers in entering or leaving such mosque. ABDUL RAHMAN *v.* YAR MUHAMMAD **[I. L. R., 3 All., 636**

51. REGISTRATION OF NAME.

220. ——— Suit as proprietor of estate to compel entry in Collector's book.—*Right to share in land.*—A person claiming a share in land by right of heirship has no right of suit against a Collector to obtain entry of his name in the revenue books: the proper form of suit is against the co-heirs for a declaration of his right to a share, and an award of such share. FATMA KOM NUBI SAHEB *v.* DARYA SAHEB . . . . **10 Bom., 187**

221. ——— Suit to compel registration of name.—*Suit of vague and speculative nature.*—A suit by a plaintiff, who alleges that he is in possession of property, praying that the Court will cause the registry to be altered into his name without stating that the proper authorities had refused to make the entry, and without joining as defendant the only person who had power to do so, was held to be not maintainable. IBRAI BYABI *v.* KAUNDINYA **[2 Mad., 363**

222. ——— Suit to compel registration of name as proprietor.—*Collector in Chota Nagpore.—Beng. Regs I of 1793, s. 9, and XIII of 1833*—A Collector in Chota Nagpore cannot be compelled by suit to register the name of any one as proprietor of an estate. LALLA BISSEN PERSHAD *v.* COLLECTOR OF HAZAREEBAGH . . . **13 W. R., 397**

223. ——— Suit to compel registration of another person's name.—*Lessee holding as agent of others.*—A Collector may register as farmer a person to whom a farming lease has been given, notwithstanding he holds it in reality as the agent of another, and a third person has no right to sue to compel the registration of such other person. COLLECTOR OF MIDNAPORE *v.* RAMDHONE DUTT **[Marsh., 65: 1 Hay, 133**

52. RESUMPTION, SUIT FOR UNLAWFUL—

224. ——— Suit for damage for unlawful resumption by Government.—Government may be sued by any person injured by its acts of unlawful resumption. RAMNARAIN MOOKERJEE *v.* MAHTAB CHUNDER **1 Ind. Jur., O. S., 48**

RIGHT OF SUIT—*continued.*

53. REVENUE, SALE FOR ARREARS OF—

225. ——— Suit for property attached by revenue authorities.—*Act XXXII of 1860.—Effect on suit of failure to deposit the revenue or give security.*—Where a third party objected to the auction sale of certain immoveable property which had been attached by the revenue authorities, it was held that his right to bring an action to prove that the property was his was not barred by section 184, Act XXXII of 1860, because he had omitted to deposit the money demanded by Government or to file security. SHEO PERSHAD SINGH *v.* GOPAL LALL **[14 W. R., 276**

54. REVENUE, SUIT FOR ARREARS OF—

226. ——— Suit for arrears of Government revenue.—*Act XIV of 1863, s. 1, cl. 1.*—In a suit under clause 1, section 1, Act XIV of 1863, for the recovery of arrears of Government revenue, the plaintiff was a lumbardar and paid the Government revenue, and the defendants severally paid rent to him according to the rent roll,—the net profits, after the Government demand and other payments had been made, being divided among them. *Held* that the suit would not lie under that section. MUHKUN *v.* JUSRAM . . . **4 N. W., 165**

55. SALE IN EXECUTION OF DECREE.

227. ——— Suit to set aside sale.—*Civil Procedure Code, 1859, s. 257.—Suit by representative of judgment-debtor.*—Section 257, Act VIII of 1859, did not bar the representative of a judgment-debtor from bringing a regular suit to set aside an execution sale, except on the score of its having been irregularly conducted. JUMMAL ALI *v.* TIRBHEE LALL DOSS **[12 W. R., 41**

228. ——— *Suit on ground of fraud.—Civil Procedure Code, 1859, s. 256.*—Section 256 of Act VIII of 1859 did not bar a suit brought by a judgment-debtor to set aside an execution sale on the ground that the decree-holder fraudulently got the property sold in execution of a previous satisfied decree: it only applied to cases of irregularity in the sale proceedings. BUDREE *v.* LOKEMUN **[3 Agra, 89**

229. ——— *Civil Procedure Code, 1859, s. 257.*—An order cannot be said to have been made under section 257, Code of Civil Procedure, so as to bar a suit to set aside a sale in execution of decree, when the judgment-debtor was not aware of the proceedings. SEEEMUNTO PURAMANICK *v.* OBHOY CHURN MANNA . . **11 W. R., 297**

230. ——— *Suit to set aside order confirming sale.—Omission to claim property on its attachment.*—The plaintiffs objected to the confirmation of the sale of certain property in execution of decree, on the ground that it was their property, and they were unaware that it was incumbered, otherwise they would have discharged the debt; neither did they know the land had been attached, and was to be sold in execution. The sale was confirmed, and they sued to set aside the order confirming the sale. *Held* that the suit would not lie. HOSSEIN BEG *v.* JEEWA RAM . **5 N. W., 139**

RIGHT OF SUIT—*continued.*

55. SALE IN EXECUTION OF DECREE —*continued.*

Suit to set aside sale—*continued.*

231. ——— *Right of purchaser under previous private sale.—Notice of transfer.—Landlord and tenant.—Beng. Act VIII of 1869, s. 26.*—The plaintiff purchased under a private conveyance from the registered tenant of a permanent transferable interest in land such as is described in section 26 of Bengal Act VIII of 1869, but no notice of the transfer was given to the zemindar. The zemindar subsequently brought a suit against the tenant for arrears of rent and obtained a decree, in execution of which he caused the tenure to be sold, and himself became the purchaser. The plaintiff took proceedings under section 311 of the Civil Procedure Code to set aside the sale, but his application was rejected, on the ground—an erroneous one—that he was not a proper party to take such proceedings, and he did not appeal against the order rejecting it. *Held,* in a suit brought against the zemindar and the tenant to set aside the sale, that in the absence of fraud the suit was not maintainable. The plaintiff might have satisfied the rent-decree and so prevented the sale, or he might have appealed against the order rejecting his application to set it aside; but having done neither, and the zemindar having had no notice of the transfer, the plaintiff was not entitled to treat the proceedings in the rent suit as a nullity on the ground that he was not a party to that suit. PANYE CHUNDER SIRCAR *v.* HURCHUNDER CHOWDHRY **[I. L. R., 10 Calc., 496**

232. ——— *Act X of 1859, s. 151.—Sale for arrears of rent.*—Section 151, Act X of 1859, barred a regular suit by a judgment-debtor to set aside a sale in execution of a decree for arrears of rent. RUTTUN MONEE DASSEE *v.* KALEEKISSEN CHUCKERBUTTY . . . **W. R., F. B., 147**

233. ——— *Act X of 1859, s. 151 and ss. 110, 111.—Dismissal of objections.*—A suit to set aside a sale in execution of a Civil Court's decree of a saleable under-tenure other than that from which the arrears of the rent were due, was not barred by section 151, Act X of 1859. The provisions of section 110, Act X of 1859, were applicable in such a case; and a party whose objection under section 111 was overruled had a right to bring a suit in the Civil Court. JUGGESSUR SUHAYE *v.* GOPAL LALL . . . . . **11 W. R., 260**

234. ——— *Non-registration of name.—Suit by unregistered holder to set aside sale of under-tenure.*—The holder of an under-tenure, though his name has not been registered as the owner, may bring a suit to set aside a sale of the under-tenure made in execution of a decree for rent against the former holder, on the ground that the

RIGHT OF SUIT—*continued.*

55. SALE IN EXECUTION OF DECREE —*continued.*

Suit to set aside sale—*continued.*

money due under the decree had been deposited before the sale. AFZAL ALI *v.* LALA GAURNARAYAN **[B.'L. R., Sup. Vol., 519 : 6 W. R., Act X, 59**

235. ——————— *Illegal sale by Collector.*—A suit will lie to set aside the proceedings of a Collector who acts without jurisdiction in selling land not within his jurisdiction. KHOONOO *v.* AOODAL SINGH . . . . . **8 W. R., 511**

JOKEE LAL *v.* NURSING NARAIN SINGH **[4 W. R., Act X, 5**

236. ——————— *Sale under Criminal Procedure Code, 1861, s. 185.*—A suit was held not to lie to set aside a sale of property carried out under section 185 of the Criminal Procedure Code, 1861. BUKHOOREE SINGH *v.* GOVERNMENT **[8 W. R., 207**

237. ——— **Suit to confirm sale.**—*Civil Procedure Code, 1859, ss. 256, 257.—Sale in execution of decree.—Order setting aside sale.—Suit to set aside such order.*—Certain immoveable property was put up for sale in the execution of *B.'s* decree and was purchased by him. Subsequently, on the same day, such property was put up for sale in the execution of *S.'s* decree and was purchased by him. *B.* objected to the confirmation of the sale to *S.*, on the ground that *S.'s* decree had been satisfied previously to such sale, and the Court executing the decrees made an order setting aside such sale on that ground. *S.* thereupon sued *B.* to have such order set aside, and to have such sale confirmed, and to obtain possession of such property. *Held* that, inasmuch as such order had not been made under section 257 of Act VIII of 1859, but had been made at the instance of a purchaser under another decree, and *B.'s* decree as a matter of fact had not been satisfied, *S.'s* suit to have such order set aside was maintainable. SANGAM RAM *v.* SHEOBART BHAGAT . **I. L. R., 3 All., 112**

238. ——————— *Civil Procedure Code, 1859, ss. 256, 257.—Sale in execution of decree.—Suit to set aside order setting aside sale.*—The Court executing a decree, having made an order setting aside a sale, under Act VIII of 1859, of immoveable property in the execution of the decree, the purchaser at such sale sued the decree-holder and the judgment-debtor to have such order set aside and to have such sale confirmed in his favour. *Held* (OLDFIELD, *J.*, dissenting) that the suit was maintainable, the provisions of section 257 precluding an appeal from an order setting aside a sale, and not a suit to contest the validity of such an order; and that the order setting aside the sale in this case being *ultra vires*, the auction-purchaser was entitled to the relief he claimed. DIWAN SINGH *v.* BHARAT SINGH **[I. L. R., 3 All., 206**

239. ——————— *Civil Procedure Code, 1877, ss. 311, 312.—Suit to have execution sale, after being set aside, confirmed.*—*Held* (OLDFIELD, *J.*, dissenting) that a suit by the purchaser at a sale of immoveable property in execution of a decree, which has been set aside under sections 311 and 312 of Act X of 1877, to have such sale confirmed, on the ground that there was no irregularity in the publication or conduct thereof, is not barred by the last clause of section 312, or by the last clause of section 588, but is maintainable. AZIM-UD-DIN *v.* BALDEO **[I. L. R., 3 All., 554**

240. ——————— *Civil Procedure Code, 1859, ss. 256, 257.—Sale in execution.—Order of attachment and sale notifications not signed by Judge but by Munsarim.—Sale set aside.—Equitable estoppel.*—On the 21st August 1876 certain immoveable property belonging to *M.* was put up for sale and was purchased by *R.* On the 20th April 1877 such sale was set aside under section 256 of Act VIII of 1859, on the ground that the order attaching such property and the notifications of sale had not, as required by section 222, been signed by the Court executing the decree, but by the Munsarim of the Court. On the 27th June 1877 *M.* conveyed such property to *H.*, who purchased it *bonâ fide* and for value, and satisfied the incumbrances existing thereon. On the 15th April 1878 *R.* sued *H.* and *M.* to have the order setting aside such sale set aside, and to have such sale confirmed in his favour, on the ground that it had been improperly set aside under section 256 of Act VIII of 1859, the judgment-debtor not having been prejudiced by the irregularities in respect whereof such sale had been set aside. *Held* by OLDFIELD, *J.*, that although such sale might have been improperly set aside, yet inasmuch as the order of attachment and the notifications of sale could have no legal effect, having been signed by the Munsarim of the Court executing the decree, and not by the Court, as required by section 222 of Act VIII of 1859; and inasmuch as it would be inequitable, after the incumbrances on such property had been satisfied and the state of things changed, to allow *R.*, after standing by for a year, and permitting dealings with the property to come in and take advantage of the change of circumstances, and obtain a property become much more valuable at the price he originally offered, *R.* ought not to obtain the relief which he sought. *Held* by STRAIGHT, *J.*, that the fact that the Court executing the decree had not signed the order of attachment and the notifications of sale vitiated the proceedings in execution *ab initio*, and rendered the sale which *R.* desired to have confirmed void, and *R.'s* suit therefore failed, and had properly been dismissed. RAM DIAL *v.* MAHTAB SINGH . . **I. L. R., 3 All., 701**

241. ——————— *Civil Procedure Code, ss. 244, 278, 283.—Suit to confirm sale after it is set aside.—Person not party to proceedings.—Specific Relief Act, s. 42.*—*M.*, in whose name property had been purchased at an execution sale which was improperly set aside, brought a suit to have the order setting aside the sale reversed and the sale confirmed in her favour, and for a declaration that the

RIGHT OF SUIT—*continued.*

55. SALE IN EXECUTION OF DECREE —*continued.*

Suit to confirm sale—*continued.*

property was not liable to be sold in execution of a decree of the defendants against third persons, under which it had been attached and advertised for sale. *Held* that such a suit could only be maintained under section 42 of the Specific Relief Act (I of 1877), but that section 244 of the Civil Procedure Code indicated the intention of the Legislature that such questions should be determined in the execution department, and, reading together the provisions of sections 244, 278, and 283 of the Code, the suit was premature and therefore not maintainable. MAN KUAR *v.* TARA SINGH . . . . **I. L. R., 7 All., 583**

242. ——— Suit for declaration of right to have property sold in execution.—*Refusal of Deputy Collector to sell in execution of decree of Revenue Court.—Cause of action.*—Where a Deputy Collector refuses to sell a certain property in execution of the decree of a Revenue Court, and the applicant fails to bring a suit within the proper time for a declaration of his right to have the property sold, he cannot procure to himself more time by making a second application to the Deputy Collector for execution and having the refusal repeated. A suit so brought cannot have its form changed and be treated as a suit to establish the lien which the plaintiff obtained on the property, and to bring the same to sale for discharge of that lien. RUGHOONUNDUN SINGH *v.* GOPAL CHUND CHOWDHRY . **20 W. R., 17**

RUGHOONUNDUN SINGH *v.* COCHRANE **[20 W. R., 16**

243. ——— Suit by purchaser at execution sale to sue for partition.—*Certificate of purchase by Registrar.—Conveyance.—Declaration of right to share.—Rules of Court, 415, 431.*—The position of a purchaser at a sale in execution of a decree of the High Court after he has obtained a certificate from the Registrar under Rule 415 of the Rules of Court, is that of a person clothed with a right to a conveyance in virtue of a contract; he does not hold, save as regards the parties to the contract of sale, the position of an owner. When the sale is confirmed, the purchaser is entitled to a conveyance, and until he obtains a conveyance the property in the estate purchased does not, having regard to Rule 431, pass to him so as to give him rights as against parties not bound by the decree under which the sale took place. All that passes to him as against the defendant in that suit is an equitable estate and a right to a conveyance of the property. And, therefore, as the estate in the property purchased has not passed, the purchaser is not entitled to maintain a suit for partition. In such a suit he could not on partition give a good conveyance to the parties interested in the estate, nor would he be entitled to a declaration of his share in the property. JOHUR MULL KHOORBA *v.* TARANKISTO DEB **[I. L. R., 10 Calc., 252**

244. ——— Suit for refund of proceeds of sale paid to wrong party.—*Civil Procedure Code, 1859, s. 270.*—No suit lay for a refund of the proceeds of sale realised in execution of a decree, paid to a wrong party by order of a competent Court under section 270, Act VIII of 1859 (*dissentiente*, LEVINGE, *J.*). HURISH CHUNDER SIRCAR *v.* AZIMOODDEEN SHAHA . **W. R., F. B., 180**

RIGHT OF SUIT—*continued.*

55. SALE IN EXECUTION OF DECREE —*continued.*

Suit for refund of proceeds of sale paid to wrong party—*continued.*

56. SHIP, SALE OF—

245. ——— Suit for declaration of title against foreign creditor.—*Sale by French Court of ship pledged to secure payment of debt.—Claim by pledgee to proceeds of sale.*—*M.* pledged his ship in August 1878 to *C.* as security for a bond-debt of R1,500, repayable by two instalments in February and August 1879. *S.* seized the ship in French territory for a debt due to him by *M.*, and the French Court sold the ship. *C.* made a claim on the proceeds of the sale in the hands of the Court in December 1878. The French Court required *C.* to produce a copy of an English Court's judgment acknowledging and sanctioning *C.'s* claim against *M.* *C.* sued *S.* to obtain a declaration of his right to recover the amount due by *M.* on the bond. *Held* that whether or not his lien was destroyed by the sale of the ship in French territory, *C.* was not entitled to any of the proceeds of the sale, either at the date of the sale or of his claim in the French Court, and the denial by *S.* of *C.'s* right to any of the proceeds of the sale gave *C.* no cause of action. CHITHAMBARA *v.* MUTHAYA **[I. L. R., 5 Mad., 330**

246. ——— Suit by owners for sum realised by sale of ship.—*Abandonment of French ship to French Consul.—Principal and agent.*—The Captain of the French ship *C.*, which had been wrecked, abandoned her to the French Consul for the benefit of all concerned. The owners assented to this arrangement, but afterwards sued the Consul, as their agent, for the sum realised by the sale of the ship. *Held* that when the owners of a foreign ship abandon her to their Consul for the benefit of all concerned, they cannot afterwards sue him as their agent. *Semble*,—That the owners of a foreign ship, when abandoning to their Consul, cannot legally enter into a private agreement with him with reference to the funds realised by the sale of the ship. ROBERT *v.* JAQUEHIM . . . **Bourke, O. C., 112**

57. SUBSCRIPTION TO CHARITABLE INSTITUTION.

247. ——— Suit by secretary of charitable institution against subscriber.—*Liability of subscribers to charitable institution.*—The extent of a subscriber's obligation must depend upon the nature of the particular charity or other object for which the subscription is given, and, in some cases, upon what the subscriber said or did when he agreed to subscribe. *Quære*,—Whether (assum-

RIGHT OF SUIT—*continued.*

57. SUBSCRIPTION TO CHARITABLE INSTITUTION—*continued.*

Suit by secretary of charitable institution against subscriber—*continued.*

ing the liability of a subscriber for unpaid subscriptions) the secretary of a charitable institution, with the consent of the committee of management, is entitled to sue a subscriber for the amount of his contribution. IN THE MATTER OF KEDAR NATH MITTER *v.* ALISAR ROHOMAN . **10 C. L. R., 197**

58. TORTS.

248. ——— Suit for tort amounting to felony.—*Cause of action.—Proof of previous conviction in Criminal Court.*—Where a person brings a suit alleging a state of facts which amount to felony, he must show that he has done his best to procure a conviction on the criminal charge before the Civil Court will entertain such a suit COONAMULL *v.* SARNO RAUR . . **2 Ind. Jur., N. S., 187**

249. ——— Suit in respect of tort.—*Taking away and detaining property.—Remedy by civil action.*—In a case where a person took away a cow out of another's field and wrongfully detained it, pretending that he purchased it at an auction-sale in execution of a decree, it was held there was a remedy by civil action. The plaintiff was not bound to institute criminal proceedings in the first instance, and the Civil Court was bound to take cognisance of the suit under section 1 of the Code of Civil Procedure of 1859. SHAMA CHURN BOSE *v.* BHOLA NATH DUTT . . . **6 W. R., Civ. Ref., 9**

250. ——— Suit for damages for abuse.—*Failure to take criminal proceedings.*—The failure of an injured party to institute criminal proceedings does not deprive him of his right to bring a suit in the Civil Court to recover damages for abuse. SREENATH MOOKERJEE *v.* KOMUL KURMOKAR **[16 W. R., 83**

251. ——— Suit for property (or its value) attached before judgment and made away with.—*Failure to institute criminal proceedings.*—A suit will lie for the recovery, or for the value, of property attached under section 81, Act VIII of 1859, and afterwards made away with by the defendants in collusion with the attaching officer, without a criminal prosecution being previously instituted against them. CHOITUNNO PARAMANICK *v.* ZUMEERODDEE SHAIKH . . . **18 W. R., 27**

252. ——— Suit for tort not compoundable.—*Merger of tort in felony.—Law applicable to Hindus and Mahomedans.—English law.—Right to bring civil suit before prosecuting for offence*—Within the original jurisdiction of the High Court of Madras, a Hindu or Mahomedan whose civil rights have been infringed by an act which is also a non-compoundable offence is not bound to prosecute the offender before maintaining his civil action, nor is his right to prosecute his

RIGHT OF SUIT—*continued.*

58. TORTS—*continued.*

Suit for tort not compoundable—*continued.*

action suspended until the offender is brought to justice. ABDUL KAWDER *v.* MUHAMMAD MERA **[I. L. R., 4 Mad., 410**

253. ——— Suit to recover damages for detention of goods.—*Dismissal of criminal charge for taking same goods.*—The circumstance that the plaintiff preferred a criminal charge against the defendant for the taking of his goods, which charge was dismissed, does not prevent the plaintiff from afterwards suing in the Civil Court to recover damages for the taking or detention of the goods, notwithstanding the Criminal Court may have jurisdiction upon a conviction to impose a fine and award it to the protector as compensation. ROOPA BEWA *v.* RAMCOOMAR SANDYAL **[Marsh, 248 : 2 Hay, 13**

ADRAM *v.* HURBULLUB . . **2 N. W., 58**

254. ——— Suit for fine realised after imprisonment in default of payment.—*Imprisonment.—Fine.*—An accused person was punished by the Magistrate both with imprisonment and fine, and was sentenced in default of payment of fine to a further imprisonment. After the accused had undergone both the principal punishment and additional imprisonment, he was released, and the fine realised from him,—*Held* that a suit by him to recover the amount of the fine was not maintainable; the additional imprisonment not being in lieu of the fine, but as a punishment for non-payment of it. MANOOLLAH *v.* GUNES . . . **3 Agra, 390**

59. WITNESS, SUIT FOR EXPENSES OF—

255. ——— Cause of action.—*Witness in civil case.*—No suit will lie for the expenses of a witness. DE SARAN *v.* HURISH CHUNDER BISWAS **[5 W. R., S. C. C. Ref., 6**

RIGHT OF WAY.

See ACQUIESCENCE. **[1 B. L. R., A. C., 213**

See ESTOPPEL—ESTOPPEL BY JUDGMENT. **[I. L. R., 4 Calc., 692**

See INJUNCTION — SPECIAL CASES — OBSTRUCTION TO RIGHTS OF PROPERTY—RIGHT OF WAY . **9 B. L. R., 328**
[I. L. R., 10 Bom., 390

See LAND ACQUISITION ACT, 1870, SS. 16 AND 17 . . . **3 W. R., 27**
[6 B L. R., Ap., 47 : 14 W. R., Cr., 72

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—DISPUTES AS TO RIGHT OF WAY, WATER, &C.
[I. L. R., 5 Calc., 194
I. L. R., 4 Mad., 121
I. L. R., 7 Mad., 49
14 W. R., Cr., 28

See CASES UNDER PRESCRIPTION—EASEMENTS—RIGHT OF WAY.

RIGHT OF WAY—*continued.*

1. ——— Creation of right of way.—*User.—Adverse possession.*—A right of way need not have its origin in an express grant, but may be established by continued user for a certain period constituting adverse possession. RAM GUNGA DOSS *v.* GOBIND CHUNDER DOSS . **16 W. R., 284**

2. ——— *User—Custom.—Proof of right of way.*—A right of way may be created either by grant or by immemorial custom or by necessity, and it is necessary for a party seeking to establish a right of this kind to prove its existence, and that it is ancient and has been exercised without interruption. The determination of the existence of the right is a question depending on the evidence in each case, the right being inferred from the evidence. IMAMBUNDEE BEGUM *v.* SHEO DYAL RAM **[14 W. R., 199**

SAVALGIAPA VIRBASAPA *v.* BASVANAPA BASAPA **[10 Bom., 399**

Proof of well-established and fixed user will be sufficient. BHUGWAN CHUNDER CHOWDHRY *v.* KHOSAL . . . . . **7 W. R., 271**

3. ——— *User.—Prescriptive right.—Proof of right of way.*—In order to establish a right of way, the person claiming must prove uninterrupted user for a certain length of time, and if his right is interrupted must go into Court at once. No length of time can give a party such a right as destroys all the ordinary uses of the servient property,—*e.g.*, a general right to the promiscuous use of a whole property for the purpose of driving cattle over it. JOY DOORGA DOSSIA *v.* JUGGERNATH ROY . . . . . **15 W. R., 295**

HEERA LALL KOOER *v.* PURMESSUR KOOER **[15 W. R., 401**

4. ——— *User.—Presumption from long user.—Quære,*—Ought a Court to infer from user alone that a right of way has been conferred by the owner of the land upon the person exercising the user, unless that user has extended over a period as long as that which the law would allow to the owner for bringing an action of ejectment if absolutely excluded from possession? MOHIM CHUNDER CHUCKERBUTTY *v.* CHUNDEE CHURN GOOHO . . . . . **10 W. R., 452**

5. ——— *User.—Actual user within two years.—Limitation Act, 1871, s. 27.*—In a suit to establish a right of way, it is not sufficient for a plaintiff to prove user for twenty years, which ended more than two years next before the institution of the suit; he must show exercise of the right by actual user within such period of two years. GOPEE CHAND SETIA *v.* BHOOBUN MOHUN SEN **[23 W. R., 401**

6. ——— *Sufferance.*—A right of way by sufferance over another's land cannot create a permanent right. ASHOOTOSH CHUCKERBUTTY *v.* TEETOO HOLDAR . **W. R., 1864, 293**

FUTTEH ALI *v.* ASGUR ALI . **17 W. R., 11**

RIGHT OF WAY.—Creation of right of way—*continued.*

7. ——— *Permitting cattle to pass over ground between village and public road.*—The owner of a piece of land between a village and the public road, who allows his neighbour's cows to pass over it on the way to pasture, does not thereby create a right of easement over the land so as to deprive it of all value by rendering its cultivation impossible. GOOROOCHURN GOON *v.* GUNGAGOBIND CHATTERJEE . . . . . **8 W. R., 269**

8. ——— *User.—Evidence of right of way.*—User during previous ownership is no evidence of a right of way which relates to the land of another. OBHOY CHURN DUTT *v.* NOBIN CHUNDER DUTT . . . **10 W. R., 298**

9. ——— *User.*—The finding that a right of way had been "formerly" exercised is not a sufficient finding to indicate the length of time for which the right had been exercised, and is therefore insufficient to prove a right of user. KRISHNA CHANDRA CHUCKERBUTTY *v.* KRISHNA CHANDRA BANIK . . **3 B. L. R., A. C., 211**

S. C. KRISTO CHUNDER CHUCKERBUTTY *v.* KRISTO CHUNDER BURNICK . . **12 W. R., 76**

10. ——— *Claim of right of way under contract.*—A party who claims, under a contract, the reopening of a way, is not required by Act IX of 1871, section 27, to prove user for twenty years. KALLARAM DHUR *v.* JOOGUL KISHORE SURMAH . . . . . **23 W. R., 290**

11. ——— *Use limited to season of year.*—A right of way may be created by use continued for many successive years, even though the use is limited to one particular season of the year alone. OOMUR SHAH *v.* RUMZAN ALI **[10 W. R., 363**

12. ——— *Pathway over waste land.—Discontinuance during rainy season*—A right of user over a pathway may be established notwithstanding that the path passes over waste land. A temporary interruption, such as during the rainy season, cannot affect a right of user. MAHOMED ANSUR *v.* SEFATOOLLAH . **22 W. R., 340**

13. ——— *User.—Easement—Existence of other access to road.*—Time and user create a right of easement over the property of others. *A.'s* right of way over *B.'s* homestead is not affected by the fact of there being another pathway by which access to the main road may be obtained by *A.* SHAM BAGDEE *v.* FUKEER CHAND BAGDEE **[6 W. R., 222**

14. ——— *Right of user.—Existence of other access to premises.*—A plaintiff's right of user of a pathway to certain premises cannot be affected by the existence of another path by which he may obtain access to the same premises. MOKOONDONATH BHADOORY *v.* SHIB CHUNDER BHADOORY . . . . . **22 W. R., 302**

RIGHT OF WAY.—Creation of right of way—*continued.*

15. ———————— *Easement.—Limitation Act (XV of 1877), s. 26.—User as of right.—Prescriptive right.* —For the purpose of acquiring a right of way or other easement under section 26 of the Limitation Act, it is not necessary that the enjoyment of the easement should be known to the servient owner. In this respect there is a difference between the acquisition of such rights under that Act and their acquisition under the English Prescription Act. ARZAN *v.* RAKHAL CHUNDER ROY CHOWDHRY . **I. L. R., 10 Calc., 214**

16. ———————— *User of twenty years to support servitude.—Extent and mode of user.—Calcutta Municipal Act (Beng. Act IV of 1876).* —As establishing his right of way over the defendant's passage, the plaintiff relied upon a user of it, several times in the year, for twenty years prior to the defendant's interruption of it, by mehters for the purpose of removing the contents of a cesspool connected with a privy belonging to the plaintiffs' house. The facts indicated by way of limit to the user of the passage only showed that it must be a reasonable user for the above purpose. There was no agreement specifying times or occasions of access, and the inference was that if the plaintiffs had thought fit to use the passage more frequently than they did, they were at liberty to do so. In and after 1876, instead of the plaintiffs' mehters, those employed by the Municipality came and went upon the passage, not at distant intervals, but daily, the plaintiffs under bye-laws, in conformity with Bengal Act IV of 1876, being bound to give them access, and the system being to clean the place daily *Held* that the above was neither a discontinuance by the plaintiffs of their user nor an aggravation of the servitude. Also that, although a servitude gained for one purpose cannot be used for another, the purposes before and after 1876 being identical, the user proved prior to that year supported a right in the plaintiffs to use the passage for giving access to the servants of the Municipality for the above purpose, at reasonable and convenient times. JADULAL MULLICK *v.* GOPALCHANDRA MUKERJI . **I. L. R., 13 Calc., 136**

S. C. JUDOO LALL MULLICK *v.* GOPAUL CHUNDER MOOKERJEE . . . **L. R., 13 I. A., 77**

Affirming the decision of the High Court, Calcutta, which held that where a right of way for a particular purpose is proved to have existed for upwards of twenty years, the Court is not bound to confine the right to the precise number of times in the year that it has been exercised, but may construe it as a right to use the road at all convenient times for the particular purpose. GOPAL CHUNDER MUKERJEE *v.* JUDDOO LALL MULLICK

[I. L. R., 9 Calc., 778: 13 C. L. R., 146

17. ———— Proof of right of way.—*Evidence.—Particular route.* —In a suit for declaration of a right of way over the land of another, the plaintiff must prove the particular line over which he claims the right. Mere proof of a right to pass over the land without proving the particular route will

RIGHT OF WAY.—Proof of right of way—*continued.*

not entitle a plaintiff to a decree. RADHANATH SUGRACHARJI *v.* BAIDONATH SEAL

[3 B. L. R., Ap., 118

18. ———— Nature of right of way.—A right of way is ordinarily a right of passing, and not a general right to pass from one point to another point. GOLUCK CHUNDER CHOWDHRY *v.* TARINEE CHURN CHUCKERBUTTY . . **4 W. R., 49**

19. ———— Mode of exercising right of way.—*Indirect way.* —If a person has a right of way from one place to another over a particular line, he cannot be compelled to use a different and substituted way. But where the right is simply to pass from one point to another, the party desiring to exercise the right cannot claim to pass in a particular tortuous and indirect course between the two points. HAMID HOSSEIN *v.* GERVAIN . **15 W. R., 496**

20. ———— Right acquired by purchaser of house.—The purchaser of a house acquires the right to the use of a way to a road which has been enjoyed with the house by the vendor, if it is not merely a right to a way of necessity, but a particular right over a defined path. NUBEEN CHUNDER BULLUB *v.* BHOOBUN CHUNDER MUNDUL

[15 W. R., 526

21. ———— General right of way.—*Right of thoroughfare for processions* —A general right of thoroughfare includes a right of way for marriage or other processions of the like nature, unless at the time of the first inception of the right it was restricted to a right of passage and such processions were interdicted. RAJ MANICK SINGH *v.* RUTTUN MANICK BOSE . . . . **15 W. R., 46**

22. ———————— *Right to carry marriage and funeral processions.*—A general right of way was held under the circumstances to include a right to carry marriage and funeral processions. LOKENATH GOSSAMEE *v.* MONMOHUN GOSSAMEE

[20 W. R., 293

23. ———— Right to freedom from obstruction.—*Ownership of soil.* —A person who has a right of way cannot claim anything more than that the reasonable exercise of his right shall not be obstructed. It is only ownership of the land that carries with it the ownership of every thing *usque ad cœlum.* TOOLSEEMONEY DEBEE *v.* JOGESH CHUNDER SHAHA . . . **1 C. L. R., 425**

24. ———— Road used only by particular section of community.—*Private way.*—Where there is a road the privilege of using which is enjoyed only by one particular section of a community, the road is not a public one. SHAM SOONDER BHUTTACHARJEE *v.* MONEE RAM DOSS

[25 W. R., 233

25. ———— Continuous user.—*Discontinuance.—Limitation.*—A right of way over the land of another must be kept up by constant use. HURIDAS NANDI *v.* JADUNATH DUTT

[5 B. L. R., Ap., 66: 14 W. R., 79

RIGHT OF WAY—*continued.*

26. ——— **Obstruction to right of way.**—*User.*—Suit by members of a joint family to enforce their right to a pathway through a door (which had been blocked up) leading to a joint thakoorbari. *Held* that this was not a case in which the plaintiffs claimed the right of user, but only complained of the obstruction of a passage belonging to them jointly with the defendants, and that the non-user for some years by the plaintiffs was not an abandonment of their right. CHUNDER KANT CHOWDHRY *v.* NUND LALL CHOWDHRY [16 W. R., 277

27. ——— **Substitution of new way for old one.**—*Non-user.—Abandonment of right.*—Where a new way is substituted for an old one with the consent of the person entitled, and the non-user of the original way is accompanied by acts which warrant the Court in inferring an intention to release, the right of resumption is lost: the non-user need not extend over any defined period. RAJ BEHAREE ROY *v.* TARA PERSHAD ROY . 20 W. R., 188

28. ——— **Loss of right of way.**—*Relinquishment of right in land.*—The relinquishment of all rights and interests in land exchanged does not necessarily involve loss of right of way over the land. KALEE KISHORE ROY *v.* DEEN DYAL SEIN [4 W. R., 83

29. ——— **Closing right of way.**—*Substitution of another way.*—The owner of the land over which there is right of way by an ancient pathway cannot, without the consent of the parties entitled to the right, substitute another path and shut up the ancient pathway. TARINEECHURN CHUCKERBUTTY *v.* TARINEECHURN CHUCKERBUTTY [1 Ind. Jur., N. S., 6

RIGHT TO APPEAR.

See ADVOCATE . 5 B. L. R., Ap., 70
[14 B. L. R., Ap., 12
13 W. R., 60
23 W. R., Cr., 14

See COUNSEL . 5 B. L. R., Ap., 70
[9 B. L. R., 417
I. L. R., 1 Bom., 64

See CASES UNDER PLEADER—APPOINTMENT AND APPEARANCE.

RIGHT TO BEGIN.

1. ——— **General rule.**—The rule is that the party holding the affirmative has the right to begin at the hearing before the High Court. LALLMOHUN MULLICK *v.* PEARY CHAND MITTRA [1 Ind. Jur., N. S., 383

2. ——— **Practice.**—*Suits under Civil Procedure Code, 1859.*—It was held under the Civil Procedure Code of 1859 that the Common Law practice in respect of the right to begin ought to prevail in cases under that Act, that practice having been followed up to that time, and the Procedure Code making no distinction between suits in the nature of Common Law actions and those in the nature

RIGHT TO BEGIN.—**Practice**—*continued.*

of equity suits. RUNGUNMONEY DOSSEE *v.* BRIJO LALL DAY . . . . . Cor., 25

3. ——— **Small Cause Court references.**—The right to begin in Small Cause Court references is generally allowed to the plaintiff, but in one case the counsel for the defendant was allowed to begin where the judgment of the Small Cause Court was in favour of the plaintiff HARAN CHANDRA MOOKERJEE *v.* NUNDOGOPAL MUTTY LALL [13 B. L. R., 142 : 22 W. R., 71

The right to begin is now specially provided for by section 179 of the Civil Procedure Code, 1882.

4. ——— **Civil Procedure Code, 1877, s. 179.**—*Suit for mesne profits.—Burden of proof.*—It cannot be laid down as a general proposition controlling the provisions of section 179 of the Code of Civil Procedure, that in a suit for mesne profits against persons who have been in possession of the land in respect of which the mesne profits are claimed, and who have been shown to have no title, that the burden of proof is upon the defendants. KRISHNA MOHUN BAISAK *v.* KUNJ BEHARY BAISAK [9 C. L. R., 1

5. ——— *Suit for partition.*—*Nucleus of joint property.*—In a suit for partition of certain property and trading businesses, the defendants, who resisted the suit, admitted a nucleus of joint property, and claimed the right to begin, on the ground that the onus was on them to prove that the whole property and the trading businesses were not joint. *Held* that unless the defendants admitted all the allegations, or all the material allegations, the plaintiff was entitled to begin. AGHORE NATH NEOGY *v.* PREM CHAND NEOGY . 7 C. L. R., 274

6. ——— *Appeal.—Objection that no appeal lay.*—Where, an appeal having been filed, the respondent objected that no appeal lay, and by agreement of the parties the case was set down for the agreement of this preliminary point,—*Held* that the appellant had the right to begin. RUSTOMJI BURJORJI *v.* KESSOWJI NAIK [I. L. R., 8 Bom., 287

7. ——— **Criminal case.**—*Counsel.—Practice.—Reference to High Court under s. 434, Criminal Procedure Code (Act XXV of 1861).*—In a reference to the High Court under section 434 of the Criminal Procedure Code, where counsel appeared, and the reference from the Judge impeached the order of the Magistrate, the Court called on counsel to support the argument. ANGELO *v.* CARGILL . 9 B. L. R., 417 : 18 W. R., Cr., 41

8. ——— *Case under s. 268, Criminal Procedure Code, 1872.*—In a case referred to the High Court under section 263 of the Criminal Procedure Code, because the Sessions Judge differed from the verdict of the jury, the High Court held that it was for the Government (the appellant), who asked for a conviction, to begin and satisfy the Court that there was a case calling upon the prisoner for an answer. QUEEN *v.* RAM CHURN GHOSE [20 W. R., Cr., 33

RIGHT TO BEGIN.—Criminal case—*continued.*

9. ——————— *Reference under s. 434, Criminal Procedure Code, 1882.*—Where, on the application of counsel for the prisoner, a question of law has been reserved for the decision of the Court under section 434 of the Criminal Procedure Code (X of 1882), the prisoner's counsel has the right to begin. QUEEN-EMPRESS *v.* APPA SUBHANA MENDRE . . . **I. L. R., 8 Bom., 200**

RIGHT TO USE OF WATER.

See CASES UNDER PRESCRIPTION—EASEMENTS—RIGHT TO WATER.

1. ——— **Presumption of right.**—*User, Proof of.*—No presumptions of law in regard to rights of water are known in this country, but proof of ancient reasonable user by particular recognised means is sufficient to give the right. BUNDHOO SOOKOOLANY *v.* JOY PROKASH SINGH **[W. R., 1864, 367**

2. ——— **Right to open conduit for water.**—*Injury to neighbours.*—The right to take water is governed by established use. No one can open a new conduit to take additional water to the injury of his neighbours. ATHUR ALI KHAN *v.* SEKUNDAR ALI KHAN . . **4 W. R., 28**

3. ——— **Right to surplus water of tank.**—*Easement.—User.—Channel.*—A right of easement may be acquired in the surplus water of a tank flowing through a defined channel, whether natural or artificial. RAYAPPAN *v.* VIRABHADRA **[I. L. R., 7 Mad., 530**

4. ——— **Right to use another's canal.**—A person has no right to tap another's canal and abstract the water therefrom for his own land, unless he has acquired that right by grant or prescription. RUN BAHADOOR *v.* POODHEE ROY **[W. R., 1864, 319**

5. ——— **Riparian proprietor, Right of.**—*Bunds or embankments.*—A riparian proprietor may deal with the stream as freely as with any other portion of his land, provided only that he must not by so doing sensibly disturb the natural condition of the stream as it exists within the limits of other proprietors, whether above or below, or on the opposite side. MONOOUR HOSSEIN *v.* KANHYA LALL **[3 W. R., 218**

6. ——————— *Natural water-course.*—The right which a riparian proprietor has, under certain restrictions, to the use of the water of a natural water-course, has no application to a water-course artificially constructed; and the mere fact of riparian proprietorship gives no rights whatever over such a stream. BHOOP NARAIN SINGH *v.* KERAMUT ALI . . . . . **6 W. R., 99**

7. ——————— *Obstruction to flow of water.—Encroachment.*—The plaintiff and defendant were proprietors of land and gardens on opposite sides of a tidal creek, which sides were protected by walls. The defendant, the wall on his side

RIGHT TO USE OF WATER.—Riparian proprietor, Right of—*continued.*

becoming dilapidated, constructed a fresh one, altering its direction, and encroaching five feet upon the bed of the stream. In a suit for possession of land by demolishing the said wall, the plaintiff alleged that he was entitled to the solum on which it was built, that his navigation was obstructed, and that there was a danger of his screw-house falling down. It appeared, however, that the Government and not the plaintiff was the owner of the solum, and that the plaintiff neither claimed nor proved that he was entitled to the flow of the water as it had been accustomed to flow, and that that flow was seriously and sensibly diverted so as to be an injury to his rights. *Held*, reversing the decree of the High Court, that the plaintiff had failed to show either *damnum* or *injuria*, and therefore had no right of action. KALI KISHEN TAGORE *v.* JODOO LAL MULLICK **[L. R., 6 I. A., 190: 5 C. L. R., 97**

8. ——— **Proprietor of water-course, Right of.**—*Proof of user by other persons.*—The proprietor of a pyne has a right to allow or to deny the use of water flowing through it to other persons, unless they have also a clearly-defined right enabling them to control the water and convert it to their own use,—a right clearly found to have originated in some grant or valid contract, or to have been exercised for so long a period that such title may be presumed. INDURJEET KOOER *v.* LUCHMEE KOOER **[14 W. R., 349**

9. ——— **Right to discharge water on to another's land on lower level.**—*Drainage.*—There is no reason why the proprietor of land on a higher level should not for the purpose of keeping his land drained, claim a right to have the water which falls thereon run off over adjoining land on a lower level. KOPIL POOREE *v.* MANICK SAHOO **[20 W. R., 287**

10. ——————— *Easement.—Embankment.—Drainage.—Right to drainage of surplus surface water through natural water-course.*—The right of the owner of high lands to drain off its surplus surface water through the adjacent lower grounds is incident to the ownership of land in this country. Where the defendants had erected a dam across a natural water-course which was found to interfere with the natural drainage of the surplus rain-water of the adjacent lands of the plaintiffs, and where the lower Court had ordered that the dam be altogether removed,—*Held* that the Court was wrong in taking it for granted that the plaintiffs were entitled to have the whole dam removed, but should have inquired how far the erection of the dam interfered with the plaintiff's right. ABDUL HAKIM *v.* GUNESH DUTT **[I. L. R., 12 Calc., 323**

11. ——— **Obstruction to flow of water.**—*Erection of bund to stop flow of water.*—Where water flows in its natural course from somewhere outside *A.'s* land, through it, and onwards to other people's land, *A.* is not entitled to stop the

RIGHT TO USE OF WATER.—Obstruction to flow of water—*continued.*

flow by an embankment across it, unless he can make out some special right to do so. Such course is a part of the natural condition of the land, and the flow of the water over it, when it occurs, is a natural incident. CHUMROO SINGH *v.* MULLICK KHYRUT AHMED . . . **18 W. R., 525**

12. ———————— *Claim to erect bund cutting off water from neighbouring lands.*—A party claiming to erect a bund in a natural flowing river, so as entirely to cut off the water from another party, is bound to prove that he has acquired the legal right to do so by user. HEERANUND SAHOO *v.* KHUBEEROONISSA . . . . **15 W. R., 516**

13. ———— **Deprivation of right to a rise of water, by breaking bund.**—*Claim to repair bund.*—Deprivation of the right to a rise of water is an injury, and a claim to repair a bund for the purpose of securing such right is not answered by the tender of another bund quite as good. SHUNKUR SAHOO *v.* GURBHOO SAHOO . **15 W. R., 216**

14. ———— **Infringement of right to water.**—*Suit to remove obstruction and for damages.—Cause of action.*—In a suit to compel defendant to remove an embankment recently constructed on his own land, on the allegation that it infringed plaintiff's right of irrigation by a certain channel, where it was found that the embankment in question was no manner of obstruction to the water-course by that channel,—*Held* that, to entitle plaintiff to a decree, there must have been some actual infringement of his right by the defendant, and not merely some act whereby, as it were, that right was denied or questioned. SHAMA CHURN CHATTERJEE *v.* BOIDONATH BANERJEE . . . . **11 W. R., 2**

15. ———————— *Cause of action.*—In order to maintain an action upon an infringement of a right (as where an obstruction is made to a natural flow of water), it is not necessary to show that there has been any subsequent injury consequent on such infringement. RAM CHAND CHUCKERBUTTY *v.* NUDDIAR CHAND GHOSE . **23 W. R., 230**

16. ———————— *Water from tank.—Onus probandi.*—Where a plaintiff alleged that, subsequent to his purchase of a tank, at a period specified, defendants had commenced to take water from it and had opened a channel for the discharge of the water,—*Held* that the onus lay on the plaintiff to prove the assertion on the part of the defendants of any new right. BUNGSHEE DHUR THAKOOR *v.* KHETTURMONEE DEBIA . . **11 W. R., 15**

17. ———————— *Right to raise embankment to diminish flow of water into reservoir.*—Where parties by agreement in a butwarra restricted their rights by the condition that one of their number was to have full use of the water in a reservoir, the others were held not to be at liberty to set up, even on their own lands, an embankment round the reservoir so as to diminish materially the flow of water into it. GOUR SAHOY SINGH *v.* SHEO SAHOY SINGH . . . . . **15 W. R., 94**

RIGHT TO USE OF WATER.—Infringement of right to water—*continued.*

18. ———————— *Erection of bund to keep water in reservoir.*—Water falling on *A.'s* land and collected in a reservoir there, used to flow on to *B.'s* land. *Held* that *B.* had no right to the use of the water, and that *A.* was entitled to erect on his own land a bund to prevent the water flowing on to *B.'s* land. BUNSEE SAHOO *v.* KALEE PERSHAD . . . . . **13 W. R., 414**

19. ———— **Right of owner of two properties.**—*Dispersion of rain-water.*—The owner of two properties may conduct through troughs the rain-water accumulating on one property over a water-course to the other property before it reaches another water-course into which the rain-water, unless diverted, would naturally flow. RAMRUTTUN NEOGEE *v.* PHOOL SINGH . . . **W. R., 1864, 147**

20. ———— **Cessation to make use of water.**—*Revocation of permission.*—Where a party who had enjoyed the permissive use of the water of a tank does not use it for four years from the date of its further excavation, the permission may be taken to be revoked. GOOROO CHURN SOOR *v.* SREE CHURN GHOSE . . . . . **15 W. R., 308**

21. ———— **Right to discharge rainfall over land.**—*Abandonment of right.*—Exposition of the right of discharging the rainfall on one's land through a water-course over another's, and of the abandonment of such right. KHETTUR NATH GHOSE *v.* PROSUNNO GHOSE . . . **7 W. R., 498**

22. ———— **Abandonment of right to water.**—*Construction of new waterway.*—Where a party suing for the use of a waterway was found to have allowed it to be filled up without objection, and another of the same description to be constructed, which he had used for a year or two, he was held to have abandoned his right of user to the former waterway. JUGUTBUNDHOO CHUCKERBUTTY *v.* JUGUT CHUNDER CHOWDHRY . . **12 W. R., 519**

RIOTING.

See SENTENCE—CUMULATIVE SENTENCES.
[**7 W. R., Cr., 60**
I. L. R., 6 All., 121
1 W. R., Cr., 7
9 W. R., Cr., 5, 33
I. L. R., 11 Calc., 349
I. L. R., 12 Calc., 495
I. L. R., 6 Calc., 718
I. L. R., 7 All., 29, 414, 757

See SENTENCE—GENERAL CASES.
[**8 W. R., Cr., 3**
12 W.R., Cr., 72

See UNLAWFUL ASSEMBLY.
[**I. L. R., 3 Calc., 573**
1 W. R., Cr., 19
20 W. R., Cr., 78
12 W. R., 75

1. ———— **Requisites for offence.**—*Penal Code, ss. 447, 453.—Common object.*—It is necessary before persons can be convicted of rioting, &c., under

RIOTING.—Requisites for offence—*continued.*

sections 447 and 453 of the Penal Code, to ascertain clearly that they have taken such a share in the transaction as will bring them within the criminal charge; and it must appear on the evidence that they had a common object, which common object they were going to carry out by unlawful means. QUEEN *v.* GHOLAM MAHOMED . . . **22 W. R., Cr., 17**

2. ——— **Sudden quarrel.**—*Assembly for lawful purpose.*—If a number of persons assembled for any lawful purpose, suddenly quarrel with an intruder without any previous intention or design, they do not commit "riot" in the legal sense of the word. NOORUL HOSSEIN *alias* WAHEED JAN *v.* FABRE-TONNERRE . . . . **24 W. R., Cr., 26**

3. ——— **Proof of offence.**—*Penal Code, s. 156.—Manager of indigo factory.*—In order to convict the manager of an indigo factory under section 156 of the Penal Code, it must be shown by legal evidence (1) that a riot was committed; (2) that the riot, if committed, was committed for the benefit of the accused; and (3) that the accused had reason to believe that a riot was likely to be committed. BHAE *v.* QUEEN-EMPRESS . **I. L. R., 13 Calc., 338**

4. ——— *Penal Code, s. 155.—Zemindar's liability.*—A zemindar ought not to be made liable under section 155 of the Penal Code for a sudden and unpremeditated riot, which there was no reason to infer he could have anticipated or thought likely to happen. QUEEN *v.* HURNATH ROY **[3 W. R., Cr., 54**

5. ——— *Penal Code, ss. 154, 155, 157.—Employment of persons to commit riot or hold unlawful assembly.—Non-resident partner.*—To constitute an offence under section 157 of the Penal Code, it must be proved that the accused has hired, or engaged, or employed other persons for the purpose of an unlawful assembly, and it is not sufficient to show that some of the accused's servants have been taken from a district where men have a well-known character as lattials, and had been in his service some time before the riot was perpetrated. A non-resident partner or sharer, who has taken no active part in the management of the estate, cannot, like a resident sharer, be convicted under sections 154 and 155 of the Penal Code. IN THE MATTER OF RADHA NATH CHOWDHRY . **7 C. L. R., 289**

6. ——— **Armed parties.**—*Attack.—Private right of defence.*—Where both parties are armed and prepared to fight, it is immaterial who is the first to attack, unless it is shown that that party was acting within the legal limits of the right of private defence. IN RE KALEE BEPAREE **[1 C. L. R., 521**

7. ——— **Offering obstruction to persons wrongfully distraining.**—*Power of distraint.*—The law confers (certain conditions being first complied with) on landholders and their authorised agents power to distrain the moveable property of their tenants for the recovery of arrears of rents due by them. In all such cases the landholder acts on his own responsibility, and if, in the alleged exercise of this power, he attempts to seize the goods of his tenant when no rent is in arrear, mere obstruction to the seizure is not an offence, nor where made by several persons does it constitute rioting. ANONYMOUS **[8 Mad., Ap., 11**

8. ——— **Attempting to stop what rioters thought an illegal procession.**—In the case of a very serious riot, in order to stop a procession which the rioters disapproved of, the rioters were acquitted by the Magistrate because he thought they might have considered their act justified because the procession was illegal by virtue of some orders (which did not appear) which might have been efficacious in point of law. *Held* that the thinking a thing legal which is not so can be no defence to a man who violates a rule of law; that there was no evidence that the procession was illegal, and that if it were, the accused were bound to invoke the aid of the tribunals charged with the enforcement of the law. ANONYMOUS **[7 Mad., Ap., 35**

9. ——— **Common object.**—*Persons coming armed with sticks on purpose to fight.—Affray.*—Two parties were convicted of rioting. One party consisted of not less than five persons, who were all found to have been assembled together in the fight which took place, and it was also found that they, as well as their opponents, came armed with sticks, prepared to fight, and did fight. *Held* that they were not improperly convicted of rioting, their common object being to assault their opponents. The other party only consisted of four persons. It was not found what object they had in common with the first party. The fight did not occur in a public place. *Held* that they were not properly convicted of rioting. *Held*, also, that had the fight occurred in a public place, it might have been held that the common object of both parties was to commit an affray QUEEN *v.* MUZHUR HOSSEIN . . . **5 N. W., 208**

10. ——— **Unlawful assembly.**—*Penal Code, s. 148.—Resisting trespass.*—A disturbance having been created with reference to the possession of certain chur land, the Sessions Judge on appeal found that certain persons had unlawfully trespassed thereupon, and that the accused had been justified in resisting the trespass by force. Inasmuch, however, as he considered the accused had exceeded their right of private defence of their property, he convicted them of rioting under section 148 of the Penal Code. *Held* that, on the findings of the Judge, the conviction could not be supported, inasmuch as on such findings the persons convicted were not members of an unlawful assembly. IN THE MATTER OF KALLEE MUNDLE . . . . **10 C. L. R., 278**

11. ——— *Forcibly getting possession of cattle seized for trespass.—Penal Code, s. 147.—Act III of 1857, s. 11.*—The prisoners having been part of an assembly of more than five persons, whose common object, as apparent from their acts, was, by means of criminal force, to recover possession of their cattle seized for trespass

RIOTING.—Unlawful assembly—*continued.*

(whether properly pounded or not), and who made use of such force and took away their cattle, were held guilty of rioting, and liable to conviction under section 147 of the Penal Code, and not under section 11, Act III of 1857. QUEEN *v.* BOKOO SHEIKH [W. R., 1864, Cr., 21

12. ——— **Forcible taking possession of wife by husband.**—A husband, or those who aided him, cannot be convicted of kidnapping for taking away his own wife, but they are guilty of rioting if they take possession of her by force and violence and in the darkness of night. QUEEN *v.* ASKUR . . . . W. R., 1864, Cr., 12

13. ——— **Forcible entry on land cultivated by trespasser.**—*Plea of right to possession.—Trespass on land.*—A plea of right to possession is no answer to a charge of rioting by making a forcible entry on land cultivated by a trespasser who is in possession and opposes the entry. APPAVU NAYAK *v.* QUEEN . [I. L. R., 6 Mad., 245

14. ——— **Rioting armed with deadly weapons.**—*Culpable homicide.—Grievous hurt.*—Persons found guilty of rioting may, if the circumstances warrant it, be convicted of the several offences of rioting armed with deadly weapons, culpable homicide, and grievous hurt. QUEEN *v.* HURGOBIND [3 N. W., 174

15. ——— **Procedure.**—*Trial of case of affray between opposite factions.*—In a trial arising out of an affray or faction fight, the members of each faction should be tried separately. The statements of the members of each faction can then, if desired, be taken on solemn affirmation, and be made evidence against their opponents; but if they decline to give evidence, on the ground of implicating themselves, they cannot be compelled to do so. QUEEN *v.* MAHOMED HOSSEIN [1 N. W., Ed. 1873, 293

RIPARIAN PROPRIETORS.

See ACCRETION—NEW FORMATION OF ALLUVIAL LAND—CHURS OR ISLANDS IN NAVIGABLE RIVERS . 5 C. L. R., 154
[6 B. L. R., 255, 343

See ACCRETION—NEW FORMATION OF ALLUVIAL LAND—RIVERS, OR CHANGE IN COURSE OF RIVERS . 2 Hay, 541
[3 Agra, 18
11 B. L. R., 265
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See ACCRETION—RE-FORMATION AFTER DILUVIATION . . 5 B. L. R., 521

See LIMITATION ACT, 1877, s. 26 (1871, s. 27) . . . . I. L. R., 1 Mad., 335

See RIGHT TO USE OF WATER.
[3 W. R., 218
6 W. R., 99
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RIPARIAN PROPRIETORS—*continued.*

——— **Private proprietorship.**—*Bed of flowing stream.*—The bed of a flowing stream may be the property of a private person. JUGDISH CHUNDER BISWAS *v.* CHOWDHRY ZUHOORUL HUQ [24 W. R., 317

RIVAL HATS.

See DECLARATORY DECREE, SUIT FOR—ORDERS OF CRIMINAL COURT.
[I. L. R., 5 Calc., 7

See NUISANCE—UNDER CRIMINAL PROCEDURE CODES . 5 B. L. R., Ap., 82
[6 B. L. R., 74
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22 W. R., 24
4 C. L. R., 410
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RIVER.

See CASES UNDER ACCRETION.

See CASES UNDER FISHERY, RIGHT OF—

——— **Strewing branches in, for fishing purposes.**

See PENAL CODE, s. 277.
[I. L. R., 2 Calc., 383

ROAD, OWNERSHIP OF—

——— *Site of road.—Presumption.*—There is nothing in this country which prevents the operation of the rule of law that where a road has been for many years the boundary between two properties, and there is no evidence that the owner of either property gave up the whole of the land necessary for it, the site of the road must be presumed to belong to the adjoining proprietors, half to one and half to the other, up to the middle of the road. MOBARUCK SHAW *v.* TOOFANY [I. L. R., 4 Calc., 206: 2 C. L. R., 446

ROAD CESS ACT (Beng. Act X of 1871.)

See EVIDENCE—CIVIL CASES—MISCELLANEOUS DOCUMENTS—ROAD CESS PAPERS . . . 22 W. R., 192

See FISHERY, RIGHT OF—
[I. L. R., 9 Calc., 183

1. ——— **Income tax.**—*Suit for arrears of rent.—Set-off.—Effect of Act on agreement made before passing of Act.*—In 1862, at the time the income tax was in force, *A.* made a putni-settlement of certain lands with *B.*, *B.* agreeing to pay any enhancement of the revenue that might be made by Government at any time, or "any impost in future to be levied by Government, the income tax to be paid by *A.* according to his income, *B.* having nothing to do with the same." In 1876 *A.* brought a suit against *B.* for arrears of rent. *B.*, under the contract, claimed to have set off, as a tax on income, a

ROAD CESS ACT (Beng. Act X of 1871). —Income tax—*continued.*

sum which he had paid under the Road Cess Act, which had been passed in 1871, after the Income Tax Act had been repealed. *Held* that the tax imposed by the Road Cess Act passed by the Bengal Council could not be considered to be a tax on income; the income tax having been a tax imposed by the Government of India on a person's annual income, levied upon whatever actually came to his hands as income, and not upon the value of his property; and that, therefore, *B.* could not set off the amount as being income tax. *Held*, also, that although the Road Cess Act contains no saving clause in favour of contracts, it does not prohibit in future the making of contracts which shall interfere with the incidence of the road cess as directed by the Act, nor vacate contracts that may have been made before the passing of the Act; and in the absence of any provisions to that effect, an agreement entered into before the passing of the Act could not be affected by the subsequent passing of the Act. SURNOMOYEE DABEE *v.* PURRESH NARAIN ROY . . I. L. R., 4 Calc., 576

2. ——— **Construction of kabuliat.**—*Suit for rent.—Right of set-off.*—The defendants executed a kabuliat dated 1st October 1870, which contained the following stipulation: "If in future any chowkidari tax or any other new abwab or tax, or fee or kor, or any additional fee or jumma, be fixed upon the mehal by Government, I will pay that separately." In a suit by the zemindar for increase of rent, the defendants claimed to set off a sum representing the amount which the zemindar was bound to contribute under the Road Cess Act and Public Works Cess Act, and which amount they had paid to the Collector. *Held* that the amount in question came within the terms of the kabuliat, and that the defendants were not entitled to the set-off claimed by them. *Surnomoyee Dabee* v. *Purresh Narain Roy, I. L. R., 4 Calc., 576*, followed. SHUMBHU NATH MOOKHOPADHYA *v.* HURRO SUNDARI DABIA CHOWDRAIN . . 11 C. L. R., 140

1. ——— **s. 3.**—*Liability of chakran or service tenure for road cess.—"Tenure."*—A chakran or service tenure comes within the definition of "tenure" in section 3 of Bengal Act X of 1871, and is therefore liable for Road Cess and Public Works Cess under that Act. JOY SUNKUR ROY *v.* SIDHI MOHAM . . . . . 7 C. L. R., 373

2. ——— **s. 3 and ss. 9, 10, 23, 25, and 26.**—*Sale for arrears of road cess, Effect of.—Right of purchaser.—Interpretation clause, Construction of.*—In a suit on a bond by which certain land admittedly lakhiraj was mortgaged, the purchaser of a portion of the mortgaged property at an auction sale for arrears of road cess due under Bengal Act X of 1871, was added as a defendant, and the lower Courts holding that the effect of such a sale was to pass the property to the defendants free of incumbrances, made a decree excluding that portion from liability in respect of the mortgage-bond. *Held*, on the construction of Bengal Act X of 1871, that the sale had no such effect, and that the whole of the property was liable to be sold in satisfaction

ROAD CESS ACT (Beng. Act X of 1871), s. 3 and ss. 9, 10, 23, 25, and 26—*continued.*

of the plaintiffs' claim. Although the effect of an interpretation clause is to give the meaning assigned by it to the word interpreted in all places in the Act in which that word occurs, it is not the effect of an interpretation clause that the thing defined has annexed to it every incident which may seem to be attached to it by any other Act of the Legislature. It does not follow, therefore, that because lakhiraj property is defined in the Road Cess Act, 1871, to be a tenure, all the interests and consequences attached by other Acts to tenures generally, or to particular classes of tenures, become annexed to lakhiraj property. UMACHURN BAG *v.* AJADANNISSA BIBEE [I. L. R., 12 Calc., 430

——— **ss. 5, 7, and Part II, sch. A, part ii.**—*Bhowli tenures.—Suit for rent.*—Section 5 of the Road Cess Act requires the holders of any estate or tenure, of which the annual rent shall exceed one hundred rupees, to lodge returns of all lands comprised in an estate or tenure; bhowli lands are therefore to be included in such returns. Where such a return has not been made, the holder of the estate or tenure is precluded from suing for or recovering any rent due therefor. JUGMOHUN TEWARI *v.* FINCH [I. L. R., 9 Calc., 62: 11 C. L. R., 100

——— **s 25.**

See DAMAGES—SUITS FOR DAMAGES—BREACH OF CONTRACT. [I. L. R., 8 Calc., 290

——— **(Beng. Act IX of 1880), ss. 52, 53.**—*Evidence Act, s. 114.—Presumption.*—Where under an Act certain things are required to be done before any liability attaches to any person in respect of any right or obligation, it is for the person who alleges that that liability has been incurred to prove that the things prescribed in the Act have been actually done. *Held* that the notice provided by section 52 of the Road Cess Act did not come within the presumption of section 114, clause (*e*) of the Evidence Act, and must be proved. ASHANULLAH KHAN BAHADUR *v.* TRILOCHUN BAGCHEE . . . I. L. R., 13 Calc., 197

ROBBERY.

1. ——— **Theft and causing hurt with intention.**—When in committing a theft there is an intention and an attempt to cause hurt, the offence is robbery. QUEEN *v.* TEEKAI BHEER [5 W. R., Cr., 95

2. ——— **Theft with grievous hurt.**—By the infliction of grievous hurt, theft becomes robbery, and all parties concerned in the offence are liable to punishment. QUEEN *v.* HUSHRUT [6 W. R., Cr., 85

3. ——— **Want of dishonest intention.**—*Theft.*—The accused was convicted of robbery, but the Magistrate found that the property taken was not taken with any dishonest intention. *Held* that the conviction was bad. ANONYMOUS [5 Mad., Ap., 39

RULE TO SHOW CAUSE.

See PRACTICE—CIVIL CASES—RULE TO SHOW CAUSE . I. L. R., 9 Calc., 735

See PRACTICE—CRIMINAL CASES—RULE TO SHOW CAUSE.
[I. L. R., 4 Calc., 20

See RIGHT OF REPLY.
[7 B. L. R., Ap., 59

1. ——— "To show cause," Meaning of.—*Alleging and proving cause.*—The term "to show cause" does not mean merely to allege cause, nor even to make out that there is room for argument, but both to allege cause and to prove it to the satisfaction of the Court. RUNG LALL *v.* HEM NARAIN GIR . . . . . I. L. R., 11 Calc., 166

2. ——— Obligation of parties applying for rules.—*Practice.—Refusal of former application.*—Parties applying in the absence of the other side for the issue of rules *nisi* interfering with the rights of persons executing decrees, are bound fully and fairly to state all the circumstances within their knowledge which it is necessary for the Court to consider in granting the rule. IN THE MATTER OF BROJO COOMAR MULLICK *v.* MON MOHINEE DEBEA . . . . . 16 W. R., 55

3. ——— Power to grant rule.—*Sufficiency of affidavit.*—A Recorder refused an application for execution against certain defendants who came in and confessed judgment before any issue of summons in the suit. The plaintiffs then applied to the High Court by petition for an order that the Recorder should issue execution against the defendants, or that he should show cause for not doing so. The affidavit did not state whether any decree had actually been made. *Held* that the affidavit was insufficient; the Court cannot grant a rule to show cause, unless it is satisfied that the rule should be made absolute, if no cause be shown. IN RE COMPTOIR D'ESCOMPTE DE PARIS *v.* CURRIE & Co.
[3 B. L. R., Ap., 153 : 12 W. R., 413

4. ——— *Case where object of application for rule may be granted if not opposed.*—The High Court can grant a rule to show cause only in cases in which the arguments advanced in favour of the party asking for the rule are such that, if not displaced by the opposite side, the rule would be made absolute. IN THE MATTER OF THE PETITION OF OMRAO BEGUM . . . . 13 W. R., 310

5. ——— Rule obtained by person not party to suit.—*Practice.*—The Court will not make a rule absolute obtained by a person who is not a party to the suit. GRANT, SMITH, & Co., *v.* STEEL . . . . 1 Ind. Jur., N. S., 60

6. ——— Service of rule in foreign territory.—*Rule nisi for contempt of Court.—Sufficiency of service.*—On the 17th of December 1869 a rule *nisi* for the attachment, for contempt of Court, of the defendants *U., G., & T.*, was granted. The rule, owing to one of the defendants keeping out of the way, was not drawn up and served until the month of April following,

RULE TO SHOW CAUSE.—Service of rule in foreign territory—*continued.*

when it was served upon the defendants in the territories of the Gaikvad of Baroda, the consent of the Gaikvad's Minister to serve the notice having been previously obtained. On motion to make the rule absolute, it was held that the rule was served in time, and that the service of it in the Gaikvad's territories, with the consent of the Gaikvad, was valid service. *Quære,*—Whether the service would have been valid if such consent had not been obtained. HARIVALLABHDAS KALLIANDAS *v.* UTAMCHAND MANIKCHAND . . . . 7 Bom., O. C., 172

7. ——— Appearance to show cause.—*Waiver of service of rule.*—A person appearing to discharge a rule thereby waives all objections to the formality of the service of the rule upon him. HARIVALLABHDAS KALLIANDAS *v.* UTAMCHAND MANIKCHAND. IN RE GOPALRAV MYRAL
[8 Bom., O. C., 236

RULES OF ENGLISH LAW, APPLICABILITY OF, TO HINDU WILLS.

See HINDU LAW—WILL—CONSTRUCTION OF WILLS—SPECIAL CASES OF CONSTRUCTION—BEQUEST TO A CLASS.
[I. L. R., 2 Calc., 262

RULES OF HIGH COURT, CALCUTTA.

See INSOLVENT ACT, s. 36.
[7 B. L. R., Ap., 61

See INSOLVENT ACT, s. 40.
[13 B. L. R., Ap., 9

See LIMITATION ACT, 1877, s. 4.
[1 C. L. R., 291

——— General Rules and Orders, Part II, ch. V, s. 14 (a).—Section 14 (*a*), Part II, Chapter V, of the General Rules and Circular Orders of the High Court commented on. BAKHIR MOHAMMED *v.* DOORGA CHURN SHAHA
[I. L. R., 10 Calc., 39 : 13 C. L. R., 200

——— Rule of 30th January 1865.

See APPEAL IN CRIMINAL CASES—PROCEDURE . . . . 9 B. L. R., 6

——— Rule of 4th April 1866.—"*Proceeding in a civil case.*"—The proceeding by way of mandamus is "a proceeding in a civil case" within the meaning of the Rule of 4th April 1866. JUSTICES OF THE PEACE FOR CALCUTTA *v.* ORIENTAL GAS COMPANY . 8 B. L. R., 433 : 17 W. R., 364

——— Rule of 11th July 1871.

See MANAGER OF ATTACHED PROPERTY.
[8 B. L. R., Ap., 23

——— Rules 50 and 52 of 6th January 1874.

See INSPECTION OF DOCUMENTS.
[I. L. R., 1 Calc., 178

RULES OF HIGH COURT, CALCUTTA —*continued.*

——— **Rule 4 of 22nd January 1875.**

See PROBATE—POWER OF HIGH COURT TO GRANT, AND FORM OF—
[I. L. R., 1 Calc., 52

——— **Rule 12 of 1st May 1875.**

See SUMMONS . 15 B. L. R., Ap., 12

RULES OF HIGH COURT, MADRAS.

——— *Rules 4 and 5 of 1866.—Right of vakils in matters of ordinary original civil jurisdiction.—24 and 25 Vict., c. 104.*—The 4th and 5th Rules of Court of 1866 are within the powers conferred on the High Court by the Letters Patent of 1865; and the provisions of the Letters Patent "relating to the admission and powers of Advocates, Vakils, and Attorneys" are authorised by 24 and 25 Victoria, Cap. 104. IN THE MATTER OF THE PETITION OF THE ATTORNEYS . . . . I. L. R., 1 Mad., 24

RULES OF LOCAL GOVERNMENTS.

1. ——— **Rules under Dekkhan Agriculturists' Relief Act, s. 49.**—*Conciliation-agreement, Notice of, to parties thereto.—Service of such notice through a Subordinate Judge.—Ultra vires.—Procedure.*—The rule that a notice to parties to a conciliation-agreement should be served through a Subordinate Judge, framed by the Local Government under section 49 of the Dekkhan Agriculturists' Relief Act, XVII of 1879, and published at page 682, Part I, of the *Bombay Government Gazette*, is not *ultra vires*, and a notice so served was held to be a good notice. JOTIRAM MANIRAM *v.* DEVBA ISHWARAPA
[I. L. R., 10 Bom., 189

2. ——— **Rules under Civil Procedure Code, 1882, s. 320.**—*Meaning of "with effect from the 31st October 1880."—Held* that effect cannot be given to the Rules prescribed by the Local Government under section 320 of Act X of 1877, unless an order for sale has been made on or after the 1st October 1880. HAFIZ-UN-NISSA *v.* MAHADEO PRASAD . . . . . I. L. R., 4 All., 116

RULES OF SUPREME COURT, BOMBAY.

See LIMITATION ACT, 1877, ART. 84 (1871, ART. 85) . I. L. R., 1 Bom., 253

——— **Rule 389.**

See SEQUESTRATION.
[8 Bom., O. C., 135

——— *"Forthwith," Meaning of.*—An order commanding an act to be done "forthwith" is sufficiently in conformity with the rule that requires the time within which an act ordered to be done is to be performed to be specified in the order. HARIVALLBHDAS KALLIANDAS *v.* UTAMCHAND MANIKCHAND . . . . 8 Bom., O. C., 135

RULES OF SUPREME COURT, CALCUTTA.

——— *Plea Side.—Rule 176.*—Rule 176 of the Rules and Orders on the Plea Side of the Supreme Court was still in force in 1871. KAILAS CHANDRA BOSE *v.* BHUBAN CHANDRA BOSE
[8 B. L. R., Ap., 18

RULES MADE UNDER ACTS.

——— *Rules under Municipal Act XXVI of 1850.—Ultra vires.*—Rules made under Act XXVI of 1850 which purport to give the managing committee of the Municipal Commissioners power to try offenders against such rules, or to levy fines upon them, are *ultra vires* and illegal. Rules of the Municipalities of Balsad, Surat, Malcolm Pet, and Ahmedabad referred to and commented on. How far a rule partially *ultra vires* and partially *intra vires* can be enforced, as to the latter portion, considered. REG. *v.* YENKU BAPUJI . . 8 Bom., Cr., 39

RYOT.

See CASES UNDER ENHANCEMENT OF RENT.

See CASES UNDER LANDLORD AND TENANT.

See CASES UNDER RIGHT OF OCCUPANCY.

——— **Occupying under person with no title.**

See RIGHT OF OCCUPANCY—ACQUISITION OF RIGHT—MODE OF ACQUISITION.
[I. L. R., 3 Calc., 560

——— **Suit for partition and to eject—**

See LANDLORD AND TENANT—EJECTMENT —NOTICE TO QUIT.
[I. L. R., 1 Mad., 333

See MULTIFARIOUSNESS.
[I. L. R., 1 Mad., 333

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SALARY.

See CASES UNDER ATTACHMENT—SUBJECTS OF ATTACHMENT—SALARY.

——— **Assignment of.**—*5 and 6 Edw. III., c. 16.—49 Geo. III., c. 126.—Public policy.—Assignment by Judge of Supreme Court of sum payable after his death under 6 Geo. IV., c. 85.*—An assignment by a Puisne Judge of the Supreme Court at Madras of the sum, "equal to the amount of six months' salary," directed by the 6 George IV., Cap. 85, to be paid to the "legal personal representatives" of such Judge in case of his death in and after six months' possession of office,—*Held* to be a valid assignment being a vested contingent interest in such Judge; and not being payable during the life of the Judge, was not an assignment of salary within 5 and 6 Edward III., Cap. 16, and 49 George III., Cap. 126, and therefore was not contrary to public policy. ABBUTHNOT *v.* NORTON . 3 Moore's I. A., 435

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——— Receipt of—

See INSOLVENCY — INSOLVENT DEBTORS UNDER CIVIL PROCEDURE CODE
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——— Suit for recovery of—

See LIMITATION ACT, 1877, ART. 7 (1859, S. 1, CL. 2) . 1 B. L. R., S. N., 20
[4 B. L. R., Ap., 68
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See CERTIFICATE OF SALE.

——— Confirmation of—

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——— Irregularity in—

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See CASES UNDER SALE FOR ARREARS OF REVENUE—SETTING ASIDE SALE—IRREGULARITY.

See CASES UNDER SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—IRREGULARITY.

See TRESPASS—GENERAL CASES.
[2 B. L. R., P. C., 10

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——— Stay of—

See INJUNCTION—UNDER CIVIL PROCEDURE CODES
[5 B. L. R., 254; 254, note
22 W. R., 506
11 B. L. R., Ap., 28
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See JURISDICTION OF CIVIL COURT—REVENUE COURTS—ORDERS OF REVENUE COURTS.

See CASES UNDER RIGHT OF SUIT—SUITS RELATING TO SALE IN EXECUTION OF DECREE.

See CASES UNDER SALE FOR ARREARS OF RENT—SETTING ASIDE SALE.

See CASES UNDER SALE FOR ARREARS OF REVENUE—SETTING ASIDE SALE.

See CASES UNDER SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE.

SALE FOR ARREARS OF RENT.

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[10 B. L. R., 294
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[2 B. L. R., P. C., 10

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[B. L. R., Sup. Vol., 382, 625
9 W. R., 363, 538, 600
8 B. L. R., 1

1. ACT VIII OF 1835.

1. ——— **Procedure.**—*Sale of under-tenure.—Beng. Reg. VII of 1799.*—Sales of under-tenures under Act VIII of 1835 for arrears of rent were not required to be according to the procedure laid down in Regulation VII of 1799, but according to the procedure prescribed by section 2 of Act VIII of 1835. MONOSHEE *v.* ABDOOL HOSSEIN
[7 W. R., 297

2. ——— **Effect of sale.**—*Right of purchaser.—Itmamee tenure.*—When rights and interests in a talook were sold for arrears of rent under Act VIII of 1835, the purchaser obtained no power to destroy the itmamee tenure. SOOBULCHUNDER PAUL *v.* ATTUR ALI . . . 11 W. R., 32

SALE FOR ARREARS OF RENT—*continued.*

1. ACT VIII OF 1835—*continued.*

Effect of sale—*continued.*

3. ——————. *Right of purchaser.—Incumbrances.*—A sale of an under-tenure under Act VIII of 1835 passed only the right, title, and interest of the judgment-debtor, and did not void the incumbrances created by the old tenant. MANICK CHUNDER DOSS *v.* DWARKANAUTH DOSS [2 Hay, 502

4. —————— *Right of purchaser.—Act XI of 1859, s. 52.—Semble,*—The purchaser of a holding in a khas mehal sold under Act VIII of 1835 could claim the position or privileges accorded by sections 37 and 52 of Act XI of 1859 to purchasers of permanently-settled estates, or of estates sold in districts not permanently settled, sold for arrears of revenue. KYLASH CHUNDER SHAHA *v.* SHURNOMOYEE DOSSEE . . 7 W. R., 318

5. —————— *Incumbrances.—Howladari tenure.*—The plaintiff held certain lands in talook Q. under a howladari pottah. Q. was sold for arrears of rent under Act VIII of 1835, and purchased by the defendant. After purchase the defendant dispossessed the plaintiff from his lands, on the ground that he had purchased the talook free from all incumbrances created by the late defaulting talookdar. The plaintiff brought this suit to recover possession of his lands from the defendant. *Held* that a purchaser of a tenure under Act VIII of 1835 did not necessarily acquire it free from all incumbrances. Case remanded for trial of the genuineness of the plaintiff's pottah. JASIMUDDIN *v.* MANSUR ALI [6 B. L. R., Ap., 149: 15 W. R., 11

Contra, DWARKANATH DOSS *v.* MANICK CHUNDER DOSS .. . . . . 3 W. R., 197

RAMJEEBUN CHOWDRY *v.* PEARY LALL MUNDUL [4 W. R., Act X, 30

6. —————— *Right of purchaser.—Attachment.—Tender of arrears.*—In a suit to set aside a sale in execution of a decree for arrears of rent due up to Aghran 1262, the plaintiff, who claimed under a deed of conditional sale, was held not entitled to a decree on the following grounds. He was not a registered tenant at the time of the sale, but as a sezawal was legally in possession. The plaintiff never tendered the arrears for which the sale was made. Under Act VIII of 1835 no separate attachment of a mehal or notification of sale in the mofussil is necessary in order to render the sale valid. In this case, not the rights and interests of the defaulter, but the tenure itself, passed for the arrears due upon it. Attachment by the appointment of a sezawal is no bar to a sale for arrears due before such attachment. FORBES *v.* PROTAP SINGH DOOGUR . . 7 W. R., 409

7. —————— *Beng. Reg. VII of 1799.—Tuppa right, Extinguishment of.—Semble,*—A tuppa right is annihilated by a sale held under Act VIII of 1835, and clause 7, section 15, Regulation VII of 1799. ZEENUT BEBEE *v.* RAHATOONISSA [7 W. R., 243

SALE FOR ARREARS OF RENT—*continued.*

2. MADRAS ACT VIII OF 1865.

8. —————— **Right of purchaser.**—*Sale of tenant's interest by creditor.—Subsequent sale by landlord for arrears of rent.—Right of purchaser.*—The right, title, and interest of a tenant in certain land having been attached, sold, and purchased in execution of a decree upon a mortgage by his creditor in 1874, the landlord, in pursuance of a notice under section 39 of the Rent Recovery Act (Madras Act VIII of 1865), issued prior to the Civil Court's sale, sold the land at auction for arrears of rent due by the tenant. *Held* that the tenant's rights having passed to the purchaser at the Civil Court's sale, there was no interest of the tenant available for sale by the landlord under the provisions of section 38 of the Rent Recovery Act. VIRAPPA NAYAK *v.* KATHANA TALAVACHI . . I. L. R., 6 Mad., 428

9. —————— *Sale of tenant's interest.—Prior incumbrance.—Rights of purchaser.*—A sale by a landlord of a tenant's interest in his holding for non-payment of rent under the provisions of section 38 of the Rent Recovery Act (Madras Act VIII of 1865) does not defeat existing incumbrances. *Munisami* v. *Dukshanamurti, I. L. R., 5 Mad., 371,* overruled. RAJAGOPALASHARI *v.* SUBBARAYA MUDALI . . I. L. R., 7 Mad., 31

See ZEMINDAR OF RAMNAD *v.* RAMAMANY AMMAL [I. L. R., 2 Mad., 234

10. —————— *Incumbrance.*—As the tenancy of an ordinary pottahdar only confers on him a right of occupancy until default in payment of rent and the determination of the tenancy under the provisions of the Rent Act, any incumbrance created by such pottahdar on the land cannot affect the landholder's statutory power of sale under the Act or the rights of the purchaser at such sale. KONDI MUNISAMI CHETTI *v.* DAKSHANAMURTHI PILLAI . . . I. L. R., 5 Mad., 371

11. —————— *Purchase by creditor.—Civil Procedure Code, 1882, ss. 276, 295.—Sale of tenant's interest by landlord pending attachment by Civil Court.*—The interest of a tenant in certain land having been attached by his creditor in execution of a decree for money, the landlord attached the same land for arrears of rent, brought it to sale, and purchased it under the provisions of the Rent Recovery Act. The creditor subsequently purchased the interest of the tenant, which was sold in execution of his decree. In a suit by the landlord to have the sale to the creditor declared invalid,—*Held* that the landlord's purchase was subject to the creditor's attachment. SUBRAMANYA *v.* RAJARAM [I. L. R., 8 Mad., 573

3. DEFAULTERS.

12. —————— **Disabilities of defaulters.**—*Purchase.—Beng. Reg. VIII of 1819.—Sale of putni.*—A defaulter cannot, under Regulation VIII of 1819, purchase a putni sold on account of his default to pay

SALE FOR ARREARS OF RENT—*continued.*

3. DEFAULTERS—*continued.*

Disabilities of defaulters—*continued.*

the putni rent, either in his own name, or in that of any other person. MAHOMED NASSEER *v.* KISHEN MOHUN GOYEE . . . **W. R., F. B., 92**

13. ——— *Purchase.—Sale of putni.*—Not merely recorded shareholders, but all actual defaulters (such as joint putnidars), are prohibited from being purchasers of putni. GOUREE KOMUL BHUTTACHARJEE *v.* RAJ KISHEN NATH **[5 W. R., 106**

14. ——— *Purchase.—Right to sue.—Suit by another defaulting co-sharer to set aside sale.*—A suit by a sharer to set aside a sale having been dismissed on the ground that plaintiff being a defaulter the suit would not lie, plaintiff brought a second suit to claim possession of his share of the dur-putni talook, on the ground that the sale must be inoperative, inasmuch as the purchaser, a co-sharer, was also a defaulter. *Held* that, until the sale was set aside, plaintiff was not in a position to claim possession of his share GOUREE KOMUL BHUTTACHARJEE *v.* RAJ KRISTO NATH **[14 W. R., 369**

15. ——— *Purchase.—Suit by other defaulters to set aside sale.—Joint owners.—Dur-putnidars.—Constructive trust.*—Of three joint owners of a dur-putni, two held each a 4 annas share and the third an 8 annas share. Default having been made by all three in the payment of the rent, the putnidar brought a suit and obtained a decree for the arrears. In execution of this decree, proclamation was made that the dur-putni would be sold on the 5th of October 1877. Up to the commencement of the sale the 4 annas shareholders were unable to pay their proportionate amount of the decree; the 8 annas shareholder declined paying his share, and, when the sale took place, he became the purchaser of the dur-putni. In a suit brought by the 4 annas shareholders to recover their shares from the purchaser, the lower Appellate Court, reversing the decree of the Court of first instance, decided in favour of the plaintiffs. *Held*, on second appeal, that the sale having taken place as much through the default of the plaintiffs as through the default of the defendant, the former had no equity against the latter; and that, therefore, the suit should be dismissed. RAM LOLL MOOKERJEE *v.* DEBENDER NATH CHATTERJEE **[I. L. R., 8 Calc., 8**

S. C. RAM LALL MOOKERJEE *v.* JODUNATH CHATTERJEE . . . . . **9 C. L. R., 337**

16. ——— **Defaulter for period later than that causing the sale.**—*Suit for damages by dur-putnidar.*—When a putni is sold for default on the part of the putnidar in paying his rents, a dur-putnidar who has paid his rent to the putnidar for the period to which the default relates may sue for damages, although himself a defaulter for a later period. MADHUB ANUND MOITRO *v.* JOY KOOMAREE BIBEE . . . **5 W. R., 201**

SALE FOR ARREARS OF RENT—*continued.*

4. UNDER-TENURES, SALE OF—

17. ——— **Beng. Act VIII of 1865.**—*Application of Act.—Chota Nagpore.*—Bengal Act VIII of 1865 applied to the district of Lohardugga in Chota Nagpore. GOBIND RAM *v.* BHUPAL SINGH . . . . . **10 C. L. R., 76**

18. ——— **s. 30.**—"*Proceeding.*"—*Sale.*—A sale under Bengal Act VIII of 1865 was a "proceeding" within the meaning of section 30 of that Act. DWARKANATH SEIN *v.* CHUNDER MOHUN MITTER . . . . . **12 W. R., 326**

19. ——— **Act X of 1859, s. 105.**—*Sale of transferable tenure.—Act X of 1859, s. 151.*—The plaintiff sued to bring a transferable occupancy tenure to sale in satisfaction of a decree for arrears of rent, by cancelment of an order passed under Act X of 1859 relating to the execution of the decree,—*Held* that in so far as the suit sought to set aside the order, it was barred by the provisions of section 151 of Act X of 1859, and was not admissible by reason of the repeal of the Act: in so far as, irrespectively of the order, the suit sought to recover the amount of the decree by the sale of the holding on which the arrear accrued, at the time it was instituted section 105 of the Act had ceased to be law in these provinces, and could not be cited in support of the claim. RAM KHILOWAN RAM *v.* FOX . . **7 N. W., 239**

20. ——— *Purchase by zemindar at sale in execution of decree of Civil Court.*—A zemindar who had obtained a decree against a registered tenant for arrears of rent was fully justified in proceeding to sale under section 105 of Act X of 1859, notwithstanding the tenure was purchased subsequently to the date of the above decree at a sale in execution of a decree of the Civil Court. SUFUROONISSA *v.* SAREE DHOOPEE . **8 W. R., 384**

21. ——— Under section 105, Act X of 1859, an under-tenure might be sold in execution of a decree, provided there was an arrear of rent adjudged. SUTTEESCHUNDER ROY *v.* MODHOOSOODUN PAUL CHOWDHRY . **W. R., 1864, Act X, 91**

22. ——— *Procedure by proprietor of under-tenure.—Act X of 1859, s. 106.*—Under section 105, Act X of 1859, an under-tenure was liable to sale in execution of a decree for arrears of rent for eleven years. Any party wishing to stay the sale, on the ground of his being the proprietor of the under-tenure, had to comply with the provisions of section 106. DOORGA PERSAD BOSE *v.* SREEKISTO MOONSHEE . . **W. R., 1864, Act X, 48**

23. ——— **Beng. Act VIII of 1869, ss. 59, 64.**—*Procedure.*—Where an under-tenure is sold under the provisions of Bengal Act VIII of 1869 in execution of a decree obtained by the zemindar for rent due to him as the separate proprietor, after bhutwarra of a share of the talook in which the tenure is situated, the sale is properly conducted, not under section 64 but under section 59 of the above law.

SALE FOR ARREARS OF RENT—*continued.*

4. UNDER-TENURES, SALE OF—*continued.*

Beng. Act VIII of 1869, ss. 59, 64—*continued.*

SURUT SOONDUREE DEBIA *v.* SUMEEROODEEN TALOOKDAR . . . . **22 W. R., 530**

24. ——— **Effect of sale.**—*Right, title, and interest of debtor.—Act X of 1859, s. 105.*—In a sale under section 105, Act X of 1859, only the judgment-debtor's property can pass. MEAH JAN MUNSHI *v.* KURRUNA MAYI DEBI . . . **8 B. L. R., 1**

25. ——— *"Tenure," Meaning of.—Non-registration of names.—Act X of 1859, s. 105.*—By the word "tenure" as used in section 105, Act X of 1859, is meant, not the right or interest of any person in the land, but the holding or the interest which has been created by the lease, and it is the latter which is sold on a sale under section 105. Therefore, where *A.*, at a sale in execution of a decree for debt, bought the right, title, and interest of the holder of a transferable under-tenure, and previous to the confirmation of such sale the zemindar sued the tenant for arrears of rent, and obtained a decree, under which he sold the tenure to persons who conveyed it to *B.*, and *A.*, under the circumstances, neither registered the transfer to himself, nor made any deposit of rent as allowed by section 6, Bengal Act VIII of 1865,—*Held* that he was not entitled to recover possession from *B.* SHAMCHAND KUNDU *v.* BROJONATH PAL CHOWDHRY **[12 B. L. R., F. B., 484: 21 W. R., 94**

GIRISH CHUNDER MITTER *v.* JHAKU **[12 B. L. R., 488, note: 17 W. R., 352**

ANUND LOLL MOOKERJEE *v.* KALIKA PERSAD MISSER **[12 B. L. R., 489, note: 20 W. R., 59**

RUGHOOBUR THAKOOR *v.* SYEFOOLLAH KHAN **[23 W. R., 289**

BANEE MADHUB BUKSHEE *v.* RADHA MADHUB MOZOOMDAR . . . **22 W. R., 196**

26. ——— *Non-registration of tenants' names.—Right of person in permissive possession of tenure.*—A sale in execution of a decree for arrears of rent (at an enhanced rate) of a subordinate talook, which has been obtained against a party who is in possession of the talook by permission of the owners, but who has no other right or title to it, will not bind those owners, even though their names be not recorded as tenants in the books of the zemindar. *Sham Chand Kundu* v. *Brojo Nath Pal Chowdhry, 12 B. L. R., 484,* distinguished. REDOY KISSEN DUTT *v.* RAM COOMAR SEN **[3 C. L. R., 231**

27. ——— *What passes at sale of under-tenure.—Growing crops.—Beng. Act VIII of 1869, s. 66.*—At a sale of an under-tenure for arrears of rent under section 66 of Bengal Act VIII of 1869, the growing crop standing on the land passes to the purchaser at the auction sale, except when it has been specially excepted by the notification

SALE FOR ARREARS OF RENT—*continued.*

4. UNDER-TENURES, SALE OF—*continued.*

Effect of sale—*continued.*

of sale, or a custom to the contrary has been proved. AFATOOLLA SIRDAR *v.* DWARKA NATH MOITRY **[I. L. R., 4 Calc., 814: 4 C. L. R., 95**

28. ——— *What passes at sale of under-tenure.—Certificate of sale.—B. B.* held 1 anna of a 10 annas share in a jumma which had been purchased by *B. L. H.*, and had paid rent to the kutkinadar on such 1-anna share, and had his name registered as owner of such 1-anna share in the serishta of the kutkinadar. The kutkinadar having afterwards brought a suit against *B. L. H.* alone for arrears of rent of the entire 10 annas, and having obtained a decree, and in execution of this decree put up to sale the entire 10 annas share,—*Held* that as the sale certificate related only to the share of *B. L. H.*, *B. B.'s* 1-anna share did not pass under such sale. BHUGEERUTH BERAH *v.* MONEERAM BANERJEE . . . . **I. L. R., 4 Calc., 855**

29. ——— *What passes at sale of under-tenure.—Beng. Act VIII of 1869, ss. 59, 60.—Sale certificate.—Proclamation of sale.—Held,* on the construction of a sale certificate and a proclamation of sale purporting to be made under sections 59 and 60 of the Rent Act, Bengal Act VIII of 1869, that what passed by the sale was not an under-tenure, but merely the right, title, and interest of the judgment-debtor therein. The declaratory portion of a sale proclamation is not by itself sufficient to override the description of the property in the body of the document. DWARKA NATH *v.* ALOKE CHUNDER SEAL . . . **I. L. R., 9 Calc., 641**

30. ——— *Sale in execution of decree under Civil Procedure Code, 1859.—Beng. Act VIII of 1869, ss. 59, 60, 66.—Right of purchaser.*—In execution proceedings under Act VIII of 1859, whether the property attached is an under-tenure or an ordinary leasehold interest, only the right, title, and interest of a judgment-debtor can be sold; while by virtue of a sale of a tenure under section 59 of Act VIII of 1869, the purchaser acquires it under sections 59, 60, and 66 free of all incumbrances which may have accrued thereon by any act of any holder of the said under-tenure, his representatives or assignees, unless the right of making such incumbrances shall have been expressly vested in the holder. DOOLAR CHAND SAHOO *v.* LALLA CHABEEL CHAND. DOOLAR CHAND SAHOO *v.* LALLA BISHESHUR DYAL **[L. R., 6 I. A., 47: 3 C. L. R., 561**

31. ——— *Beng. Act VIII of 1869, ss. 59, 60.—Right of auction-purchaser.*—Where an under-tenure was sold in execution of a decree which had been passed in the terms of a compromise effected between the landlord and all the sharers in the tenure but one, and the representative of the latter sought to assert his right to his share against the auction-purchaser,—*Held* that, in a sale under Act VIII of 1869, a tenure is sold outright, and that this tenure did not pass to the auction-

SALE FOR ARREARS OF RENT—*continued.*

4. UNDER-TENURES, SALE OF—*continued.*

Effect of sale—*continued.*

purchaser with any incumbrances. GRISH CHUNDER GHOSE *v.* KALEE TARA . . **25 W. R., 395**

32. ——— *Right of mortgagee.—Right to notice of sale.—Adjudication of title, Suit for.*—The right, title, and interest of *A.* in a certain under-tenure was sold in execution of a decree for rent obtained against him by *B.* and purchased by *B.* himself. *B.* at the time held another decree against *A.* for arrears of rent for the same under-tenure. *C.*, to whom *A.* had previously mortgaged the under-tenure, thereupon having foreclosed the mortgage, instituted a suit for possession against *A.* and *B.*, and obtained a decree for possession. After this decree, but before *C.* got actual possession, *B.* caused the under-tenure to be sold in execution of his other decree against *A.*, and again became himself the purchaser. *C.* having shortly afterwards obtained possession under his decree, was dispossessed by *B.*, who took possession through the Court under his second purchase. *C.* thereupon instituted proceedings under section 269, Act VIII of 1859, in which he was successful, and consequently regained possession. In a suit brought by *B.* to set aside those proceedings and for adjudication of title,—*Held* that *B.* had a good title to the under-tenure, and that he was not bound, before bringing the under-tenure to sale under his second decree, to give notice to *C.* *Nobeen Kishen Mookerjee* v. *Shib Pershad Pattuck*, *8 W. R., 96*, considered. LAIDLEY *v.* GUNNESS CHUNDER SAHOO **[I. L. R., 4 Calc., 438**

S. C. WATSON *v.* GONESH CHUNDER SAHOO **[3 C. L. R., 240**

33. ——— **Procedure.**—*Setting aside sale.—Material irregularities.—Civil Procedure Code (Act X of 1877), ch. XIX, ss. 311, 647.*—The procedure to be followed upon the sale of an under-tenure is now that prescribed by the Civil Procedure Code. Section 311 does not apply only to sales made under Chapter XIX of the Code, and the sale of an under-tenure may be set aside upon any of the grounds mentioned in that section. AZIZOONNESSA KHATOON *v.* GORA CHAND DASS . . **I. L. R., 7 Calc., 163**

S. C. AZIZOONNESSA KHATOON *v.* KALLY CHURN SEN . . .. . **8 C. L. R., 498**

5. PORTION OF UNDER-TENURE, SALE OF—

34. ——— **Judgment-debtor in receipt of whole rent.**—*Beng. Act VIII of 1869, ss. 61, 64.*—It is only where the judgment-debtor is in receipt of the entire 16 annas share of the rent that in execution of a decree for rent the under-tenure can be sold. DWARKA NATH CHAKRAVUTI *v.* SUVRIDRA NATH CHOWDHURI . **8 C. L. R., 407**

35. ——— **Sale under decree obtained by sharer in undivided estate.**—If a decree is given in favour of a sharer in a joint undivided estate for his share of the rent of an under-tenure situate

SALE FOR ARREARS OF RENT—*continued.*

5. PORTION OF UNDER-TENURE, SALE OF—*continued.*

Sale under decree obtained by sharer in undivided estate—*continued.*

in such estate, he is not allowed by law to put up for sale a portion of the under-tenure. GOBIND CHUNDER ROY CHOWDHRY *v.* RAM CHUNDER CHOWDHRY **[22 W. R., 421**

36. ——— *Act X of 1859, s. 108.—Effect of sale.*—Where a sharer in an undivided talook, after obtaining a decree for money due to him on account of his share of the rent, brings to sale a portion of the tenure corresponding with the share of the rent for which he obtained a decree, the sale has no further effect than any other sale in which the rights of the judgment-debtor are sold. NUND LALL ROY *v.* GOOROO CHURN BOSE **[15 W. R., 6**

PITAMBURRE CHOWDHRAIN *v.* NOBIN KRISTO MOOKERJEE . . . **18 W. R., 205**

37. ——— **Act X of 1859, s. 108.**—*Beng. Act VIII of 1865, s. 4.—Sale of under-tenure.—Execution of decree for rent.*—A suit by a sharer in a joint undivided estate for money due to him on account of his share of the rent of an under-tenure situate in such undivided estate, fell within the provisions of section 108, Act X of 1859. Where the owner of an undivided estate lets his share to a tenant by giving a pottah and taking a kabuliat, a suit for the rent of such undivided share, treated as a separate and distinct under-tenure, came under the provisions of section 4, Bengal Act VIII of 1865. DWARKANATH CHUCKERBUTTY *v.* DHUN MONEE CHOWDRAIN **[15 W. R., 524**

38. ——— *Right of purchaser on sale of portion of tenure.*—Where a suit was for rent, and the balances due under the decree were on account of a 7 annas rukkum of a tenure, and the sale certificate passed the right and interest of the defaulting under-tenant, it was held that Act X of 1859, section 108, was applicable to the case, and that such right and interest only, and not the whole tenure, became vested in the auction-purchaser. AUKHIL CHUNDER MOOKERJEE *v.* CHUNDER COOMAR MITTER . . . . . **22 W. R., 414**

39. ——— **Beng. Act VIII of 1869, s. 64.**—*Right of purchaser.—Effect of sale.*—The Full Bench decision (in *Sham Chand Kundu* v. *Brojonath Pal Chowdhry, 12 B. L. R., 484 : 21 W. R., 94*), by which the right of a purchaser in execution of a rent-decree prevails over that of an earlier purchaser, has no application to the case of a sale under Bengal Act VIII of 1869, section 64, which provides for the sale, not of the tenure, but of the right, title, and interest of the judgment-debtors. LUCHMUN RAMONOOJ DOSS *v.* RAM HUREE ROY . **22 W. R., 67**

40. ——— *Landlord and tenant.—Sale of a portion of a tenure.—Beng. Act VIII of 1869, ss. 59, 60.—Co-sharers.—Parties.*—A portion of a tenure cannot be the subject of a sale

SALE FOR ARREARS OF RENT—*continued.*

5. PORTION OF UNDER-TENURE, SALE OF—*continued.*

Beng. Act VIII of 1869, s. 64—*continued.*

under section 64, Bengal Act VIII of 1869, so as to give the purchaser the same privilege as he would acquire by the purchase of an entire tenure under sections 59 and 60. A landlord who was in receipt of a half share of the rent of a certain tenure caused that share of the tenure to be sold in execution of a decree for arrears of rent. After such sale *A.*, the purchaser, took possession. Subsequently the tenant executed a mortgage, and a decree being obtained by the mortgagee the whole tenure was brought to sale in execution thereof and purchased by the mortgagee, who proceeded to oust *A.* In a suit by *A.* to recover possession of his half share of the tenure on the footing of his purchase,—*Held* that he could not make out a title to the half tenure with the privilege attaching to the purchase of an entire tenure under sections 59 and 60 of Bengal Act VIII of 1869; and that as it appeared that the mortgagor, whose rights and interests only were thus sold, was only one of several co-sharers, in the absence of the co-sharers who were not parties to the suit, *A.* was not entitled to the relief he sought. REILY *v.* HUR CHUNDER GHOSE . **I. L. R., 9 Calc., 722: 12 C. L. R., 398**

See SHAMCHAND KUNDU *v.* BROJONATH PAL CHOWDHRY . . . **12 B. L. R., 484**

41. ——————— *Right, title, and interest of registered shareholder in tenure.—Effect on joint shareholders.*—Where a judgment-debtor was alone registered in the sherista of the zemindar as owner of a tenure, but it appeared that his two brothers who were joint in estate with him were entitled to an equal share with him in the tenure, but that the judgment-debtor was the manager; and when it appeared that the zemindar, being only entitled to a share in the zemindari, had obtained a decree against the judgment-debtor alone for arrears of rent, and in execution thereof proceeded to sell his right, title, and interest under section 64 of the Rent Act,—*Held* that as the judgment-debtor represented his brothers, and as they were equally liable to pay the amount of the decree, upon the principle set out above, the latter were not entitled to recover their share of the tenure which the auction-purchaser had obtained possession of in execution of the decree against the judgment-debtor. *Doolar Chand Sahoo* v. *Lalla Chabeel Chand, L. R., 6 I. A., 47;* and *Bissessur Lall Sahoo* v. *Luchmessur Singh, L. R., 6 I. A., 233,* commented on. JEO LAL SINGH *v.* GUNGA PERSHAD . **I. L. R., 10 Calc., 996**

42. ——————— *Sale of gantidari rights.*—In a suit for arrears of rent, where defendants denied the relation of landlord and tenant to exist between themselves and the plaintiffs, it was found that plaintiff had been the sole owner of an estate which formed a 12 annas share of the under-tenure of a gantidar, who was liable to pay the rent of the other 4 annas to the owner of the neighbouring estate. In execution of a decree for arrears of rent due on the 12 annas share, plaintiff caused the ganti to be sold and purchased it himself, and the proceeds not being sufficient to pay the amount of the decree, he caused the tenant-right of the 4 annas share to be sold and purchased that also. *Held* that Bengal Act VIII of 1869, section 64, did not apply, because plaintiff was not a sharer in a joint undivided estate; and that, by his purchase, plaintiff had become the absolute owner of the 12 annas ganti, and had acquired the right, title, and interest of the last-registered tenant in the 4 annas share. The result was to place him in the position of holding the 16 annas gantidari right as against the under-tenants, who were bound to pay rent to him as *de facto* gantidar. JOGENDRO CHUNDER GHOSE *v.* SHONA KALEE . . **24 W. R., 313**

43. ——————— *Sale of immoveable property.—Beng. Act VIII of 1869, s. 65.*—Where one co-sharer obtains a decree for money due to him on account of his share of the rent of an ijara, and in execution of that decree attaches, in the first instance, the immoveable property of his debtor, such attachment is void and will not invalidate a conveyance of the property by the judgment-debtor made during its continuance. It is not unless and until all the moveable property of the judgment-debtor has been sold and the sale-proceeds are found insufficient to satisfy the decree, that the judgment-creditor can proceed under section 64 or 65, Bengal Act VIII of 1869, to seize and sell the immoveable property of his debtor. SARODA PROSAD GANGOOLY *v.* TARUCK CHUNDER BHUTTACHARJEE . **2 C. L. R., 325**

44. ——————— *Landlord and tenant.—Sale of portion of under-tenure.—Suit for arrears of rent.*—There is nothing in section 64, Bengal Act VIII of 1869, which necessarily leads to the conclusion that under that section a share of an under-tenure cannot be sold so as to render the sale binding upon the judgment-debtor; and there is no substantial difference between the sale of a portion of an under-tenure under that section and under the Civil Procedure Code. Where, therefore, a plaintiff, who was the owner of a share in a zemindari, had obtained a decree against *X.*, who held a talook in such zemindari, for arrears of rent due in respect of such share, and in execution of such decree brought a share of such talook to sale, corresponding with his share in the zemindari, and himself became the purchaser; and where such plaintiff subsequently instituted a suit against *X.*, who was also the owner of a howla and nim-howla under the said talook, for arrears of rent due in respect of the share of the talook so purchased by him; and where it appeared that the sale at which the plaintiff became the purchaser was afterwards confirmed; and that he had obtained a sale certificate;—*Held* that such suit was not liable to be dismissed merely on the ground that the plaintiff had brought a share of an under-tenure to sale in execution of a decree for arrears of rent under section 64 of Bengal Act VIII

SALE FOR ARREARS OF RENT—*continued.*

5. PORTION OF UNDER-TENURE, SALE OF—*continued.*

Beng. Act VIII of 1869, s. 64—*continued.*

of 1869, and had thereby acquired nothing by such purchase, there being nothing in that section to support such a conclusion. *Gobind Chunder Roy Chowdhry* v. *Ram Chunder Chowdhry, 22 W. R., 421;* and *Reily* v. *Hur Chunder Ghose, I. L. R., 9 Calc., 722,* discussed and explained. ASHANULLA KHAN BAHADUR *v.* RAJENDRA CHANDRA RAI

[I. L. R., 12 Calc., 464

6. EFFECT OF SALE.

45. ——— **Dissolution of relation of landlord and tenant.**—*Putni tenure.*—The sale of a putni dissolves the relationship of landlord and tenant between the zemindar and the putnidar. BROJONATH SINGH ROY *v.* BHUGOBUTTY DASSEE

[1 W. R., 133

46. ——— **Unregistered tenant.**—A zemindar has a perfect right to bring a tenure to sale for arrears of rent without regard to the rights of the new tenant while he is yet unregistered. NOBEEN KISHEN MOOKERJEE *v.* SHIB PERSHAD PATTUCK . . . . . 9 W. R., 161

Upholding on review decision in . 8 W. R., 96

47. ——— **Registered tenant affected by sale.**—A zemindar need not ordinarily look beyond the register for sale of a tenure of a registered defaulter. FORBES *v.* PROTAP SINGH DOOGUR

[7 W. R., 409

48. ——— **Liability of tenant for rent after sale.**—*Non-registration of transfer.*—Where a putni tenure is sold under a decree against the tenant, he is not liable for any rent which may accrue afterwards, notwithstanding the transfer may not be registered. GOPEEKISTO GOSSAMEE *v.* RAM COMUL MISTRY . . . . . Marsh., 212

S. C. RAM COMUL MISTRY *v.* GOPEEKISTO GOSSAMEE . . . . . 1 Hay, 563

See contra, HOROMOHUN MOOKERJEE *v.* RAM COOMAR MITTER . . . 1 W. R., 225

49. ——— **Right of inamdars in respect of debts for arrears of rent.**—The paramount rights of Government in respect of debts due to the Crown are not transferred to alienees (such as inamdars) of Government revenue. If an inamdar fails to recover his rents by any of the special processes provided in the regulations, and is obliged to go into the Civil Court and obtain a decree for arrears, the sale of the land in execution of such a decree has the same effect (and no more) as a sale of land in execution of a decree for any other debt. BALAJI NARAYAN KOLATKAR *v.* RAMCHANDRA GANESH KELKAR

[11 Bom., 37

SALE FOR ARREARS OF RENT—*continued.*

7. INCUMBRANCES.

50. ——— **Subordinate tenures, Effect of sale on.**—*Beng. Reg. VIII of 1819.—Sale of putni talook.*—On the sale of a talook under the provisions of Regulation VIII of 1819, all subordinate tenures, such as ousut talooks, howalahs, nim howalahs, did not necessarily lapse: it depended very much upon the terms of the pottah or grant under which the original talook was created. DWARKANATH DOSS BISWAS *v.* MANICK CHUNDER DOSS

[9 W. R., 200

51. ——— **Tenures created by defaulter.**—*Beng. Reg. VIII of 1819.—Sale of putni tenure.*—A sale under Regulation VIII of 1819 did not *ipso facto* annul all tenures created by the defaulting putnidar, but the purchaser, if he thought proper, could avoid them. MADHUSUDUN KUNDU *v.* RAMDHAN GANGULI

[3 B. L. R., A. C., 431: 12 W. R., 383

52. ——— **Tenures created by putnidar.**—*Putni tenure.—Act X of 1859, s. 105.—Beng. Reg. VIII of 1819.*—The provisions of Regulation VIII of 1819 with respect to the sale of under-tenures for arrears of rent being applicable to sales under decrees for rent made under section 105, Act X of 1859,—*Held* that where a sale had been effected of a "putni talook" under that section, it must be presumed, in the absence of evidence to the contrary, that the tenure was one transferable by sale, and upon the creation of which it was stipulated by the terms of the engagements interchanged that, in case of an arrear occurring, the estate might be brought to sale; in other words, it must be presumed to be a tenure such as is described in the preamable to Regulation VIII of 1819, and the effect of the sale was to annul all incumbrances created by the putnidar. BRINDABUN CHUNDER SIRCAR CHOWDHRY *v.* BRINDABUN CHUNDER DEY CHOWDHRY

[13 B. L. R., 408: 21 W. R., 324
L. R., 1 I. A., 178

S. C. in High Court, BRINDABUN CHUNDER CHOWDHRY *v.* BRINDABUN CHUNDER SIRCAR CHOWDHRY . . . 8 W. R., 507

53. ——— **Decree as to liability to enhancement.**—*Beng. Reg. VIII of 1819.—Right of purchaser.—Suit for enhancement of rent.—Putni tenure.*—The purchaser of a putni talook at a sale for arrears of rent under Regulation VIII of 1819 sued for a kabuliat at an enhanced rent. The former putnidar had brought a similar suit, and the Court had declared that the rent was not liable to enhancement. *Held* that the purchaser was bound by that decree. TARAPRASAD MITTRA *v.* RAM NRISING MITTRA

[6 B. L. R., Ap., 5: 14 W. R., 283

54. ——— **Purchase by grantor of putni tenure.**—*Beng. Reg. VIII of 1819, s. 11, cls. 1 and 3.—Rate of rent.—Putni tenure.*—The grantor of a putni tenure who subsequently purchases the lands granted by him in putni at the sale of the

SALE FOR ARREARS OF RENT—*continued.*

7. INCUMBRANCES—*continued.*

Purchase by grantor of putni tenure—*continued.*

putni tenure does not revert *ipso facto* to the possession he formerly held as proprietor, and is not entitled to recover rent from the tenants at the rate he was receiving when he granted the putni, without reference to the rents realised by the putni-holder in the interim. MAJORAM OJHA *v.* NILMONEY SINGH DEO . . 13 B. L. R., 198 : 21 W. R., 326

55. ——— **Right to annul tenures.**—*Right of lessee claiming under purchaser.—Tenures not annulled by purchaser.*—Where an auction-purchaser did not avail himself of the power vested in him by law to avoid and annul a tenure created by his predecessor,—*Held* that it was not open to any person subsequently holding his estates, and still less to a mere lessee claiming under him, to avoid the tenure. TARA CHAND DUTT *v.* WAKENOONISSA BIBEE . . . . . 7 W. R., 91

56. ——— **Power to make incumbrances.**—*Putni lease, Construction of—Beng. Reg. VIII of 1819.*—A putni lease containing words to the effect that the putnidar could give no durputni or mokurrari lease at a jumma less than the jumma of the putni, was held to confer no such power as that described in clause 1, section 11, Regulation VIII of 1819,—*viz.*, that of making incumbrances. A portion of a putni tenure cannot be sold under the provisions of Regulation VIII of 1819; and if an auction-purchaser acquires any of the rights of the putnidar, he is bound by the acts of the latter as regards the grant of leases. MOHADEB MUNDUL *v.* COWELL . . . . . 15 W. R., 445

Upheld on review. COWELL *v.* MOHADEB MUNDUL [17 W. R., 182

See MONOMOTHONATH DEY *v.* GLASCOTT [20 W. R., 275

SHAM CHAND MITTER *v.* JUGGUT CHUNDER SIRCAR . . . . . 22 W. R., 50

Upheld on review. . . 22 W. R., 541

57. ——— **Right of ejectment.**—*Right of purchaser of putni tenure.—Waiver by acceptance of rent.*—The receipt of rent for fifteen years by the purchaser of a putni talook sold for arrears of rent under Regulation VIII of 1819, was held to be a waiver on his part of his right to evict the tenant under clause 2, section 11 of that Regulation. WOOMANATH ROY CHOWDHRY *v.* ROGHOONATH MITTER . . . . . 5 W. R., Act X, 63

58. ——— **Beng. Rent Act, 1869, s. 66 (Beng. Act VIII of 1865, s. 16).**—*Khodkasht ryots.*—The object of section 16, Bengal Act VIII of 1865, was to protect, not merely any one class of tenants, but the leaseholder of the particular land leased: the expression "khodkasht ryots" as used there meaning "resident and hereditary cultivators." KOONTEE DEBEE *v.* HIRDOY NATH DURREEPA [16 W. R., 206

SALE FOR ARREARS OF RENT—*continued.*

7. INCUMBRANCES—*continued.*

59. ——— **Beng. Act VIII of 1869, s. 66 (Beng. Act VIII of 1865, s. 16).**—*Purchaser of rights of holder of fractional share.*—Section 16 of Bengal Act VIII of 1865 did not apply to the purchaser of the rights and interests of the holder of a fractional share in an under-tenure. HARASUNDARI DASI *v.* KISTOMANI CHOWDHRAIN [5 B. L. R., Ap., 37 : 13 W. R., 257

60. ——— *Right of purchaser to eject tenants.*—Where the rights and interests of a judgment-debtor were sold in execution under Bengal Act VIII of 1865, the tenure itself did not pass, much less did it pass free from all incumbrances; and the purchaser was not entitled to eject tenants who had been occupying and cultivating the land for more than twelve years. RAJ KISHEN MOOKERJEE *v.* DUSRUTH SOOTRODHUR [15 W. R., 234

61. ——— *Under-tenure, Sale of.—Act X of 1859, s. 105.*—Under-tenures sold for arrears of rent under section 105 of Act X of 1859, other than tenures upon which the right of selling for arrears of rent had been especially reserved by stipulation in the engagements interchanged on the creation of the tenures, did not pass free from incumbrances. *Semble,*—It was to get rid of this that section 16 of Bengal Act VIII of 1865 was enacted. SHAHABOODDEEN *v.* FUTTEH ALI [B. L. R., Sup. Vol., 646 2 Ind. Jur., N. S, 135 : 7 W. R., 260

MOHIMA CHUNDER DEY *v.* GOOROO DOSS SEN [7 W. R., 285

INDUR CHUNDRA DOOGUR *v.* RUTTUN KOOMAREE BIBEE . . . . . 7 W. R., 376

The above Full Bench decision did not apply where the tenure itself was not sold. DOORGA SOONDUREE DEBIA *v.* DINOBUNDHOO KYBURTO DOSS [8 W. R., 475

62. ——— *Sale of sub-tenure.—Beng. Reg. VIII of 1831.*—Where a sub-tenure had been granted, but no power was reserved to the grantor in the sanad to sell the tenure free from incumbrances in case of default in payment of rent,—*Held* that, in a sale for arrears of rent under Regulation VIII of 1831, the purchaser did not take free from incumbrances created by the grantee. The decision in *Shahaboodeen* v. *Futteh Ali, B. L. R., Sup. Vol., 646,* affirmed. FORBES *v.* LUTCHMEEPUT SINGH . . 10 B. L. R., 139 : 17 W. R., 197 [14 Moore's I. A., 330

MOHESH CHUNDER BANERJEE *v.* CHUNDER MONEE DEBI [10 B. L. R., 150, note : 15 W. R., 237

63. ——— *Beng. Act VIII of 1865.*—An auction-purchaser under Act VIII of 1865 was not at liberty, without notice of his intention to cancel a pre-existing under-tenure, or other act on his part, to avoid any incumbrance. GOBIND CHUNDER BOSE *v.* ALIMOODDEEN . . 11 W. R., 160

SALE FOR ARREARS OF RENT—*continued.*

7. INCUMBRANCES—*continued.*

Beng. Act VIII of 1869, s. 66 (Beng. Act VIII of 1865, s. 16)—*continued.*

64. ——————— *Survival of incumbrances.*—The sale of a tenure under section 16, Bengal Act VIII of 1865, did not *ipso facto* annul all incumbrances, but certain incumbrances were recognised by this section to survive such sale. UMASUNDARI DASI *v.* BIRBUL MANDAL [3 B. L. R., A. C., 183

S. C. WOOMA SOONDUREE DOSSIA *v.* BEERBUL MUNDUL . . . . 11 W. R., 563

65. ——————— *Voidable incumbrances.*—Under Bengal Act VIII of 1865, section 16, under-tenures became void *ipso facto* by the sale, and were not merely voidable at the option of the purchaser. UNNODA CHURN DASS BISWAS *v.* MOTHURA NATH DASS BISWAS [I. L. R., 4 Calc., 860: 4 C. L. R., 6

66. ——————— *Suit to set aside incumbrances.*—The right which an auction-purchaser has under the Rent Law, section 66, to do away with under-tenures, cannot be executed without a suit first having been instituted, the mere fact of purchase being insufficient to set aside incumbrances. RAJ BULLUBH MITTER *v.* SREERAM SIRCAR [25 W. R., 109

67. ——————— *Putni tenure.—Dur-putni tenure.—Under-tenure.—Incumbrance.—Beng. Act VIII of 1869, ss. 59, 60.*—The sale of a putni tenure for its own arrears under sections 59 and 60, Bengal Act VIII of 1869, does not *per se* avoid the dur-putni tenures, but only renders them voidable at the option of the purchaser. An under-tenure is an incumbrance within the meaning of section 66, Bengal Act VIII of 1869. TITU BIBI *v.* MOHESH CHUNDER BAGCHI MUNSURUNNISSA BIBI *v.* MOHESH CHUNDER BAGCHI. IBRAHIM MALLA *v.* MOHESH CHUNDER BAGCHI [I. L. R., 9 Calc., 683

S. C. TITU BIBI *v.* IBRAHIM MOLLAH [12 C. L. R., 304

68. ——————— *Brick-built house.*—A brick-built house was not an "incumbrance," or a tenure within the meaning of that word in section 16 of Bengal Act VIII of 1865 which a purchaser at a sale for arrears of rent could remove. SHIBDAS BANDAPADHYA *v.* BAMANDAS MUKHOPADHYA [8 B. L. R., 237: 15 W. R., 360

69. ——————— *Mortgage by defaulting tenant.—Act X of 1859, s. 105.*—A mortgage created by a defaulting under-tenant, on account of a debt contracted by him, could not continue to the prejudice of the auction-purchasers of the tenur sold for arrears of rent under section 105, Act Xeof 1859. KALEE KANT CHOWDHRY *v.* ROMONEE KANT BHUTTACHARJEE . 3 W. R., 217

70. ——————— *Title acquired.—Adverse possession.*—If the holder of an under-tenure allowed his tenant to occupy the land rent free for more than twelve years, the interest thus created in the latter was an incumbrance upon the under-tenure as much within the reason of Bengal Act VIII of 1865, section 16, as if the holder had made a rent-free grant or given a nominal lease. MAHOMED ASKUR *v.* MAHOMED WASUCK . . 22 W. R., 413

71. ——————— *Right of occupancy under Act X of 1859, s. 6.—Right of purchaser.—Incumbrance.*—A purchaser of a tenure sold under Act VIII of 1865 for arrears of rent could not, under section 16, eject a ryot who had acquired a right of occupancy under section 6, Act X of 1859, under the former tenant. NILMADHAB KARMOKAR *v.* SHIBU PAL . 5 B. L. R., Ap., 18: 13 W. R., 410

PUREDAG SINGH *v.* PURTAB NARAYAN SINGH [5 B. L. R., Ap., 20: 11 W. R., 253

BHOLANATH GHOSSAL *v.* KEDARNATH BANERJEE [19 W. R., 106

EMAM ALI MESTORY *v.* ATOR ALI KHAN [22 W. R., 133

72. ——————— *Intermediate holding.—Howlah tenure.*—An auction-purchaser at a sale held under Bengal Act VIII of 1865 had a right to get rid of an intermediate holding such as a howlah so far as to substitute himself for the howlahdar in respect of the collection of the ryots' rents. MOHIOODDEEN MAHOMED *v.* RAM KISHORE KOONDOO . . . . 22 W. R., 311

73. ——————— *Rights of a purchaser at an auction-sale held under Beng. Act VIII of 1865 when in collusion with the former proprietor.*—A proprietor of a talook, which was about to be sold for arrears of rent, entered into an arrangement with the plaintiff whereby, in consideration of a share in the purchase, he agreed to use his influence to urge on the sale, and to secure the purchase to the plaintiff. Under this arrangement the plaintiff became the purchaser of the talook, and the former proprietor obtained a share in the purchase. A suit by the plaintiff to oust the under-tenants was dismissed; the plaintiff took only as a purchaser at an ordinary execution sale, and did not obtain the benefit of section 16 of Bengal Act VIII of 1865. SRINATH GHOSE *v.* HARONATH DUTT CHOWDHRY [9 B. L. R., 220: 18 W. R., 240

74. ——————— *Shikmi tenure.*—Where a shikmi tenure was sold under Bengal Act VIII of 1865 and the shikmidar was found to be the under-tenant of the zemindar, the shikmi pottah not giving the privilege of making incumbrances, the purchaser was held entitled under section 16 to receive the tenure free of all incumbrances,—*e g.*, the incumbrances of a jummai tenure of a person who was not a khodkhast ryot. HUREE NARAIN CHATTERJEE *v.* WOOMA CHURN MOOKERJEE . 19 W. R., 169

SALE FOR ARREARS OF RENT—*continued.*

7. INCUMBRANCES—*continued.*

Beng. Act VIII of 1869, s. 66 (Beng. Act VIII of 1865, s. 16)—*continued.*

75. ——————— *Shikmi tenure.*—At a sale held under Bengal Act VIII of 1865 the defendant purchased a shikmi tenure, and obtained possession thereof. Subsequently he ousted the plaintiff from certain lands, and hence the suit by the plaintiff for recovery of possession thereof, on the ground that the property in dispute was a lakhiraj tenure created by the Rajah of Tipperah, and that the plaintiff was owner thereof, partly by purchase and partly by inheritance. The lower Appellate Court found as a fact that the late shikmidar, and not the Rajah, had granted the lands in dispute as brahmatar, but not in favour of the person through whom the plaintiff claimed. It, however, passed a decree in favour of the plaintiff, as he had been unlawfully dispossessed. *Held* that, under section 16, Bengal Act VIII of 1865, the incumbrances created by the former holder were voidable by the auction-purchaser, and that the plaintiff should show that the former holder could create such right. ISWAR CHANDRA CHUCKERBUTTY *v.* BISTU CHANDRA CHUCKERBUTTY [3 B. L. R., Ap., 97: 12 W. R., 32

See SRINATH CHUCKERBUTTY *v.* SRIMANTO LASHKAR . 8 B. L. R., 240, note: 10 W. R., 467

76. ——————— *Incumbrance created with sanction of zemindar.*—In a suit by a purchaser at a sale under Bengal Act VIII of 1865 to get rid of an under-tenure set up by the defendants, where, in reliance upon the latter clause of section 16, it was urged that the pottah under which the defendants held was created by the late holder with the express sanction of the zemindar,—*Held* that under the strict provisions of that section no sanction of the zemindar would avail, unless the right was vested in the holder by the written engagement under which the under-tenure was created, or by the subsequent written authority of the person who created it, or his representatives. ESHAN CHUNDER MOJOOMDAR *v.* HURISH CHUNDER GHOSE [21 W. R., 137

77. ——————— *Avoidance of incumbrance.—Beng. Act VIII of 1869, ss. 59, 60.*—On a partition of the joint family property, a certain ganti tenure, which had been purchased by the three members of the family at a sale, on the 3rd August 1874, under the provisions of section 59 and 60 of Bengal Act VIII of 1869, was allotted to the plaintiff, who brought a suit claiming to be entitled, under the statutory provisions of section 66 of that Act, to evict the defendant, who was alleged to be in possession by virtue of an under-tenure of the land covered by the ganti tenure. It appeared that the tenure under which the defendant held the land was created, not by the owner of the ganti tenure, but by the superior landlord before the creation of the ganti tenure. *Held* that inasmuch as the tenure had not been created by the owner of the ganti tenure the plaintiff was not entitled to avoid it as an incumbrance under section 66 of Bengal Act VIII of 1869. DURGA PROSONNO GHOSE *v.* KALIDAS DUT [9 C. L. R., 449

78. ——————— *Beng. Reg. VIII of 1819, s. 11.—Cancelment of under-tenures.*—Lands appertaining to a certain talook which was sold under Regulation VIII of 1819 for arrears, were held from the owner of the talook under a kaimi jumma tenure, under which the plaintiff, who sued the purchaser for confirmation of his title, cultivated the land through persons called burgaits, with whom he shared the profits in some way. *Held* that under section 11 of that Regulation the plaintiff's tenure was cancelled. Compare *Unnoda Churn Das* v. *Muthura Nath Dass, I. L. R., 4 Calc., 860: 4 C. L. R., 6; Surnomoyee* v. *Suttees Chunder Roy Bahadoor, 10 Moore's I. A., 123,* cited and discussed. MOHINI CHUNDER MOZUMDAR *v.* JOTIRMOY GHOSE . . 4 C. L. R., 422

8. RIGHTS AND LIABILITIES OF PURCHASERS.

79. ——————— Right of purchaser.—*Right to khas possession.*—A ryot's tenure having been sold for arrears of rent under an Act X decree, the purchaser was held to be entitled to be put in khas possession of the entire tenure as it originally stood, notwithstanding that the sons of the ryot had been occupying huts on the land for more than twenty years. The circumstance that the purchaser happened to be the superior landlord did not diminish his right. TEELOTTUMA DEBEE *v.* BROJO LALL SHAMUNT [8 W. R., 478

80. ——————— *Right to nij-jote land.*—The right to hold nij-jote lands necessarily passes with the sale to the auction-purchaser. JOY DUTT JHA *v.* BAYEE RAM SINGH . 7 W. R., 40

81. ——————— *Right to rent due at time of sale.*—A purchaser of a putni sold in execution buys it with all its liabilities, including instalments due to the zemindar, and cannot recover them from the original putnidar. KHODA BUKSH *v.* DEGUMBUREE DOSSEE . . W. R., 1864, 207

82. ——————— *Right to rent.—Liability of putnidar for rent.—Beng. Reg. VIII of 1819, s. 8, cl. 3.*—Where a putnidar's possession is disturbed by the zemindar, and he is prevented from collecting the rents of certain kists, he is not liable for those kists. Where a talook is sold for arrears, the putnidar who is sold out is not liable for the rent of the month in which the zemindar presented the petition enjoined by clause 3, section 8, Regulation VIII of 1819. DARIMBA DEBIA *v.* NILMONEE SINGH DEO [15 W. R., 180

83. ——————— *Right to rent.—Liability of surety of putnidar.*—The purchaser of

SALE FOR ARREARS OF RENT—*continued.*

8. RIGHTS AND LIABILITIES OF PURCHASERS—*continued.*

Right of purchaser—*continued.*

the rights and interests of a putnidar in a putni talook sold for arrears of rent purchases the talook subject to whatever claims the zemindar has against it for rent, and has no claim against the surety of the putnidar by reason of the name of the latter appearing as the owner of the talook in the zemindar's papers or otherwise. He may sue the other sharers for the money which he has paid on their account. OBHOY CHUNDER BUNDOPADHYA *v.* NILAMBUR MOOKERJEE . . . . **W. R., 1864, 73**

84. ——————— *Sale under Beng. Act VIII of 1865.—What passes at sale.*—As a general rule, when a tenure was sold in execution of a decree under the provisions of Bengal Act VIII of 1865, the whole tenure passed, unless there was some reservation made at the time of the sale. HURO GOBIND BISWAS *v.* DUMOUNTEE DABEE . . **[13 W. R., 304**

85. ——————— *Purchaser of shareholder's rights.—Sale under Beng. Act VIII of 1865.*—The purchaser of a partnership in a tenure—in other words, of a shareholder's rights—acquired no right to retain possession against a person who bought the tenure itself when sold for arrears under Bengal Act VIII of 1865. HURO NARAIN GIREE *v.* DURGA CHURN GIREE . . . . **15 W. R., 319**

86. ——————— *Purchase by shareholders.—Ousut howalas, Effect of sale on.—Recorded tenants.*—A shareholder is not precluded from purchasing the whole of a howala sold *bonâ fide* for arrears of rent due from himself and his co-sharer. All ousut howalas created by the co-sharers fall with the sale of a howala unless specially protected by the howala lease. A zemindar may bring a suit for arrears only against the tenant whose name is recorded in his sherista, and in execution of a decree obtained in such a suit the whole tenure may be sold, though others, not recognised by the zemindar as his tenants, may be interested in the lease. HUREE CHURN BOSE *v.* MEHAROONISSA BIBEE . **7 W. R., 318**

87. ——————— *Liability of co-sharers on sale of tenure.*—Where a decree was for arrears of rent due upon a tenure, it was held that, though the sale proceedings specified that the rights and interests of certain parties were sold, yet the tenure itself was sold, and all the co-sharers were jointly liable. ALIMOODDEEN *v.* SABIR KHAN **[8 W. R., 60**

Contra, LALLA SABIL CHAND *v.* GOODUR KHAN **[22 W. R., 187**

88. ——————— *Right of purchaser of transferable under-tenure to void leases.—Right to enhance rent.*—The purchaser of a transferable under-tenure in execution of a decree for rent may void any lease or holding within the tenure not specially protected by law, and consequently may sue for a kabuliat at rates paid for similar lands in the neighbourhood. SRISHTEEDHUR MUNDUL *v.* GOBIND SURUCKAR **[6 W. R., Act X, 15**

89. ——————— *Act X of 1859, s. 105.—Beng. Reg. VIII of 1819, s. 11.—Title created by purchaser.*—Where a tenant committed default, and purchased the tenure when it was sold in execution of a decree against himself, he could not claim the benefit of the law relating to auction-purchasers under section 105 of Act X of 1859, and section 11, Regulation VIII of 1819, and ask the Court to set aside the title of a third party which had been created by himself. Where he himself has sold to a third party, he is bound to recognise that party's purchase, and also all *bonâ fide* leases under that party. Where the lease by which a howala tenure is created does not expressly reserve it for sale for non-payment of rent, the rights of an auction-purchaser cannot arise under Regulation VIII of 1819. MEHEROONISSA BIBEE *v.* HUR CHURN BOSE . . . . . **10 W. R., 220**

90. ——————— *Principle with regard to purchasers at revenue sales.*—The principle laid down in the case of *Surnomoyee* v. *Suttees Chunder Roy, 2 W. R., P. C., 14: 10 Moore's I. A., 123,* with respect to the rights of purchasers at sales for arrears of revenue, is applicable to sales for arrears of rent under Regulation VIII of 1819. WOMANATH ROY CHOWDHRY *v.* ROGHOONATH MITTER . . . . . **5 W. R., Act X, 63**

91. ——— **Liability of purchaser.**—*Date from which purchaser's liability for rent commences.*—The purchaser of a tenure at a sale for arrears of rent was held to be liable for rent from the date on which the sale was confirmed, for until confirmation he could not obtain the certificate of purchase. BEEPIN BEHAREE BISWAS *v.* JUDOONATH HAZRAH . . . . **21 W. R., 367**

92. ——————— *Liability to condition in lease.—Right of re-entry.*—A dur-putni lease granted upon the payment of a bonus contained a condition that if the annual rent remained for a longer period than one month in arrear, the lessor should have a right of re-entry. The lessor upon default in payment of rent, without availing himself of the forfeiture, instituted a summary suit for the arrears of rent; and upon an award therein the lands were sold for such arrears. *Held* that the purchaser, who bought the putni tenure without notice of the condition for forfeiture, was not subject to that condition. DEENDYAL PARAMANICK *v.* JUGGESHUR ROY . . . **Marsh., 252: 2 Hay, 21**

93. ——————— *Liability to decree in ejectment suit.—Previous purchase by mortgagee of portion of tenure.—Right of purchaser to question by suit the validity of decree for ejectment if*

SALE FOR ARREARS OF RENT—*continued.*

8. RIGHTS AND LIABILITIES OF PURCHASERS—*continued.*

Liability of purchaser—*continued.*

not a party to the rent suit.—In a suit for arrears of rent by a mokurraridar against his dur-mokurraridar, a decree was passed ejecting the latter, and, as a consequence, the tenure of the dur-mokurraridar was cancelled. *Held* that a mortgagee from the dur-mokurraridar, who had, previously to the rent suit, obtained a decree on his mortgage and purchased himself at the auction sale, and who had not been made a party to the rent suit, was entitled to question by suit the validity of the decree obtained in the rent suit ordering ejectment of the dur-mokurraridar. MADHOO PROSHAUD SINGH *v.* PURSHAN RAM . . **I. L. R., 4 Calc., 520**

9. SECOND SALE.

94. ——— Sale for prior arrears after sale for arrears of rent.—Where a tenure has once been sold for its own arrears, it cannot be again put up to sale for the arrears due on account of a previous period. *Lutifun* v. *Meah Jan, 6 W. R., 112,* followed. PRANGOUR MOZOOMDAR *v.* HIMANTA KUMARI DEBYA **[I. L. R., 12 Calc., 597**

10. SURPLUS PROCEEDS OF SALE.

95. ——— Right to surplus proceeds.—*Attachment in hands of Collector.*—The surplus proceeds of a sale made for default of payment of putni rent, though under attachment by a Civil Court in the hands of the Collector, continues to be the property of the putnidar until ordered to be paid away by an order from such Court. SAEFOOLLAH KHAN *v.* LUCHMEEPUT SINGH DOOGUR **[13 W. R., 58**

96. ——— *Priority.—Surplus proceeds of sale under s. 59, Beng. Act VIII of 1869.—Decree against dur-putnidar after sale of his tenure.*—A putnidar caused to be sold the tenure of his dur-putnidar, under section 59 of Bengal Act VIII of 1869, for the arrears of rent due up to 12th April 1876. This sale took place on the 7th November 1876, and after satisfaction of the decree the surplus proceeds remained in the Collectorate to the credit of the dur-putnidar. Afterwards, in December 1876, the putnidar brought another suit for the dur-putni rent due in respect of the period between April and October 1876, and having obtained a decree, attached the surplus proceeds in the Collectorate, which were at the same time attached by two other holders of ordinary decrees. *Held* that the decree of the putnidar, although for rents of the current year, had no priority over the other decrees; and that the surplus proceeds of the sale of the dur-putni tenure formed part of the assets of the late dur-putnidar, and were not hypothecated to the putnidar for the rent of the year current. GRISH CHUNDER MUNDUL *v.* DOORGA DOSS **[I. L. R., 5 Calc., 494**

SALE FOR ARREARS OF RENT—*continued.*

10. SURPLUS PROCEEDS OF SALE—*continued.*

Right to surplus proceeds—*continued.*

97. ——— *Beng. Reg. VIII of 1819, s. 17, cl. 5.—Putni talook.—Attachment.—Priority.*—The putnidar of a talook granted a dur-putni to the defendants on the 10th of February 1869. The same putnidar afterwards mortgaged the putni talook to the plaintiffs, who obtained a decree on their mortgage on the 28th September 1874. The putni was sold for its own arrears on the 17th November 1876; and after payment of rent and all expenses, there remained a surplus in the hands of the Collector, which was attached by the plaintiffs in execution of their decree on the 9th of November 1876. On the 12th January 1877 the defendants instituted a suit against the putnidar, under clause 5, section 17, Regulation VIII of 1819, for compensation for the loss of the dur-putni, and obtained a decree, which the Court directed should be satisfied out of the surplus sale-proceeds; and the Collector, notwithstanding the plaintiffs' attachment, allowed the defendants to obtain the amount decreed out of the surplus sale-proceeds. In a suit by the plaintiffs to recover the amount paid for compensation, on the ground that the plaintiffs' attachment was prior to the defendants' suit,—*Held* that the defendants' decree must, notwithstanding the plaintiffs' attachment, be satisfied out of the surplus sale-proceeds in priority to the plaintiffs' decree. SURNOMOYEE DASSYA *v.* LAND MORTGAGE BANK OF INDIA **[I. L. R., 7 Calc., 173 : 8 C. L. R., 341**

11. DEPOSIT TO STAY SALE.

98. ——— Right to sue.—*Voluntary payment to stay sale.—Act X of 1859, ss. 102, 103.*—A person making voluntary payments in his own name to stay a sale in execution of a decree against others could not sue under section 102 or 103 of Act X of 1859 for the recovery of the money so paid by him. ABDOOL WAHAB *v.* DRUMMOND **[2 W. R., Act X, 48**

99. ——— Party with recognised interest.—*Beng. Reg. VIII of 1819, s. 14, cl. 1.*—Clause 1, section 14, Regulation VIII of 1819, does not contemplate that any party may, by depositing the amount due, stay a sale of a putni, but only a party having a recognised interest in such putni. According to section 6, even application for registration is not sufficient: that section provides what can legally be done if registration is refused. KRISTO JEEBUN BUKSHEE *v.* MACKINTOSH **[W. R., 1864, 53**

100. ——— Sufficiency of interest.—*Suit to recover money deposited.*—The plaintiff's mother brought a suit to recover a portion of a talook which she claimed under a will, and which she would be entitled to upon the death of the widow of the deceased owner. While the suit was pending, the talook was put up for sale under Regulation VIII of 1819, and to prevent its being sold she paid the rent

SALE FOR ARREARS OF RENT—*continued.*

11. DEPOSIT TO STAY SALE—*continued.*

Sufficiency of interest—*continued.*

The above suit abated by the death of the plaintiff's mother, and the plaintiff now sued the shareholders to recover the amount paid to save the talook from sale. *Held* that the plaintiff's mother's interest in the talook was such as entitled the plaintiff to recover the money she paid. SHABODA KOOMAREE DOSSEE *v.* MOHINEE MOHUN GHOSE

[20 W. R., 272

101. ——— Voluntary payment.—*Right of mortgagee to prevent sale of mortgaged property.—Voluntary payment.*—The mortgagee of a putni talook paid certain moneys to prevent the sale of such talook for arrears of zemindari rent. *Held* that this was not a voluntary payment, and could not be so considered even in the case where the mortgagee, by a covenant in his mortgage-deed, had insured himself against loss by such sale. *Nogender Chunder Ghose* v. *Kaminee Dossee, 11 Moore's I. A., 241*, followed. MOHESH CHUNDER BANERJEE *v.* RAM PURSONO CHOWDHRY

[I. L. R., 4 Calc., 539 : 6 C. L. R., 280

See DULICHAND *v.* RAMKISHEIN SINGH

[I. L. R., 7 Calc., 648

102. ——— *Sale of transferable tenures under s. 105, Act X of 1859.—Right of suit.*—The right to make payments to preserve an interest, and to recover the sums paid, was not given in the case of ganti jummas and other transferable tenures sold for arrears of rent under section 105, Act X of 1859; when such payments are neither expressly nor impliedly authorised, they must be regarded as voluntary payments, for the recovery of which no action will lie. SREENATH HOLDAR *v.* RAM SOONDUR CHUCKERBUTTY

[4 W. R., S. C. C. Ref., 4

103. ——— *Right of suit.*—An under-tenant who has saved the superior tenure from sale by depositing the amount of rent due, not only has the security of the tenure which he preserves, and of which he can obtain possession on application to the Collector, but he also has a right to recover the amount deposited by him as a loan in an ordinary suit. AMBIKA DEBI *v.* PRANHARI DAS

[4 B. L. R., F. B., 77

S. C. UMBIKA DEBIA *v.* PRANHUREE DOSS

[13 W. R., F. B., 1

104. ——— *Right of suit.—Beng. Reg. VIII of 1819.—Non-registration of transfer.*—*L.* and *R.*, the holders of a putni estate, granted in 1856 a dur-putni lease to *S.* at an annual rent, the lease stipulating that *S.* should have full power of sale and gift, but should not sub-let without the putnidars' consent. The lease contained no stipulation for the registration of any vendee or donee. In 1860 *S.* sold the dur-putni lease to *K.*, the deed of sale which was duly registered providing for mutation of names in the putnidars' books. No such mutation was ever effected by *K.*, who was never recognised as their tenant by *L.* and *R.*, the rent of the dur-putni being paid in the name of *S.* In 1864, the rent due from the putnidars being in arrear, the zemindar proceeded to sell the putni under Regulation VIII of 1819. Thereupon *K.*, in order to protect his under-tenure, deposited in the Collectorate, on 17th November 1864, a sum of money, on which the sale was stayed. *K.*, being then in arrear in the payment of his dur-putni rent, claimed to set off the amount deposited in the Collectorate against the rent due to *L.* and *R.* This *L.* and *R.* refused to allow, and they brought a suit in the Collector's Court against *S.* and his sureties to recover the arrears of rent. In that suit *K.* intervened, claiming the benefit of the set-off, to which, however, the High Court, on 26th June 1866, on appeal, held that he was not entitled, the deposit being merely a voluntary payment by *K.* On 30th October 1867 *K.* brought a regular suit against *S.* and *L.* and *R.* to recover the amount of the deposit, and obtained a decree, but the decision was reversed on appeal, and the suit dismissed for want of jurisdiction. On 6th June 1869 *K.* filed his plaint in the proper Court. *Held* that he was entitled to recover the amount deposited by him in the Collectorate. LUCKHINARAIN MITTER *v.* KHETTRO PAL SINGH ROY

[13 B. L. R., P. C., 146 : 20 W. R., 380

Affirming the decision of the High Court in S. C. KHETTER PAUL SINGH *v.* LUCKHEE NARAIN MITTER

[15 W. R., 125

OKHOY COOMAR CHATTERJEE *v.* DHIRAJ MAHTAB CHUND . . . . 22 W. R., 299

105. ——— *Payment made by vendee of dur-putnidar.—Voluntary payment.*—A payment made by the vendee of the dur-putnidar (who has not obtained registration) to save the putni from sale is a voluntary payment, and the registered dur-putnidar cannot seek to deduct the amount from the rent due by him. LUKHEENARAIN MITTER *v.* SEETANATH GHOSE

[1 Ind. Jur., N. S., 317 : 6 W. R., Act X, 8

106. ——— *Payment of putni rent by dur-putnidar.—Beng. Reg. VIII of 1819, s. 13.*—In a suit by the purchaser of a putni against a dur-putnidar for arrears of rent of the year 1285 (1878), it appeared that, before the plaintiff's purchase, the dur-putnidar had paid the amount of arrears of putni rent for the year 1284 (1877), in order to save the putni from being sold under Regulation VIII of 1819, and that the amount so paid considerably exceeded the dur-putni rent due at the date of suit. *Held* that the defendant was entitled to deduct from the rent claimed the amount paid under the Regulation in excess of the dur-putni rent due up to the end of 1284. NOBO GOPAL SIRCAR *v.* SRINATH BUNDOPADHYA

[I. L. R., 8 Calc., 877 : 11 C. L. R., 37

107. ——— *Payment by dur-putnidar.—Beng. Reg. VIII of 1819.—Beng Act*

SALE FOR ARREARS OF RENT—*continued.*

11. DEPOSIT TO STAY SALE—*continued.*

Voluntary payment—*continued.*

VIII of 1869, s. 62.—The zemindar of an estate, in which the plaintiff and defendant respectively had purchased putni and dur-putni tenures, obtained decrees for arrears of rent accruing before their purchases, though one of the decrees was obtained subsequently to defendant's purchase; and in execution of these decrees he advertised the putni for sale, and the amounts due were paid into Court by the defendant to protect the tenure from sale. In a suit by the putnidar against the dur-putnidar for arrears of rent accruing due subsequently to the defendant's purchase,—*Held* that the defendant was, on the construction of section 13 of Regulation VIII of 1819, and section 62, Bengal Act VIII of 1869, entitled to set off such payments against the plaintiff's claim. *Nobogopal Sircar* v. *Sreenath Bundopadhya, I. L. R., 8 Calc., 877,* followed. LALIT MOHUN SHAHA *v.* SRINIBAS SEN . . **I. L. R., 13 Calc., 331**

108. ——————— *Payment by dur-putnidar.—Notice of title to tenants.—Beng. Reg. VIII of 1819, s. 13.*—A dur-putnidar who has paid a deposit in order to stay the sale of the superior tenure under clause 4, section 13, Regulation VIII of 1819, and has come into possession of the tenure, and is entitled to the profits of it, is bound to give notice of his title to the ryots. In the absence of such notice he cannot recover from them rents already paid by them to the putnidar. NILMONEE ROY *v* HILLS . . . . **4 W. R., Act X, 38**

109. ——————— *Payment by shikmidar.—Money paid to preserve estate from sale.*—A shikmidar is not entitled to recover money voluntarily paid by him to preserve an estate from sale. POORNO CHUNDER DOSS CHOWDHRY *v.* SREENATH GOOPTO . . . . **6 W. R., 173**

110. ——————— *Right to contribution from co-sharers.*—A shareholder who pays up arrears of rent due from the whole of the tenure in order to save it from sale in execution, is entitled to recover contribution from other shareholders who were in possession during the period within which the arrears accrued, even though the tenure should be in the name of another and the decree be nominally against such other alone. ASUDOOLLAH *v.* MONOHUR DOSS . . . **22 W. R., 531**

111. ——————— *Compulsory payment.—Right to recover.*—Plaintiff, to save the putni from sale for arrears of rent of a former year which had been adjudged by an apparently valid decree to be due to the defendant, paid the money. *Held* that the payment was made under such circumstances as entitled the plaintiff to recover back the money from the defendant. ANDREW *v.* LARMOUR . . **2 Ind. Jur., O. S., 4: 1 Hay, 309**

112. ——————— *Suit to recover money paid.—Beng. Reg. VIII of 1819, s. 13, cl. 3. —Beng. Act VIII of 1865, s. 6.*—A putnidar, in execution of a decree for rent against his mirasidar, attached certain property of his, including a parcel of land belonging to the plaintiff, who, to save that portion, paid the whole amount due, and sued the mirasidar to recover the portion he ought to have paid The suit was dismissed, no obligation on the plaintiff to pay having been shown. She appealed, alleging that her portion was within and subordinate to the holding of the mirasidar, and to sell would have jeopardised her holding. *Held* that the case was rightly remanded by the lower Appellate Court, but that the issue to be tried was whether the plaintiff was a party who came under the provisions of section 6, Bengal Act VIII of 1865, read with section 13, Regulation VIII of 1819, more particularly with clause 3. LUCKHEE PREA DEBIA *v.* BRINDABUN DEY . . . . . **12 W. R., 313**

113. ——————— *Suit to recover money paid.*—The plaintiff purchased an estate at an auction sale in execution of a decree against the defendant, who was in possession, and after his purchase obtained possession on 6th April 1866. While he was in possession, one *R.*, the putnidar, sued the defendant to recover arrears of rent which had become due. During the defendant's possession and before the plaintiff's purchase, and in execution of the decree he obtained in this suit, the estate in possession of the plaintiff was attached and ordered by the Collector to be sold; whereupon the plaintiff paid the amount of the decree to save the tenure from sale. In a suit brought to recover the amount,—*Held* that the payment by the plaintiff was, as far as the defendant was concerned, a voluntary payment. Mere inconvenience without risk of actual damage is not sufficient to take away the voluntary character of the payment. RAM BAKSH CHETLANGI *v.* HRIDOY MANI DEBI

[8 B. L. R., 10, note: 10 W. R., 446

114. ——————— *Suit to recover money paid.*—A putni tenure which had been attached by *G.* in execution of a decree against *D.* was claimed by *S.*, whose claim was allowed. Upon this *G.* instituted a suit against *S.* and others to have the putni declared to be the property of *D.*, and being successful, had the putni sold in execution of his decree against *D.*, became the purchaser, and got possession. After this he saved the estate from being sold for arrears of rent which had accrued prior to his purchase, by paying up the amount due. He subsequently sued *D.* and *S.* to recover the amount so paid. *S.*, who had meantime appealed to the Privy Council, succeeded in obtaining a reversal of the decree under which *G.* had sold the putni; but this reversal did not take place before *G.* had instituted the suit for recovering the arrears he had liquidated. *Held* that *G.* was entitled to recover from *S.* the amount which had been paid by him to save the putni from being sold. GOPAL CHUNDER CHUCKERBUTTY *v.* UOODOY LALL DEY

[10 W. R., 115

SALE FOR ARREARS OF RENT—*continued.*

11. DEPOSIT TO STAY SALE—*continued.*

Voluntary payment—*continued.*

115. ——— *Suit to recover money paid.*—The plaintiff purchased at an execution sale a share of *K.'s* tenure which had been attached on account of a money-decree. Subsequently the whole tenure was advertised for sale in execution of a decree for arrears of rent. On applying to the Munsif he was told that, if he deposited the whole amount due the sale would be stayed. He did so and prevented the sale. He now sued *K.* to recover the amount deposited. *Held* that the payment was neither officious nor voluntary, and that *K.*, who had enjoyed the profits of the land, was equitably liable for the sum paid to save it from sale. KHETTUR MOHUN BANERJEE *v.* HARADHUN CHATTERJEE [19 W. R., 287

116. ——— *Unconditional tender.—Beng. Reg. VIII of 1819.*—KEMP, *J.*—A tender to stay a sale under Regulation VIII, 1819, must be of the whole of the zemindar's demand and without any condition as to its being kept in deposit by the Collector. RAM CHURN BUNDOPADHYA *v.* DROPO MOYEE DOSSEE . . 17 W. R., 122

117. ——— *Payment to zemindar.—Beng. Reg. VIII of 1819, s. 13.—Payment to stay final sale.*—The direction in section 13 of Regulation VIII of 1819, that money paid into Court by a talookdar in order to stay the final sale shall be deducted from any claim of rent that may at the time be pending on account of the year or months for which the notice of sale may have been published, is satisfied by payment, not into Court, but to the zemindar. If a strictly literal construction were put upon the words "into Court," no payment effectual to stay the sale could be made, for "the Court" has nothing to do with these sales; which are managed by the Collector. TARINY DEBEE *v.* SHAMA CHURN MITTER . I. L. R., 8 Calc., 954

118. ——— *Nature of payment.—Loan to proprietor.—Beng. Act VIII of 1865, s. 6.*—Money deposited to protect from sale a tenure advertised under the provisions of Act VIII of 1865 must, under section 6, be considered as a loan made to the proprietor of the tenure, which becomes security to the depositor, who is entitled, on applying, to obtain immediate possession in order to recover the amount from any profits belonging to the tenure. KARTICK SURMAH *v.* BYDONATH SAEENEE [10 W. R., 205

119. ——— Position of person making payment.—*Beng. Reg. VIII of 1819.—Suit for share of putni estate.—Mortgages.*—Plaintiff claimed an eight annas share of a putni as purchased by the official assignee of an insolvent, *D.*, whom the Principal Sudder Ameen found to have been owner in his own right by inheritance of the share of the putni of which defendant's ancestor, *G.*, having deposited arrears of rent, was in possession as girurdar under the provisions of Regulation VIII of 1819. *Held* that *G.* was substantially in the same position

SALE FOR ARREARS OF RENT—*continued.*

11. DEPOSIT TO STAY SALE—*continued.*

Position of person making payment—*continued.*

as a mortgagee in possession under an usufructuary mortgage; and that plaintiff, as a purchaser from such a mortgagor, would have no cause of action until the debt was paid off. *Held* that, as defendant's plea of purchase from the alleged shareholders of the putni, in satisfaction of their ancestor *G.'s* lien, had proved unfounded, if they were permitted to fall back on their title as girurdars, the plaintiff must be allowed to show that the debt "was realised from the usufruct of the tenure," even though this had not been "established in a suit instituted for the purpose." BOISTUB CHURN BHUDRO *v.* TARA CHAND BANERJEE . . . 11 W. R., 357

12. SETTING ASIDE SALE.

(*a*) IRREGULARITY.

120. ——— Beng. Reg. VIII of 1819, s. 8, Application of.—*Jungleburi tenures.*—Section 8, Regulation VIII of 1819, refers to jungleburi tenures that existed at that time, and its provisions do not apply to any tenure created since the passing of that Regulation. MUNMOHUN SINGH *v.* WATSON & Co . . . . 2 Hay, 398

121. ——— Beng. Reg. VIII of 1819, s. 8, Construction of.—*Residing in neighbourhood.—Attesting witnesses.*—By the words "residing in the neighbourhood" in Regulation VIII of 1819, section 8, the Regulation does not make it imperative that the attesting witnesses shall be residents of the village, but may be taken to include men living within a short distance of the cutcherry. MOHINEE DOSSEE *v.* JUGGODUMBA DOSSEE [W. R., 1864, 382

122. ——— *Substantial persons.—Attesting witnesses.*—With reference to the provision in clause 2, section 8, Regulation VIII of 1819, that the service of notice of sale of a putni talook shall be attested by three substantial persons,—*Held* that the word "substantial" must be understood in its ordinary sense,—*i.e.*, men who have some stake in the community, men of local influence or importance and respectability,—and not be taken to mean simply men who can readily be found. GOPAL KISHORE SHOOR *v.* MUDUN MOHUN HOLDAR [2 W. R., 188

MOHINEE DOSSEE *v.* JUGGODUMBA DOSSEE [W. R., 1864, 382

123. ——— *"Substantial persons."—Service of notice.*—The provisions of clause 2, section 8, Regulation VIII of 1819, with regard to the notification of the sale of a putni talook for the arrears of rent under the Regulation, that the serving peon shall "bring back the receipt of the defaulter or of his manager for the same, or, in the event of inability to procure this, the signature of

SALE FOR ARREARS OF RENT—*continued.*

12. SETTING ASIDE SALE—*continued.*

(*a*) IRREGULARITY—*continued.*

Beng. Reg. VIII of 1819, s. 8, Construction of—*continued.*

three substantial persons residing in the neighbourhood in attestation of the notice having been brought and published on the spot," are merely directory, and where there is proof that the notice was in fact served, the sale will not be vitiated by non-compliance with any of these provisions,—*e.g.*, as where one of the witnesses attesting the service of the notice turns out not to be "substantial." A respectable man, of good character, living and well known in the neighbourhood, may properly be considered a "substantial person" within the meaning of clause 2, section 8 of the Regulation. It is too limited a construction of that clause to hold that the word "substantial" must be taken to mean a wealthy man, from whom damages could be recovered by the putnidar, supposing the attestation to be false. RAMSABUCK BOSE *v.* KAMINEE KOOMAREE DOSSEE [14 B. L. R., 394

S. C. RAM SABUK BOSE *v.* MONMOHINEE DOSSEE [L. R., 2 I. A., 71: 23 W. R., 113

124. ——————— *Substantial persons.—Suit to set aside sale for irregularity.—Non-service of notices.—Omission to tender rent.*—In a suit to set aside the sale of a putni for arrears of rent under Regulation VIII of 1819, on the ground that proper notices were not sent, served, and published under section 8, clause 2, the objection in order to succeed must be one of substance and not merely of form. The requirements of the Regulation as to the service of the istahar, and the signing of the receipt by substantial persons, may be held to have been substantially performed where the persons signing are such as are usually expected to attest such a document, persons who are treated with consideration, —*e.g.*, ameens, mooktears, chowkidars. PITAMBER PANDA *v.* DAMOODUR DOSS. DASSEE *v.* PITAMBUR PANDA . . . . . 24 W. R., 129

125. ——— **Service of notice of sale.**—*Beng. Reg. VIII of 1819, s. 8, cl. 2.—Non-service of notice, Effect of, on sale.*—Where a Court finds that the notice prescribed in clause 2, section 8, Regulation VIII of 1819, has been duly served, it need not find whether the peon who served the notice complied with all the directions of the Regulation as to what should be done in verification of such service. Omission to comply with those directions does not vitiate a sale under the Regulation, provided notice is duly served. SONA BEEBEE *v.* LALL CHAND CHOWDHRY . . . . . 9 W. R., 242

126. ——————— *Proof of service. —Onus probandi.—Evidence Act, s. 196.*—In a suit against a zemindar to reverse the sale of a putni tenure held under Regulation VIII of 1819, on the ground of non-service of notice, the onus of proving service lies on the defendant, according to the spirit

SALE FOR ARREARS OF RENT—*continued.*

12. SETTING ASIDE SALE—*continued.*

(*a*) IRREGULARITY—*continued.*

Service of notice of sale—*continued.*

of section 106 of the Evidence Act. DOORGA CHURN SURMA CHOWDHRY *v.* NAJUNOODDEEN [21 W. R., 397

127. ——————— *Proof of service. —Beng. Reg. VIII of 1819, s. 8, cl. 2.—Publication.*—Although the provisions of section 8, clause 2 of Regulation VIII of 1819, specifying the manner in which proof should be given of service of notice of sale, are merely directory, it is nevertheless absolutely essential to the validity of a sale under the Regulation that the notice of such sale should be served in strict compliance with the directions given in the same clause and section of the Regulation. BHUGWAN CHUNDER DASS *v.* SUDDER ALLY [I. L. R., 4 Calc., 41: 2 C. L. R., 357

128. ——————— *Beng. Reg. VIII of 1819, s. 8, cl. 2.—Proof of publication of notice before sale of putni talook for arrears of rent.*—The due publication of the notices prescribed by Regulation VIII of 1819, section 8, clause 2, forms an essential part of the foundation on which the summary power to sell a putni talook for non-payment of rent is exercised by the zemindar, who, when instituting this proceeding, is exclusively responsible for such publication being regularly conducted. Although objection to the form of the receipt, and the absence of the receipt itself, need not be regarded, if the fact of the due publication of the notices having been made is not matter of controversy (as held in *Sona Bibee* v. *Lalchand Chowdhry, 9 W. R., 242*), yet where that fact was in doubt owing to the evidence of it not having been secured according to the provisions of the Regulation—a result due to the neglect of those representing the zemindar,—the finding of the High Court that due publication had not been established by such proofs as were forthcoming was maintained by the Judicial Committee. MAHARAJAH OF BURDWAN *v.* TARASUNDARI DEBI [I. L. R., 9 Calc., 619: 13 C. L. R., 34 L. R., 10 I. A., 19

129. ——————— *Proof of publication of notice.—Beng. Reg. VIII of 1819, s. 8. —Irregularity in sale.—Suit to set aside sale.*—It is essential to the validity of a sale, held under Regulation VIII of 1819, of a putni estate for arrears of rent, that the notices of sale prescribed by clause 2, section 8 of the Regulation, should have been all duly and regularly published as therein directed. BAIKANTHA NATH SINGH *v.* DHIRAJ MAHATAB CHAND . . 9 B. L. R., 87: 17 W. R., 447

HARANATH GUPTA *v.* JAGANNATH ROY CHOWDHRY . 9 B. L. R., 89, note: 11 W. R., 87

And as to what amounts to publication of notice. RAGHAB CHANDRA BANERJEE *v.* BRAJANATH KUNDU CHOWDHRY [9 B. L. R., 91, note: 14 W. R., 489

SALE FOR ARREARS OF RENT—*continued.*

12. SETTING ASIDE SALE—*continued.*

(*a*) IRREGULARITY—*continued.*

Service of notice of sale—*continued.*

130. ——————— *Ground for setting aside sale.—Non-service of notice.*—The fact of no notice having been served in the mofussil is sufficient ground for setting aside a sale for arrears of rent. NUGENDRO CHUNDER GHOSE *v.* MUSRUFF BIBEE . . . . . **15 W. R., 17**

TARA CHAND BISWAS *v.* RAM JEEBUN MOOSTAFEE **[22 W. R., 202**

131. ——————— *Beng. Reg. VIII of 1819, s. 8.—Notice of sale, Publication of.*—In a case of a sale under Regulation VIII of 1819, where the putni was a small piece of land, upon which there was no town or village or cutcherry of any kind, and the peon stuck up the notice in the Collector's office and also at the sudder cutcherry of the zemindar, and obtained the receipt of the defaulter in the latter place, he was held to have carried out substantially, as far as he could, the provisions of the law regarding notice. HURRY KISTO ROY *v.* MOTEE LALL NUNDEE . . . **14 W. R., 36**

132. ——————— *Beng. Reg. VIII of 1819.*—It was held to be a far more exact compliance with the spirit of Regulation VIII of 1819 to serve the notice which it enjoins at the place in which the defendant's gomashta was transacting and did habitually transact business, than at the cutcherry, which had not been in use. HUNOOMAN DOSS *alias* NONNAH BABOO *v.* BIPRO CHURN ROY **[20 W. R., 132**

133. ——————— *Beng. Reg. VIII of 1819, s. 8.*—In the case of a sale of a putni talook for arrears of rent, so long as the cutcherry at which notice on the defaulter, as required by Regulation VIII of 1819, section 8, clause 2, is served, is an adjacent one in which all the business of the defaulting putni is carried on, and is on land belonging to the defaulter, publication at that cutcherry is a sufficient publication. MUNGAZEE CHAPRASSEE *v.* SHIBO SOONDUREE . . . . . **21 W. R., 369**

134. ——————— *Beng. Reg. VIII of 1819, s. 8.—Due publication of notice of sale.*—Where there is a cutcherry upon the land of a defaulting putnidar, the notice required by section 8 of Regulation VIII of 1819 must be served there; but where there is no such cutcherry, the notice should be published, in the manner required by the section, at the principal town or village within the talook. MAHARAJAH OF BURDWAN *v.* KRISTO KAMINI DASI **[I. L. R., 9 Calc., 931 : 13 C. L. R., 427**

S. C. on appeal to the Privy Council. MAHARANI OF BURDWAN *v.* KRISHNA KAMINI DASI **[I. L. R., 14 Calc., 365**

135. ——————— *Insufficient publication of notice.—Suit for reversal of sale.*—Where, in a suit to set aside a putni sale under Regulation VIII of 1819, it was proved that the notice of sale was first stuck up in the cutcherry of the ijaradar (the mehal having been let out in ijara by the putnidar), and, on the refusal of the ijaradar's gomashta to give a receipt of service, it was taken down, and subsequently personally served on the defaulting putnidar at his house, which was at some distance from the putni mehal,—*Held* that the object of the provisions in Regulation VIII of 1819 as to service of notice of sale is not only to give notice of sale to the defaulter, but also to the under-tenants, and to advertise the sale on the spot for the information of intending purchasers; but though those provisions had not been strictly complied with, yet as the plaintiff (the putnidar) did not allege that in consequence of the defective publication there was not a sufficient gathering of intending purchasers, nor that the under-tenants were ignorant of the sale, and were prejudiced by such ignorance, nor that the mehal was sold below its value,—*Held* that the defect did not amount to a "sufficient plea" under section 14 for setting aside the sale. *Bykantha Nath Sing* v. *Dhiraj Mahatab Chand Bahadur, 9 B. L. R., 87,* commented on and distinguished. GOUREE LALL SINGH *v.* JOODHISTEER HAJRAH **[I. L. R., 1 Calc., 359 : 25 W. R., 141**

136. ——————— *Publication of notice of sale.—Material irregularity.—Beng. Reg. VIII of 1819, s. 8, cl. 2.*—Clause 2, section 8 of Regulation VIII of 1819, which provides that a notice of sale under the Regulation shall be stuck up in the cutcherry of the zemindar, is not complied with by serving the notice upon the zemindar himself or his agent. The object of the Regulation is to make known to the holders of under-tenures and ryots and the residents of the place that the putni will be sold if the arrears are not paid off within the time specified, and if the notice is not stuck up in the cutcherry, as prescribed by the Regulation, there is such a material irregularity in the publication as will avoid the sale. GOBIND LALL SEAL *v.* CHAND HURRY MAITY . . . **I. L. R., 9 Calc., 172**

137. ——————— *Beng. Reg. VIII of 1819, s. 8.—Publication of proof of service.—Suit to set aside sale.*—Compliance with the directions in Regulation VIII of 1819 as to service of notice is essential to the validity of a sale under that Regulation. Where there was evidence of service upon the defaulter personally, but not of service at his cutcherry,—*Held* that this was not sufficient, and that the sale must be set aside. *Maharajah of Burdwan* v. *Tarasundari Debi, L. R., 10 I. A., 19 : I. L. R., 9 Calc., 619;* and *Maharajah of Burdwan* v. *Kristo Kamini Dasi, I. L. R., 9 Calc., 931,* followed. MAHOMED ZAMIR *v.* ABDOOL HAKIM **[I. L. R., 12 Calc., 67**

138. ——————— *Putni tenure.—Beng. Reg. VIII of 1819, s. 8, cl. 2, and s. 14.—Date of publication of notice.*—The fact that the

SALE FOR ARREARS OF RENT—*continued.*

12. SETTING ASIDE SALE—*continued.*

(*a*) IRREGULARITY—*continued.*

Service of notice of sale—*continued.*

receipt of the notice of sale was dated the 15th of Bysack, and therefore did not show that the notice had been published at some time "previous to that day," so as to satisfy the provisions of section 8, clause 2 of Regulation VIII of 1819, was held not to be sufficient ground for setting aside the sale of a putni tenure for arrears of rent. There being nothing in the receipt to show the date on which the notice was published, no injury to the plaintiff having been proved, and it appearing that more than the time prescribed by the Regulation had elapsed before the sale actually took place, the Court refused to set aside the sale. It would not be a "sufficient plea" within the meaning of section 14 that the receipt had been obtained, or the notification published, on, instead of previous to, the 15th of Bysack. MATUNGEE CHURN MITTER *v.* MOORRARY MOHUN GHOSE [I. L. R., 1 Calc., 175; 24 W. R., 453

139. ——————— *Beng. Reg. VIII of 1819, s. 8.—Benami purchase.—Validity of sale.—A.* and *B.* were co-sharers of a putni which was sold for arrears of rent by the zemindar and purchased by *C.* In a suit by *A.* against *B.*, *C.*, and the zemindar, the plaintiff alleged (1) that no sufficient notice had been given, and (2) that *C.* purchased benami for *B.* *Held*, on the question of notice, that once it was found that the notice had been posted up in the cutcherry of the defaulter in accordance with clause 2, section 8, Regulation VIII of 1819, it was not essential to the validity of the sale that any other notice should have been given to the defaulters themselves, or that the service should have been verified in the manner directed by the section. *Held*, also, the benami purchase having been proved, that the sale must be considered good as far as the zemindar was concerned, and therefore the suit as against him must be dismissed with costs; and that as against *B.* the parties were in exactly the same position as before the sale, *B.* being a constructive trustee for *A.* *Sona Beebee* v. *Lall Chand Chowdhry, 9 W. R., 242;* and *Koylash Chunder Banerjee* v. *Kali Prosunno Chowdhry, 16 W. R., 80,* cited and followed. JOTENDRO MOHUN TAGORE *v.* DEBENDRO MONEE . . . . . 2 C. L. R., 419

(*b*) OTHER GROUNDS.

140. ——— **Unregistered proprietor's right to sue to set aside sale.**—*Putni talook.—Transfer of putni.—Registered transferee.—Beng. Reg. VIII of 1819, s. 14.*—Where a putni talook has been sold under the provisions of Regulation VIII of 1819, an unregistered shareholder therein is entitled to sue for a reversal of the sale under the provisions of section 14 of the same Regulation. CHUNDER PERSHAD ROY *v.* SHUVADRA KUMARI SHAHEBA [I. L. R., 12 Calc., 622

141. ——— **Fraud.**—*Suit to set aside sale.—Beng. Act VIII of 1865.—Right of purchaser.—*

SALE FOR ARREARS OF RENT—*continued.*

12. SETTING ASIDE SALE—*continued.*

(*b*) OTHER GROUNDS—*continued.*

Fraud—*continued.*

A purchaser at a sale in execution of a decree held under Bengal Act VIII of 1865 could not be ousted from the property purchased by him without proof that the decree and sale were fraudulent, and that he (the purchaser) was a party to or had notice of the fraud. DAMUDAR ROY *v.* NIMANUND CHUCKERBUTTY . . 7 B. L. R., Ap., 1: 15 W. R., 265

142. ——————— *Collusion.—Suit by tenant against purchaser to set aside sale.*—Where a tenure had been sold under section 105, Act X of 1859, in execution of a decree for the rent of land held under a mirasi pottah, a tenant in possession was at liberty to show that the decree had been obtained by fraud and collusion against a person who had then no interest in the premises. BORRADAILE *v.* GREGORY . . . 2 W. R., Act X, 63

143. ——————— *Beng. Reg. VIII of 1819.—Invalid sale.*—A putni talook being about to be brought to sale under Regulation VIII of 1819, the agents of the sharers were in attendance at the Collectorate on the day of sale, prepared to pay the rent due. Two of the agents (*T.* and *B.*) happening to be out of the way at the time, the lot was about to be called up. The third (*K.*), without informing the Collector or zemindar's agent of their intention to pay, or giving notice to the others, purchased the putni. *Held* that *K.'s* act was one of bad faith, and that the 4 annas shareholders whom he represented could not in equity be allowed to benefit by adopting the fraud. *Held* also that, as between the Collector and zemindar and the defaulting putnidars, the sale was valid; but that it was void so far as it created a title in favour of the 4 annas shareholders to the 12 annas share, and *K.* must be treated as having made the purchase on account of, and as a trustee for, the 12 annas shareholders. KOYLASH CHUNDER BANERJEE *v.* KALEE PROSUNNO CHOWDHRY. [16 W. R., 80

144. ——————— *Collusion.—Invalid sale.—Reconveyance of share sold.*—Where the sale of a tenure for arrears of rent was brought about by collusion between the party in whose name it stood and the purchaser, with a view to get rid of a co-sharer, who had neglected to have his share transferred to his name,—*Held* that the transaction was a private one, and not really an auction sale for the purpose of realising the zemindar's rent, and that on payment of his share of the rent the above sharer was entitled to have his share reconveyed to him. KISHORE CHUNDER SEIN *v.* KALLY KINKUR PAUL CHOWDHRY . . . . 20 W. R., 333

See SHIBO SOONDUREE DOSSEE *v.* PANCHCOWREE CHUNDRA . . . 14 W. R., 158

SIDHEE NUZUR ALLY KHAN *v.* OJOODHYARAM KHAN . . . 10 Moore's I. A., 540 [S. C. 5 W. R., P. C., 83

SALE FOR ARREARS OF RENT—*continued.*

12. SETTING ASIDE SALE—*continued.*

(*b*) OTHER GROUNDS—*continued.*

Fraud—*continued.*

145. ——— *Collusion.—Beng. Reg. VIII of 1819.—Sale where no arrears are due.—Per* AINSLIE, *J.*—It can only be on the ground that a sale is carried out in respect of arrears not really due that fraud and collusion can be imputed. RAM CHURN BUNDOPADHYA *v.* DROPO MOYEE DOSSEE . . . 17 W. R., 122

146. ——— *Beng. Reg. VIII of 1819.—Invalidity of sale.—Sale where no arrears are due.*—A putni sale under Regulation VIII of 1819 is invalid if there was no arrear of rent at the date of sale, whether notice of the fact had been given to the Collector or not at the time of the sale. SHUROOP CHUNDER BHOOMICK *v.* PERTAB CHUNDER SINGH . . . . 7 W. R., 219

147. ——— Sale after arrears have been paid.—*Suit to set aside sale.—Deposit of rent in Collector's treasury.*—An estate was sold under clause 2, section 8, Regulation VIII of 1819, for arrears of rent due by a putnidar to the zemindar. Prior to the date of sale, the amount due was paid by the putnidar to an accountant in the Collector's office, as in satisfaction of arrears, but no notice was given to the zemindar or Collector. A suit was afterwards brought to set aside the sale, on the ground that, in consequence of such payment, there were no arrears due at the time of sale. *Held per* NORMAN and MACPHERSON, *JJ.*, that the suit could not be maintained. *Per* MITTER, *J.*—If the custom of the Collectorate was, as alleged by the plaintiff, for payments in satisfaction so to be made to the Collector's accountant, the sale ought to be set aside. KRISHNA MOHAN SHAHA *v.* AFTABUDDIN MAHOMED [8 B. L. R., 134: 15 W. R., 560

148. ——— *Sale by zemindar with notice (though irregularly served) that arrears of rent have been deposited.*—Where a zemindar puts up a putni for sale, under Regulation VIII of 1819, knowing that the rent due to him has been paid into Court by the putnidar, the sale is invalid, even if the notice served on the zemindar was illegally served. TARA SOONDUREE DEBIA *v.* RADHA SOONDUR ROY . . 24 W. R., 63

149. ——— Sale under decree alleged to be against wrong person.—*Beng. Act VIII of 1865.—Registered tenant.*—The plaintiff purchased, on 28th of September 1866, the right, title, and interest of one *H.* in a certain tenure of which *G.* was the registered tenant. Previously the zemindar had brought a suit against *G.* for arrears of rent of the tenure and obtained a decree, in execution of which the tenure in question was, on 29th April 1867, sold to the defendant under Bengal Act VIII of 1865. In a suit by the plaintiff for a declaration of his right in the tenure, and for reversal of the sale to the defendant,—*Held* that the suit by the defendant was rightly brought against *G.*, who was

SALE FOR ARREARS OF RENT—*continued.*

12. SETTING ASIDE SALE—*continued.*

(*b*) OTHER GROUNDS—*continued.*

Sale under decree alleged to be against wrong person—*continued.*

the registered tenant; and the arrears being actually due and the sale a *bonâ fide* one, such sale was valid and binding as against the plaintiff. FATIMA KHATUN *v.* COLLECTOR OF TIPPERAH [8 B. L. R., 4, note: 13 W. R., 433

150. ——— Decree for sale set aside on review.—*Bonâ fide purchaser.—Suit to set aside sale.—A.* purchased a share of *B.'s* talook at an auction sale in execution of an *ex parte* decree obtained against *B.* under section 105 of Act X of 1859. *B.* obtained leave under section 58 of Act X of 1859 to revive the suit, and succeeded in getting it dismissed. He now sued to set aside the sale to *A. Held* that the sale to *A.* was binding against *B.*, notwithstanding that the decree in execution of which it had taken place had been set aside in review, provided the sale was *bonâ fide.* JAN ALI *v.* JAN ALI CHOWDHRY [1 B. L. R., A. C., 56: 10 W. R., 154

151. ——— Decree for sale set aside for fraud.—*Suit to set aside sale.*—In a suit to annul the sale of an under-tenure in execution of a decree under Act X of 1859, which was subsequently set aside on the allegation that it had been obtained collusively and by fraud, it was found that neither the decree-holder nor the purchaser was guilty of any fraud. *Held* that the mere circumstance of the decree under which the sale had taken place having itself been set aside did not invalidate the sale, the plaintiff having failed to show that the purchaser was a party to the fraud which led to the decree and sale. JUGUL KISHORE BANERJEE *v.* ABHAYA CHARAN SARMA . 1 B. L. R., A. C., 84

MOHESH CHUNDER BAGCHEE *v.* DWARKANATH MOITRO . . . . 24 W. R., 260

152. ——— Sale while warrant is in force against moveable property.—*Beng. Act VIII of 1869, s. 61.—Irregularity in sale.—Suit to set aside sale for irregularity.*—Under section 61 of Bengal Act VIII of 1869, a sale for arrears of rent, while a warrant against the moveable property of the debtor is still in force, is not merely irregular but void. A suit will lie to set aside an auction sale for arrears of rent where the decree-holder himself becomes the purchaser, on the ground of irregularity in conducting or publishing it, unless it be shown that the judgment-debtor has failed to set the sale aside in a proceeding under the Civil Procedure Code, or, having full opportunity of so doing, has neglected to do so. UJOLLA DASI *v.* DHIRAJ MAHATAB CHAND [7 C. L. R., 215

153. ——— Want of material injury.—*Beng. Reg. VIII of 1819.*—A purchaser under a sale for arrears of rent is not entitled to have the purchase set aside on the ground merely of an irregularity in sticking up the preliminary advertise-

SALE FOR ARREARS OF RENT—*continued.*

12. SETTING ASIDE SALE—*continued.*

(*b*) OTHER GROUNDS—*continued.*

Want of material injury—*continued.*

ment, unless he can show that he has been prejudiced thereby. JOYNUB BEBEE *v* AHAMED JAN [Marsh., 31: 1 Hay, 68

154. ——— Want of notice of suit for arrears.—*Suit to set aside sale.*—No suit will lie to set aside the sale of an estate in execution of a decree for arrears of rent at enhanced rates according to a prior decree for enhancement subsequently reversed on special appeal, on the ground of want of notice of the suit for arrears of rent. DOORGA PERSHAD PAL CHOWDHRY *v.* JOGESH PROKASH GONGOPADHYA . . . 4 W. R., Act X, 38

155. ——— Want of notice of sale.—*Bonâ fide purchaser.*—If a putni is sold for arrears of rent without the notice required by Regulation VIII of 1819, the sale is informal and can be set aside notwithstanding the *bona fides* of the purchaser. MOBARUCK ALI *v.* AMEER ALI [21 W. R., 252

156. ——— *Unregistered tenant.—Purchaser.—Suit to set aside sale.*—The purchaser of a tenure which is liable to be sold under Regulation VIII of 1819, who has not registered his name as tenant, is not entitled on a sale of the tenure to notice of sale, and a suit brought by him for reversal of the sale on that ground was dismissed. DHUNPUT SINGH ROY *v.* VILLAYET ALI [13 B. L. R., 153, note: 15 W. R., 211

Also BROBO TARINEE DOSSEE *v.* PROSONNOMOYE DOSSEE . . . 13 B. L. R., 150, note

GOSSAIN MUNGUL DOSS *v.* ROY DHUNPUT SINGH [25 W. R., 152

157. ——— Vagueness of specification and notice of sale.—*Act X of 1859, s. 104.*—Want of clearness in the specification of the arrears and costs for which a sale takes place, or in the mode in which the notice is published, is not an irregularity vitiating a sale for arrears of rent if fraud is absent. MAHOMED AYENOODDEEN *v.* KALEE DOSS CHUNDO . . . . . 15 W. R., 279

158. ——— Absence of one shareholder's name from proceedings.—*Irregularity affecting validity of sale.*—Where a tenure was duly sold for arrears of rent under Act X of 1859 and Bengal Act VIII of 1865, the absence of a shareholder's name from the proceedings did not as a matter of law invalidate the sale as against him. DOORBIJOY MAHTOON *v.* PRITHEE NARAIN SINGH [14 W. R., 30

159. ——— Fixing date of sale.—*Era.—Custom.—Uniformity of practice.*—As regards the date fixed for sale and the era to be followed, the intention of the Regulation was to lay down a uniform practice in each locality. Uniformity being the essential requirement, and the particular date only

SALE FOR ARREARS OF RENT—*continued.*

12. SETTING ASIDE SALE—*continued.*

(*b*) OTHER GROUNDS—*continued.*

Fixing date of sale—*continued.*

the form of enforcing regularity, a practice which has been established for a course of years and which is reasonable and convenient in itself, is not liable to objection on a mere point of form. PITAMBER PANDA *v.* DAMOODUR DOSS. DASSEE *v.* PITAMBUR PANDA . . . . . 24 W. R., 129

160. ——— *Era.—Error in advertisement of date.*—According to Regulation VIII of 1819, the sale of a putni tenure for arrears of rent must take place on a day in the Bengali month of Jeyt. When a sale was advertised to take place on the 5th Jeyt 1269, which date was erroneously stated in the sale notice to correspond with Saturday, May 17th, 1862, whereas the 5th Jeyt was in fact Sunday, May 18th, and the sale took place on Saturday, the 4th Jeyt, the sale was held to be illegal, in consequence of its not having taken place on the 5th Jeyt, or any subsequent date to which it might have been adjourned after due notice. BECHARAM MOOKERJEE *v.* ISSUR CHUNDER MOOKERJEE [W. R., 1864, 4

161. ——— Change of date of sale.—*Sale not for full arrears.—Fraud.—Suit to set aside sale.*—In a suit to set aside a sale for arrears of rent due up to Aughran 1262, the plaintiff, who claimed under a deed of conditional sale, was held not entitled to a decree on the following grounds. The change of date of sale from a holiday to the next advertised public sale day was not in this case such a postponement of the sale as to require any new distinct notification. A sale is not invalid because it is not for the full complete arrears due at the end of the year; it may take place at the end of the year for such arrears as may then be existing. No fraud or collusion was proved to justify the sale being set aside. FORBES *v.* PROTAP SINGH DOOGUR [7 W. R., 409

162. ——— Postponement of sale.—*Discretion of Court.*—A sale in execution of a decree under Bengal Act VIII of 1869 can be postponed at the discretion of the Court only when the postponement is shown to promise benefit to the judgment-debtor, *i.e.*, that it will put him in a position to satisfy the demand, or when an immediate sale would be likely to entail injury to him, while a postponement would cause no serious prejudice to the decree-holder. JANOKEENATH MOOKERJEE *v.* RADHA MOHUN CHATTERJEE . . . 20 W. R., 130

163. ——— *Mad. Act VIII of 1865 (Rent Recovery Act), s. 33.—Adjournment for want of bidders to next day.—Duty of officer conducting sale.*—A sale of land for arrears of rent under the provisions of the Rent Recovery Act having been advertised for a certain day, was, owing to the absence of bidders on that day, adjourned and held on the day following by the officer empowered to sell,—*Held* that the sale was invalid. PALANI *v.* SIVALINGA . . I. L. R., 8 Mad., 6

SALE FOR ARREARS OF RENT—*continued.*

12. SETTING ASIDE SALE—*continued.*

(*b*) OTHER GROUNDS—*continued.*

164. ——— Inadequacy of price.—*Ground for setting aside sale.*—Inadequacy of price is no ground for setting aside a sale regularly held for arrears of rent under the putni law. MUNGAZEE CHAPRASSEE *v.* SHIBO SOONDUREE . **21 W. R., 369**

165. ——— Irregularity not caused by act or omission of decree-holder.—*Act X of 1859, s. 104.—Damages.*—Section 104, Act X of 1859, does not enact that the decree-holder is to pay damages whenever it may be found that there has been an irregularity in publishing the sale processes, wholly irrespective of the question whether such irregularity was caused by his acts or omissions. RAMCHUNDER SURMAH CHUCKERBUTTY *v.* KALEE CHUNDER SINGH . . . **7 W. R., 307**

166. ——— Omission to tender before sale.—*Inclusion of irrecoverable charges.*—Where there is no tender before sale of the amount of rent due, a sale under Regulation VIII of 1819 cannot be set aside merely because some charges were included which might not strictly be recoverable under the Regulation, where the zemindar in his petition clearly distinguished the amount due for rent from such charges. PITAMBER PANDA *v.* DAMOODUR DOSS. DASSEE *v.* PITAMBUR PANDA . **24 W. R., 129**

13. EFFECT OF SETTING SALE ASIDE.

167. ——— Recovery of purchase-money.—*Decree for purchase-money.—Execution.—Fresh suit.—Interest on deposit.*—In a suit to set aside the sale of a putni tenure, where a purchaser is made a co-defendant under section 14, Regulation VIII of 1819, and it is decreed that the purchaser may recover the purchase-money from the zemindar defendant,—*Held* that the purchaser may proceed in execution without a fresh suit. If the purchase-money of a putni is in deposit in the Collectorate, and the zemindar, judgment-debtor, fails to assist the judgment-creditor in recovering his dues, he is liable for interest on the entire sum. PREOLALL GOSSAIN *v.* GYAN TURUNGINEE DOSSIA **[13 W. R., 161**

168. ——— *Sale where no putni tenure exists.*—*Held* by JACKSON, *J.* (MOOKERJEE, *J.*, *dubitante*), that a zemindar who puts up for sale a putni under Regulation VIII of 1819, guarantees to the purchaser that there are some lands appertaining to the putni, and if it turns out that there are no such lands (that there is in fact no such putni), the purchaser will be entitled to recover his purchase-money. KHELUT CHUNDER GHOSE *v.* KISHEN GOBIND DEB . . **16 W. R., 128**

169. ——— Refund of bonus paid to purchaser on his purchase.—*Lease, Construction of.—Landlord and tenant.—Failure of consideration.—Sale subsequently set aside.*—The defendants, after

SALE FOR ARREARS OF RENT—*continued.*

13. EFFECT OF SETTING SALE ASIDE —*continued.*

Refund of bonus paid to purchaser on his purchase—*continued.*

purchasing a putni talook at an auction sale for arrears of rent under Regulation VIII of 1819, granted a dur-putni lease to the plaintiffs (the former dur-putnidars) and received a bonus of R1,199. The auction sale being five years afterwards set aside,—*Held* that the plaintiffs were entitled to a refund of the bonus, although they had not been dispossessed, but had simply reverted to their former position as dur-putnidars under the former putnidar. TARACHAND BISWAS *v.* RAM GOBIND CHOWDHRY **[I. L. R., 4 Calc., 778 : 4 C. L. R., 20**

170. ——— Indemnification for payments of rent while sale existed.—*Beng. Reg. VIII of 1819, s. 14, cl. 1.*—Where a zemindar sells a putni tenure for arrears of rent and the sale is afterwards set aside, the purchaser can, under Regulation VIII of 1819, section 14, clause 1, require the Court to compel the zemindar to indemnify him on account of all payments of rent which he may have made, and if he does not do so, he cannot set up his loss in answer to a liability which he has incurred. TARACHAND BISWAS *v.* NAFAR ALI BISWAS **[1 C. L. R., 236**

171. ——— Position of holder of chahar-putni.—*Sale.—Under-tenures.—Purchaser, Liability of.*—The holder of a chahar-putni, or other subordinate tenure, whose tenure has been brought to an end by the sale for arrears of rent of a superior tenure on which his own was dependent, is, upon such sale being set aside, remitted to his previous position, and is entitled to recover possession of the land comprised in his chahar-putni from the purchaser or any assignee of the purchaser at such sale, and he can do so notwithstanding that he himself took a dur-putni, including the land he had held as chahar-putnidar, from the purchaser at such sale, and that this dur-putni was afterwards sold in execution of a decree against himself, and purchased at such last-mentioned sale by the person whom he seeks to evict on the strength of his original title. SREENARAIN BAGCHEE *v.* SMITH **[I. L. R., 4 Calc., 807 : 4 C. L. R., 148**

172. ——— Order for refund of purchase-money.—*Beng. Reg. VIII of 1819.—Notice of sale.—Setting aside sale.—Refund of purchase-money.*—If a putni is sold for arrears of rent without the notice required by Regulation VIII of 1819, the sale is informal and can be set aside, notwithstanding the *bona fides* of the purchaser. Where such a sale was so set aside and the lower Appellate Court refused to make an order for refund of the purchase-money, the High Court in special appeal, and with reference to section 14, clause 1 of the Regulation, declared the purchaser entitled to a refund with interest. MOBARUCK ALI *v.* AMEER ALI **[21 W. R., 252**

SALE FOR ARREARS OF REVENUE.

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See ENHANCEMENT OF RENT—EXEMPTION FROM ENHANCEMENT BY UNIFORM PAYMENT OF RENT, &c.—PROOF OF UNIFORM PAYMENT.
[I. L. R., 4 Calc., 793
B. L. R., Sup. Vol., 623

See LIMITATION ACT, 1877, ART. 95 (1871, ART. 95) . I. L. R., 3 Calc., 300
I. L. R., 9 Mad., 457

See PRE-EMPTION—RIGHT OF PRE-EMPTION . . I. L. R., 1 All., 277

See RELINQUISHMENT OF TENURE.
[I. L. R., 1 Bom., 577

——— Suit to set aside—

See CO-SHARERS—SUIT BY CO-SHARERS WITH RESPECT TO THE JOINT PROPERTY —POSSESSION . 7 B. L. R., Ap., 42

See PARTITION—MISCELLANEOUS CASES.
[5 B. L. R., 135

1. RIGHT TO SELL.

1. ——— Right of Government.—Whenever the land revenue is in arrear, Government is entitled to sell the land and to realise its due, whoever is the defaulter. BALKRISHNA VASUDEV *v.* MADHAVRAV NARAYAN . . I. L. R., 5 Bom., 73

2. ——— *Arrears.—Beng. Regs. XIV of 1793 and VII of 1799.—Beng. Reg. V of 1812.*—By Regulations XIV of 1793 and VIII of 1799 the Governor General in Council may order a

1. RIGHT TO SELL—*continued.*

Right of Government—*continued.*

sale for arrears of a monthly instalment of revenue before the close of the year; but in order to warrant that act there must be an arrear of a previous year or of a monthly instalment. The existence of a written engagement or kistbandi is not a condition precedent to the right to enforce the payment of the revenue by monthly instalments, provided the monthly instalments be fixed and determined. By Regulation V of 1812, if there be an arrear of the annual assessment, or of a fixed monthly kist or instalment of that assessment, unpaid on the first day of the following month, the Governor General in Council may order a sale, and the Board of Revenue may direct the whole estate of the defaulting zemindar to be sold. When the monthly instalments are fixed and determined, the Government does not forego the right of selling the zemindari on default being made in payment of these instalments, by taking a bond from sureties by which the estates of the sureties also were rendered liable for the payment. KIRT CHUNDER ROY *v.* GOVERNMENT
[5 W. R., P. C., 41: 1 Moore's I. A., 383

2. PROTECTED TENURES.

3. ——— Act XI of 1859, s. 37.—*Power of purchaser to avoid incumbrances.—Right of occupancy.*—The title of a purchaser at a sale for arrears of Government revenue, to void an under-tenure and eject the tenant, will depend upon whether the tenure is protected under any of the clauses of section 37 of Act XI of 1859, and whether the tenant has a right of occupancy. If the tenant can prove such a right, he cannot be ejected under section 37. SHEO PURSHUN SINGH *v.* RAJENDRO KISHORE SINGH
[12 W. R., 123

4. ——— *Right of transferee of purchaser at sale for arrears of revenue.*—The rights which are conferred upon a purchaser at a sale for arrears of revenue under Act XI of 1859, section 37, are capable of being transferred to another person, if the transfer follows immediately upon the sale or within a reasonable time thereafter. KOYLASH CHUNDER DUTT *v.* JUBUR ALI . 22 W. R., 29

5. ——— *Right of purchaser to avoid under-tenure.*—When a putni granted by a Hindu widow, though in appearance a duly registered tenure falling within the 3rd exception of section 37, Act XI of 1859, was in reality a fraud which the owner or reversioner might have avoided,—*Held* that a revenue sale passes the right of avoiding it to the auction-purchaser. RAM CHUNDER CHUCKERBUTTY *v.* KASHINATH MORTRO
[W. R., 1864, 66

6. ——— *Suit by purchaser to avoid under-tenure.—Beng. Act VIII of 1865, s. 16.—Resident and hereditary cultivator.*—A certain chur having been converted into two estates paying Government revenue, the plaintiffs became the pur-

SALE FOR ARREARS OF REVENUE —*continued.*

2. PROTECTED TENURES—*continued.*

Act XI of 1859, s. 37—*continued.*

chasers of one of these estates at a sale for arrears of revenue and of a howala lease of the other at an auction sale for arrears of rent, and brought a suit in virtue of section 37 of Act XI of 1859, and section 16 of Bengal Act VIII of 1865, to avoid the tenures of the defendants, who held, in shikmi talookdari and howaladari tenure, lands appertaining to both estates. The defendants admitted the alleged nature of their holdings, but claimed exemption from eviction on the ground that their ancestor, more than twelve years before, had cleared and cultivated the land and built a house thereon, and that since his death they themselves had continued to cultivate the land and reside upon it. The lower Courts having found that the defendants were hereditary and resident cultivators, it was held that the defendants were entitled to the benefit of the proviso in section 16 of Bengal Act VIII of 1865, the words of that proviso being wide enough to embrace every resident and hereditary cultivator irrespective of his denomination. MAHOMED ASSANOOLLAH CHOWDHRY *v.* SHAMSHIR ALI [4 C. L. R., 165

7. ——————— *Garden and homestead land with tanks.*—Where a party had occupied land for about forty years under a howala lease, and had made tanks, gardens, and homesteads, he was held to be protected under Act XI of 1859, section 37. GRISH CHUNDER BANERJEE *v.* GUNGA DOORGA [25 W. R., 60

8. ——————— *Protection from effect of sale.—Land planted as garden.*—A landlord cannot, by planting a garden in any portion of his estate, become, *quoad* such plantation, his own ryot, so as to bring the land so planted under the protection of Act XI of 1859, section 37, in the event of his estate being sold for arrears of revenue. BOOL CHAND JHA *v.* LUTHDO MOODEE . . . 23 W. R., 387

9. ——————— *Garden land.—Under-tenures.—Avoidance of tenure.*—Leases of lands which may not have been expressly leased for the purpose of making gardens thereon, but on which gardens have subsequently been made, are, under the provisions of Act XI of 1859, section 37, clause 4, protected from avoidance by a revenue auction-purchaser. GOBIND CHUNDRA SEN *v.* JOY CHUNDRA DASS . . . . I. L. R., 12 Calc., 327

10. ——————— *Permanent structures and improvements.—Suit to avoid incumbrances.*—In a suit to avoid an under-tenure by the purchasers at an auction sale for arrears of Government revenue, the defendants contended that the tenure was created prior to the permanent settlement, and that some portion of the lands comprised in it were covered with permanent structures and improvements, and that, accordingly, it was protected under exceptions 1 and 4 to section 37 of Act XI of 1859; but the lower Court gave a decree to the plaintiffs and annulled the under-tenure. *Held* by WHITE, *J.*, that, notwithstanding a party may fail to show that his tenure was created prior to the permanent settlement, yet he is entitled to the benefit of the 4th exception in respect of any permanent structures that may be upon his holding. BHAGO BIBEE *v.* RAM KANT ROY CHOWDRY . I. L. R., 3 Calc., 293

11. ——————— *Under-tenure-holders.—Ryots, Rights of.—Improvements on land.*—A person holding land which is not protected from the operation of section 37 of Act XI of 1859 by any of the first three exceptions, is yet entitled to the benefit of the 4th exception in respect of any of the items mentioned therein which may have been established on the land; and there is nothing in the words of the exception confining the benefit of it to tenure or under-tenure holders, and excluding the ryots from it. *Bhago Bibee* v. *Ramkant Roy Chowdhry, I. L. R., 3 Calc., 293,* followed. The benefit of the 4th exception to section 37, Act XI of 1859, must be limited to improvements effected *bonâ fide* and to permanent buildings erected before the revenue sales, and should not be conceded to anything subsequently constructed, or which appears to have been constructed merely for the purpose of defeating the rights of an auction-purchaser. Subject to this reservation, it does not matter whether the improvements have been effected by the present holder or by some previous occupier. AJGUR ALI *v.* ASMUT ALI [I. L. R., 8 Calc., 110: 10 C. L. R., 87

3. SALE OF SHARE OF ESTATE.

12. ——————— Separation of estate.—*Act XI of 1859, ss. 10, 11, and 37.—"Shares" of an estate.*—The portion of an estate for which a separate account is opened under sections 10 and 11 of Act XI of 1859, and the portion from which it is separated, are equally "shares" within the meaning of section 10. The latter (though it may for convenience's sake be termed the parent estate) cannot be considered an entire estate within the meaning of section 37, but is still a share and liable to all the incidents of a share. MONOHUR MOOKERJEE *v.* HUKOMOHUN MOOKERJEE . . . . . 1 W. R., 27

13. ——————— *Act XI of 1859, s. 13.—Application for separate account without order of Collector.*—Section 13, Act XI of 1859, does not say that when an application has been made for a separate account, but when a Collector shall have ordered a separate account, that he is to put up to sale only the share in respect of which an arrear of revenue may be due. An order setting aside the sale as to the plaintiff's share therefore reversed on appeal. RAJENDRO KISHORE NARAIN SINGH *v.* DOORGA KOONWAR . . . 7 W. R., 154

14. ——————— *Act XI of 1859, s. 11.—Share of estate.*—A sharer of a joint talook, whose share consists of a specific portion of land, can obtain protection from a sale for arrears of revenue only under section 11, Act XI of 1859.

SALE FOR ARREARS OF REVENUE —*continued.*

3. SALE OF SHARE OF ESTATE—*continued.*

Separation of estate—*continued.*

mon registry of the talook as a shikmi talook under that Act will not preclude any person thinking himself wronged by such registry from suing for the cancelment of the same. GOUR CHUNDER GOOPTO *v.* TARA MONEE . . . **6 W. R., 217**

15. ——————— *Act XI of 1859, s. 11.—Separation of shares.*—The proprietors of a certain lot having obtained a separation of their shares under section 11 of Act XI of 1859, there remained one share (comprising one village and one third of three other villages) which was sold for arrears of revenue, and purchased by *W.* Of this share *W.* sold one village to *P.*, who agreed to pay a certain sum as his share of the Government jumma, and then applied to the Collector to open a separate account at the rate which had been agreed upon. The shareholders having objected, the Collector referred the parties to the Civil Court under section 12. *P.* then brought a suit in the Civil Court for a separate account. *Held* that there was no legal objection to plaintiff having his separate share opened at the rate he mentioned, even if the jumma on the share which remained in *W.'s* possession was excessive; for if the whole estate were put up to sale for arrears on account of that remaining share, the other shareholders could always protect themselves by paying the sum due. POORNO CHUNDER BANERJEE *v.* RAM KANAYE GHOSE . **12 W. R., 243**

16. ——————— *Act XI of 1859, ss. 10, 11, and 13.—Separation of shares.—Suit by purchaser at private sale for possession of specific share.*—The proprietors of a joint mehal, the jumma of which had been partitioned under section 10, Act XI of 1859, were in possession of specific shares under a private arrangement among themselves, but had not obtained separation of shares under section 11. One of the proprietors sold his share to the plaintiff, and the shares of two other proprietors who made default in payment of the revenue were sold under section 13, Act XI of 1859, and purchased by the defendants. In a suit for exclusive possession of the share purchased by the plaintiff,—*Held* that the defendants acquired by their purchase an interest in the property as an undivided estate, and the plaintiff was not entitled as against them to have exclusive possession of any specific share. GUNGADEEN MISSER *v.* KHEEROO MUNDUL **[14 B. L. R., 170: 22 W. R., 449**

4. INCUMBRANCES.

(*a*) GENERALLY.

17. ——— **Limit of power to avoid incumbrance.**—*Act XI of 1859, s. 11.—Purchaser of entire estate.*—The power of a purchaser at a revenue sale to annul all incumbrances is limited to purchasers of entire estates. KALIDASS GHOSE *v.* CHANDRA MOHINI DASI . . **8 W. R., 68**

MADHUB CHUNDER CHOWDHRY *v.* PROMOTHONATH ROY . . . **20 W. R., 264**

SALE FOR ARREARS OF REVENUE —*continued.*

4. INCUMBRANCES—*continued.*

(*b*) ACT I OF 1845.

18. ——— **Object of act.**—*Fraudulent purchaser.—Sale by mortgagee.*—Act I of 1845 was not designed to protect a fraudulent purchaser as to the question whether a plaintiff could in point of law insist, notwithstanding an auction sale for arrears of revenue, that as against him the sale ought to be viewed as a private sale. *Held* that, under the circumstances,—a fraudulent devise to bring about the same being alleged,—the sale must be considered a private sale. The exception that a fraudulent purchaser at an auction sale by a mortgagee will not defeat the equity of redemption, is an exception to the rule that a sale for arrears of revenue gives a title against all the world. SIDHEE NUZUR ALLY KHAN *v.* OJOODHYARAM KHAN **[10 Moore's I. A., 540: 5 W. R., P. C., 83**

19. ——— **Right to avoid incumbrances.**—*Right of purchaser.—Quære,*—Whether the auction-purchaser under Act I of 1845, at a sale for arrears of revenue, was entitled to take free of all incumbrances created by the defaulting proprietor. JUGGODESHURY DOSSIA *v.* UMACHURN ROY **[7 W. R., 237**

20. ——————— *Right of auction-purchaser.—Act I of 1845, s. 26.*—An auction-purchaser of a zemindari at a sale for arrears of revenue is not entitled, under section 26, Act I of 1845, to eject a holder of a lakhiraj tenure though held under an invalid title. DOORGA PERSHAD CHOWDHRY *v.* RAJENDUR NARAIN ROY . . **2 Hay, 121**

21. ——————— *Agreement by former owner as to division of chur.—Act I of 1845, s. 26.*—A purchaser at a sale for arrears of Government revenue, suing to establish his right to chur lands which had accreted to the purchased estate, is not bound by an agreement entered into by the prior owner with the owners of the adjoining estate to divide the chur equally; such an agreement is an alienation of, or incumbrance on, the purchased estate, and therefore, under section 26 of Act I of 1845, void as against the purchaser (*dissentiente* CAMPBELL, *J.*). But *per* NORMAN, *J.*, and CAMPBELL, *J.*, it would seem that purchasers under any of the sale laws since Act XII of 1841 may be bound by a decree in a boundary suit against the prior owner. BOYKUNTNATH CHATTERJEE *v.* AMEEROONISSA KHATOON . . . . **2 W. R., 191**

22. ——————— *Act I of 1845, s. 26.—Mokurrari tenant in Benares, Right of.*—Section 26 of Act I of 1845, which enables auction-purchasers at sales for arrears of revenue to eject tenants in the province of Benares, was by section 1 of Act X of 1859 made subject to the modifications contained in the latter Act. Therefore, notwithstading a sale by auction for arrears of revenue, a mokurrari tenant in the province of Benares is entitled to receive a pottah at the fixed rent theretofore paid by him. MUNEO *v.* BALUCK SINGH **[1 N. W., 153: Ed. 1873, 235**

SALE FOR ARREARS OF REVENUE —*continued.*

4. INCUMBRANCES—*continued.*

(*b*) ACT I OF 1845—*continued.*

Right to avoid incumbrances—*continued.*

23. ——————— *Act I of 1845, s. 26, cl. 3.—Purchaser's right to evict.—Khodkast kadimee ryot.*—Possession as a khodkast kadimee ryot having a right of occupancy (but not merely as a khodkast ryot for twelve years) barred an auction-purchaser's right of eviction under clause 3, section 26, Act I of 1845. LOTF ALI KHAN *v.* KASHEE DYAL **[1 W. R., 6**

24. ——————— *Act I of 1845, s. 26.—Embankments.*—Embankments are not incumbrances liable to be extinguished under section 26, Act I of 1845, which refers only to tenures and leases. COLLECTOR OF 24-PERGUNNAHS *v.* JOYNARAIN BOSE **[W. R., F. B., 17 : 1 Ind. Jur., O. S., 101**

(*c*) BENGAL REGULATION XI OF 1822.

25. ——— **Right to alter arrangements as to rent.**—*Purchase by Government.—Position of old proprietors.*—An estate having been sold for arrears of revenue under Regulation XI of 1822, it was purchased by Government, and the Government as landlord raised the rents throughout the property. *Held* that the revenue sale cancelled all former arrangements entered into intermediately by the former proprietors, and that the fresh settlement made by Government with the present proprietors would not restore former arrangements and rates because they happen to be the heirs of the former proprietors. GUNGAMONEE *v.* LUTEEFOONISSA CHOWDHRAIN **[7 W. R., 196**

26. ——— **Right to cancel talookdari tenure.**—*Settlement.—Right to eject.*—The Government purchased the zemindari rights in a pergunnah under Regulation XI of 1822 at a sale for arrears of Government revenue, and re-settled one of the talooks in the pergunnah (which talook had been created subsequently to the decennial settlement) with the plaintiffs as talookdars. Subsequently, and after the terms for which they had re-settled with the plaintiffs had expired, the Government sold their zemindari rights to the defendant, who ejected the plaintiffs. In a suit to recover possession,—*Held* that it was the intention of Government to retain talookdars in possession of their lands during the subsistence of their tenures subject to the condition of having their rents enhanced according to the pergunnah rates; and as in this case the proceedings which were taken by the Government showed that they did not cancel the plaintiffs' tenure, the defendant who purchased from the Government could not eject the plaintiffs, who were entitled to retain possession, subject to a liability to enhancement. Under the sale law as it existed before 1822 a talookdar could not be dispossessd at the will of the purchaser; he was at most liable to pay the full pergunnah rate, and could only be ejected after refusal to pay the enhanced rate; but under Regulation XI of 1822 dependent talooks created subsequent to the decennial settlement were liable to be wholly avoided and annulled at the option of the purchaser at a sale for arrears of Government revenue, unless they fell within the class contemplated by the 32nd section of that Regulation. Where an auction-purchaser, under Regulation XI of 1822, intends to cancel a talookdari tenure (a power which he might or might not exercise), he must take some clear step to declare the avoidance or cancellation of the tenure. ASSANOOLLAH *v.* OBHOY CHURN ROY **[13 W. R., P. C., 24 : 13 Moore's I. A., 317**

27. ——————— *Right of cancellation by Government at auction-purchaser.—Exercise of power of cancellation.*—Where the Privy Council, in the case of *Assanoollah* v. *Obhoy Churn Roy, 13 Moore's I. A, 317,* recognising that the Government had, as the auction-purchaser at a sale for arrears of revenue, the option of cancelling and avoiding the talookdari tenure in that case, ruled that it was incumbent on Government to take some clear step for the purpose of declaring the avoidance or cancellation of the tenure, and finding that the Government had not exercised that power, declared the under-tenant entitled to retain possession of his land during the subsistence of his tenure,—*Held* that the decision did not apply to a case in which the proceedings of Government showed that it had exercised the power of cancellation. *Held,* also, that the indulgence in that case referred mainly to tenures purchased between 1817 and 1822, but not to tenures created after Regulation XI of 1822 had informed persons that their rights were liable to be cancelled by a purchaser at an auction sale for arrears of revenue. AFTABOODDEEN MAHOMED *v.* SANIOOLLAH. SANIAOLLAH *v.* AFTABOODDEEN MAHOMED **[23 W. R., 245**

28. ——— **Right of Government to annul tenures.**—*Evidence of cancellation.—Presumption.*—Though on the sale of a zemindari for arrears of revenue the Government has the right to annul all under-tenures not specially protected, yet it cannot be taken for granted that the Government has enforced its extreme rights; and even where the right of the Government to do so is asserted in the course of the proceedings, it is a matter which has to be decided upon evidence, whether, having asserted its right, the Government afterwards actually enforced it. TRILOCHUN CHUCKERBUTTY *v.* KOMOLA KANT CHUCKERBUTTY. KOMOLA KANT CHUCKERBUTTY *v.* NURRO SINGHO SINGH . **25 W. R., 536**

29. ——————— *Evidence of cancellation.—Settlement.—Right to eject incumbrancers.*—Where at an auction sale for arrears of revenue the Government becomes the purchaser of the property, and afterwards makes a settlement with the former proprietors of the under-tenures, the question whether or not the Government cancelled the under-

SALE FOR ARREARS OF REVENUE —*continued.*

4. INCUMBRANCES—*continued.*

(*c*) BENGAL REGULATION XI OF 1822—*continued.*

Right of Government to annual tenures —*continued.*

tenures existing at the time of the sale is one to be decided solely according to the effect of the proceedings taken by the Collector in each case. It is a mistake to suppose that their Lordships of the Privy Council, in the case of *Assanoollah* v. *Obhoy Churn Roy, 13 Moore's I. A., 317 : 13 W. R., P. C., 24,* intended to lay down a general rule according to which all questions of this nature are necessarily to be decided. SHOOK DEB SHAHA *v.* ALLADI **[2 C. L. R., 13**

See GOOROO PERSHAD CHUCKERBUTTY *v.* BANI NATH CHUCKERBUTTY . **2 C. L. R., 216**

30. ——— Right of purchasers.—*Tender of Government revenue by defaulter's mortgagee.—Liability of Collector.*—The purchaser at a revenue sale, held in default of the payment of assessment, takes free of all incumbrances, although, the revenue authorities, without otherwise depriving the defaulter of his right of occupancy, under section 36 of the Bombay Survey Act, I of 1865, have only sold his right, title, and interest. *Abdul Gani* v. *Krishnaji Bhikaji, 10 Bom., 416;* and *Gundo Shiddeshvar* v. *Mardan Sahib, 10 Bom., 419,* followed. The Collector may be responsible to the mortgagee of a revenue defaulter for refusing to accept the tender made by him of the Government rent, but if he does refuse it, and the land is sold, the title of the purchaser is unimpeachable. GHELABHAI BHIKARIDAS *v.* PRANJIVAN ICHHARAM . . . . . **11 Bom., 218**

31. ——— Right of ejectment.—*Beng. Reg. XI of 1822.—Under-tenures.—Right to impeach sale.*—The right to impeach a sale of lands for arrears of Government revenue extends not only to the defaulting proprietor, but to derivative holders under him. By Bengal Regulation XI of 1822, section 30, all under-leases are extinguished by a Government sale of the proprietor's lands for arrears of revenue, and an auction-purchaser takes the lands clear of all under-tenures. At a sale by Government for arrears of revenue, the Government became purchasers, and afterwards granted a lease of the lands for a term of years, and put their lessees into possession. At the time of the sale the lands were subject to an istemrari lease. No suit was brought to reverse the sale, but the Government some time afterwards, in consequence of doubts as to the legality of the sale, offered to give up their rights under the sale, and to restore the lands to the original proprietors, subject to the recognition of the claims of their lessees. This offer resulted in an arrangement between the Government, the original proprietors, and the Government lessees, and eventually the original proprietors upheld the lease to the Government lessees to a part of the lands called the Jungle Mehal for a term of years at a reduced rent. In a suit by the istemrari lessee for possession,—*Held* (reversing the decree of the Sudder Court) that by Bengal Regulation XI of 1822, section 30, the istemrari lease was determined by the sale for Government arrears, and that the arrangement by which the lands were restored to the proprietors, subject to the rights of the Government lessees, was in the nature of a compromise, and not such an unconditional restoration as amounted to a reversal of the sale, and the consequent revival of he istemrari lease. *Aliter,*—If a suit had been brought and a decree made for reversal of the sale. WATSON *v.* SREEMUNT LAL KHAN . **5 Moore's I. A., 447**

SALE FOR ARREARS OF REVENUE —*continued.*

4. INCUMBRANCES—*continued.*

(*c*) BENGAL REGULATION XI OF 1822—*continued.*

Right of ejectment—*continued.*

(*d*) ACT XI OF 1859.

32. ——— *Lakhirajdars.*—*Beng Reg. VII of 1822, s. 10, cls. 7 and 8.—Arrangement by Commissioner for payment of revenue.—Payment by all through principal proprietor.*—In a suit for ejectment and khas possession by an auction-purchaser under Act XI of 1859 the defendants' case was that after resumption of their lakhiraj tenure a settlement had been made under Regulation VII of 1822 with the principal proprietor; and by that settlement it was arranged that the Government revenue payable by all the proprietors, the defendants among them, was to be paid through the principal proprietor, and that the defendants were to hold perpetual possession as shikmidars, and that their rights should be reserved intact. *Held* that the possession of the defendants as lakhirajdars could not be disturbed as long as they paid the revenue assessed upon them under the settlement. *Held* also (MARKBY, *J., dissentiente*) that clause 8, section 10, Regulation VII of 1822, applied only to cases referred to in clause 7,—that is, of cultivating proprietors on puttidari or bhyachari tenure, or the like, and not to a case of this kind. RAM GOBIND ROY *v.* KUSHUFFUDOZA **[14 W. R., 1**

Affirmed on review, where it was held that a Commissioner's amulnama cannot destroy legal rights, even if no protest or objection be made. The order of a Commissioner requiring proprietors having separate jummas, to pay, for the convenience of the Collector, their shares of revenue through one of their number, cannot override their legal right of separate proprietorship allowed under the settlement law and preserved by express record, or transform such right into a joint tenancy. Where, therefore, such order had been made, and the defendants paid the revenue through one of their number and he made default,—*Held,* the whole estate was not liable to be sold for his default. RAM GOBIND ROY *v.* KUSHUFFUDOZA **[15 W. R., 141**

33. ——— Right to annul incumbrances.—*Encroachments by neighbouring estates.*—The principle under which purchasers of estates at revenue sales acquire such estates in the condition they were in at the permanent settlement, is equally recognised by the sale law (Act XI of 1859) as by

SALE FOR ARREARS OF REVENUE —*continued.*

4. INCUMBRANCES—*continued.*

(*d*) ACT XI OF 1859—*continued.*

Right to annual incumbrances—*continued.*

the laws previous to it, and applies as much to actual encroachments on the talook or estates by neighbours as to incumbrances or under-tenures created on it by the old proprietor or by his laches. GOLUCK MONEE DOSSEE *v.* HURO CHUNDER GHOSE [8 W. R., 62

34. ——————— *Permanently-settled estate.*—An auction-purchaser at a revenue sale of a permanently-settled estate is remitted to all the rights possessed by the original settler at the date of the settlement. In order to abolish tenures and incumbrances subsequently created, his cause of action dates from his purchase. The existence of such tenures at the date of the permanent settlement must be proved by their holders, the presumption in favour of a purchaser resting upon the principle that every bigha of land sold must contribute to the public revenue unless specially exempted. The tendency of recent legislation and decision has been to give force to the contrary presumptions arising from long and undisturbed possession. FOBBES *v.* MAHOMED HOSSEIN . 12 B. L. R., P. C., 210: 20 W. R., 44

35. ——————— *Suit to annul under-tenures.*—*Right to eject.*—When an auction-purchaser at a sale for arrears of revenue creates a putni, he cannot sue to annul an under-tenure within that putni, as his whole power under Act XI of 1859 passes to the putnidar, who alone can institute such a suit. In such a case the putnidar's competency to sue is not affected by the fact of his being a tenant of only a portion of the estate, provided that portion contains the tenure which is sought to be resumed. A putnidar, under such circumstances, though he may recover rent, is not entitled to eject an under-tenant who had been allowed to dig a tank and remain in possession undisturbed by the former proprietor for a long period (say upwards of thirty years), and who must therefore be assumed to have held with the acquiescence of the former proprietor, such acquiescence being equivalent to a lease. SREEMUNT RAM DEY *v.* KOOKOOR CHAND . 15 W. R., 481

36. ——————— *Land subject to mortgage.*—Where land in the possession of a mortgagee is sold by the mamlatdar for arrears of Government land revenue,—*Held* that as the land revenue is the paramount charge on the land, whoever derives title from the occupant takes it subject to that charge; and that, therefore, the purchaser at the sale was entitled to the land, free from any mortgage lien. ABDUL GANI *v.* KRISHNAJI BHIKAJI [10 Bom., 416

37. ——— **Right acquired by purchaser.**—*Act XI of 1859, ss. 11, 13, 54.—Sale of share of zemindari.*—*A.*, in exchange for his lakhiraj land, obtained in 1791 from his zemindar 441 bighas of mâl land, which the zemindar thereupon created rent-free. The zemindar fell into arrears,

SALE FOR ARREARS OF REVENUE —*continued.*

4. INCUMBRANCES—*continued.*

(*d*) ACT XI OF 1859—*continued.*

Right acquired by purchaser—*continued.*

and the zemindari was sold. Subsequently, three persons, who had become owners of the zemindari, applied to the Collector under section 11, Act XI of 1859, and the Collector opened separate accounts with each of them for the revenue of their respective shares. The revenue due from one of them fell into arrears, and his share, which included the 441 bighas, was sold under section 13, and purchased by the plaintiff, who now sued the descendants of *A.* to recover possession. *Held* that a sale of a share of a zemindari under section 13, Act XI of 1859, does not convey to the purchaser the share free from all incumbrances created by the former zemindar, but he acquires the share, as laid down in section 54, subject to all incumbrances. KASINATH KOOWAR *v.* BANKUBEHARI CHOWDHRY [3 B. L. R., A. C., 446

S. C. KASHEENATH KOONWAR *v.* BUNKO BEHAREE CHOWDHRY . . 12 W. R., 440

38. ——————— *Act XI of 1859, s. 32.—Right of purchaser to eject holders of howala and neem-howala tenures.*—Where certain howala and neem-howala tenures were never set aside by the Revenue Settlement or Revenue Commissioner's orders, from the time they were recorded as existing rightful hereditary tenures of those classes at the first settlement,—*Held* that the purchaser of the ousut talook could not eject the holders of those tenures under section 32, Act XI of 1859, so long as they paid their jumma according to the settlement jummabundi. BURODA KANTH LAHA *v.* GOBIND CHUNDER GOOHO. KALEE KINKUR ROY *v.* GOBIND CHUNDER GOOHO . . . . 7 W. R., 50

39. ——————— *Act XI of 1859, s. 37.—Incumbrances.—Right of purchaser.*—A purchaser at a sale for arrears of revenue, with a paramount title under section 37, Act XI of 1859, acquires the estate free from any incumbrance which accrued thereupon from the laches of former proprietors, in the same way as he would have acquired it free from any incumbrance created by sale, lease, or mortgage. In the absence of any proof to the contrary, such purchaser must be assumed to be the owner. THAKOOR DASS ROY CHOWDHRY *v.* NUBEEN KISHEN GHOSE . . 15 W. R., 352

40. ——————— *Act XI of 1859, s. 37.—Suit to cancel under-tenures.—Right of purchasers.*—On the 13th January 1871 *A.* and *B.* purchased an estate sold for arrears of Government revenue. The original proprietors asserted their right to collect the rents of a portion of the property by virtue of holding two shikmi talooks and a howala tenure. This right was affirmed by the High Court in April 1875. *B.* had previously sold his interest to *C.* On the 29th May 1876 *A.* created a putni of his 8 annas in favour of *D.* and *E.*, and on the 4th July 1876 *C.* purchased all the rights of the

SALE FOR ARREARS OF REVENUE —*continued.*

4. INCUMBRANCES—*continued.*

(*d*) ACT XI OF 1859—*continued.*

Right acquired by purchaser—*continued.*

ginal proprietor. On the 18th January 1877 *A.* sued under Act XI of 1859, section 37, to cancel or vary the tenures, making the original proprietors, *C.* and various tenants, defendants. *C.* objected that *A.* had no right of suit or cause of action, as he had parted with all his rights to *D.* and *E.*, and that as his entire interest in the estate was only 8 annas, he could not sue to cancel a part only of the sub-tenures. *D.* and *E.* then applied to be made parties. *Held* they could not sue, as they were not purchasers of an entire estate within section 37, Act XI of 1859. Even on the assumption that *D.* and *E.* were properly made plaintiffs, the lower Appellate Court should have taken into consideration certain admissions made by them as to the existence of the under-tenure, both before and after the Government sale. *Sreemunt Ram Roy* v. *Kookoor Chand, 15 W. R., 481*, followed. DWARKANATH PAL *v.* GRISHCHUNDER BUNDOPADHYA . **I. L. R., 6 Calc., 827**

41. ——— *Unrecorded co-partner, Purchase by.—Incumbrances.—Act XI of 1859, ss. 37, 53.*—*A.*, in November 1862, purchased a portion of an estate sold in execution of a decree against the then proprietor. This sale was not confirmed till the 9th February 1863. Default occurred in the payment of the Government revenue in January 1863, and the entire estate was put up for sale by the Collector, and purchased by *A.* on the 29th March 1863. *Held* that *A.*, at the time of his second purchase, was an unrecorded co-partner of an estate within the meaning of section 53 of Act XI of 1859, and therefore took the entire estate subject to all the incumbrances existing at the time of the Government sale for arrears of revenue. ABDOOL BARI *v.* RAMDASS COONDOO **[I. L. R., 4 Calc., 607**

42. ——— *Re-purchase by co-proprietor.—Rights of under-tenants.—Incumbrances.—Act XI of 1859, s. 53.*—Under section 53 of Act XI of 1859, a co-proprietor who purchases an estate at a sale for arrears of Government revenue takes it subject to the incumbrances created by the defaulting proprietor. MAHOMED GAZI CHOWDHRY *v.* LEICESTER . . . **7 B. L. R., Ap., 52**

S. C. MAHOMED GAZEE CHOWDHRY *v.* PEAREE MOHUN MOOKERJEE . . **16 W. R., 136**

And this is so whether he purchases benami or from the benamidar after his purchase. *See* same case, and case of ALUM MANJEE *v.* ASHAD ALI **[16 W. R., 138**

43. ——— **Act XI of 1859, s. 54.**—*Bonâ fide incumbrances.*—The object of section 54, Act XI of 1859, is to protect, not every incumbrance which may be set up, but only *bonâ fide* incumbrances executed in contemplation of an impending sale or in fraud of a possible purchaser. Where surrounding circumstances suggest such creation, it is for the party setting up the incumbrance to establish its *bonâ fide* character. MONOHUR MOOKERJEE *v.* JOYKISHEN MOOKERJEE . . . **5 W. R., 1**

44. ——— *Lease of a share.*—A lease of a share is protected under section 54, Act XI of 1859. KALEE PUDDO GHOSE *v.* MONOHUR MOOKERJEE . . . . **7 W. R., 295**

45. ——— **Mad. Act II of 1864.**—*Sale of land mortgaged.—Purchase by mortgagee.—Equity of redemption.*—Where land has been mortgaged and while in the possession of the mortgagee sold for arrears of revenue under Madras Act II of 1864, and purchased by the mortgagee at the revenue sale, such sale does not necessarily deprive the mortgagor of his right to redeem. JAYANTI LAKSHMAYA *v.* YERUBANDI PEDDA APPADU **[I. L. R., 7 Mad., 111**

46. ——— **Beng. Act VII of 1868, s. 12.**—*Auction-purchaser, Right of.—Lakhiraj grant.—Onus probandi.*—A person seeking to obtain the benefit of section 12, Bengal Act VII of 1868, must give some *primâ facie* evidence to show that the incumbrance which he seeks to avoid is an incumbrance falling within the terms of the section,—that is, an incumbrance imposed on the tenure by some one who previously held it. The law relating to lakhiraj grants reviewed and explained. KOYLASHBASHINY DOSSEE *v.* GOCOOLMONI DOSSEE **[I. L. R., 8 Calc., 230: 10 C. L. R., 41**

5. PURCHASERS, RIGHTS AND LIABILITIES OF—

47. ——— *Purchaser of rights of Government.—Limitation.*—An auction-purchaser of the rights of Government in a talook sold for arrears of revenue is not privy in estate to the defaulting proprietor. He does not derive his title from him, and is bound neither by his acts nor by his laches. The purchaser, moreover, is bound by no limitation which would not bind or affect the Government. The talook in this case having come into the possession of Government by resumption in 1841,—*Held* that the auction-purchaser could have no better title, and could be in no better position than the Government at the time of resumption. BUZLOOL RAHMAN *v.* PRANDHUN DUTT . . . **8 W. R., 222**

48. ——— **Purchaser at sale on default of purchaser of rights of Government.**—*Government proclamation.—Act XI of 1859.*—The Government having sold its zemindari rights in certain talooks after a proclamation that the purchaser would be bound to abide by the settlements entered into by it with the defendant talookdars, one of the talooks, a mehal, J. C. B., was purchased with this reservation by *M.*, who then sued without success to eject the proprietor of the said talook. After this, *M.*

SALE FOR ARREARS OF REVENUE —*continued.*

5. PURCHASERS, RIGHTS AND LIABILITIES OF—*continued.*

Purchaser at sale on default of purchaser of rights of Government—*continued.*

having defaulted in the payment of the Government revenue, the mehal was sold for arrears under Act XI of 1859, and purchased by *G.* *Held* that *G.* was in a very different position from *M.* (who had purchased the zemindari rights of the Government), and was not bound by the terms of the Government proclamation, but was, as his sale certificate showed, the purchaser of an entire estate separately recorded on the Collector's rent-roll. GHOLAM MUKHDOOM *v.* ASHUCK JAN BIBEE . . **25 W. R., 86**

49. ——— Right to resume and assess lakhiraj land.—*Act XI of 1859, s. 54.*—When the former proprietor had a right to bring a suit to resume and assess lakhiraj land, the auction-purchaser of his rights and interests acquired the same right under section 54, Act XI of 1859. DABEE MUNNEE CHOWDHRAIN *v.* FAQUEER CHUNDER SHAHA . . . . . **W. R., 1864, 293**

50. ——— Period from which title of purchaser dates.—*Act I of 1845, s. 20.*—The title of an auction-purchaser at a sale for arrears of revenue accrues, not from the date of sale, but from the date on which the sale was confirmed, and certificate granted under section 20, Act I of 1845. DHEPUT SINGH *v.* MOTHOORANATH JAH **[W. R., 1864, 278**

51. ——— Liability for Government revenue.—*Right to recover money paid for arrears of revenue.—Act XI of 1859, s. 21.*—The purchaser of an estate sold for arrears of revenue on the 29th Pous, the latest date of payment of the revenue due for the three months previous to Pous, is not entitled to recover from the defaulter the amount of revenue which he was subsequently obliged to pay for the month of Pous. KHEMA SOONDAREE DOSSIA *v.* NUNDKOOMAR GOOPTO . . **4 W. R., 75**

52. ——— *Suit for money paid for arrears of revenue.—Character of Government revenue.—Apportionment of revenue.—Purchaser's liability.*—Government revenue does not become due from day to day, but at certain specified times, according to the contract of the parties, or the custom of the district in which the lands liable to pay such revenue are situate. It is not, therefore, liable to apportionment; and the person who is the owner of a revenue-paying estate at a time when the payment of the revenue falls due, is the only person liable for its payment. The purchaser of an estate which pays Government revenue takes it subject to all revenue and cesses, whether in arrear or accruing. *Held,* therefore, in a suit by a purchaser for a certain sum for Government revenue and cesses, which became due after the date of, though due for a period previous to, his purchase, which sum he alleged he had been compelled to pay to save his interest in the subject of his purchase, that he was not entitled to recover. CHATRAPUT SINGH *v.* GRINDRA CHUNDER ROY . **I. L. R., 6 Calc., 389 : 7 C. L. R., 456**

See WOZEER BEGUM *v.* FUZLOONISSA . **[W. R., 1864, 373**

53. ——— *Registered occupant.—Bom. Survey Act, I of 1865.*—Government revenue being a paramount charge on the land, it adheres to the land and to every portion of it independently of the hands into which it passes, or the subordinate rights that may have been created by the occupant out of his own qualified proprietorship; so that, even after a valid sale of the land by the occupant to a purchaser who neglects to get his name registered in his books, the Collector may, after giving notice of the failure to pay the revenue to the registered occupant, in whom alone, according to the Bombay Survey Act, I of 1865, vests the right of conditional occupancy, put up the land for sale, and the purchaser gets occupancy rights free from all claims on the part of the first purchaser. GUNDO SHIDDHESHVAR *v.* MARDAN SAHEB . **10 Bom., 419**

54. ——— *Beng. Reg. XLIV of 1793, ss. 5 and 7.—Enhancement of rent.*—The object of section 5, Regulation XLIV of 1793, taken together with section 7, was not the destruction of the under-tenures upon the sale of the parent estate for arrears of Government revenue. It only empowered the purchaser at such sale to avoid the subsisting engagements as to rent, and to enhance the rent to that amount at which, according to the established uses and rates of the pergunnah or district, it would have stood had the cancelled engagement so avoided never existed. *Quære,*—Whether such a power was given only to the purchaser or to him and his heirs, or whether it was a power attaching to the zemindari and passing to subsequent purchasers. SHURNOMOYEE *v.* SUTTEE CHUNDER ROY . **2 W. R., P. C., 14**

S. C. SURNOMOYEE *v.* SUTTEES CHUNDER ROY. **[10 Moore's I. A., 123**

55. ——— *Beng. Reg. XI of 1822, ss. 30, 33.—Beng. Reg. XLIV of 1793, s. 5.—Beng. Reg. VIII of 1793, s. 51.*—A zemindari was sold for arrears of Government revenue under Regulation XI of 1822. The purchaser's representatives sued to enhance the rent of the under-tenure. *Held* that they had no right to enhance. The rights of the purchaser were defined by sections 30 and 33 of Regulation XI of 1822, which were repealed by Act XII of 1841, and that Act, with the exception of the 1st and 2nd sections, was again repealed by Act I of 1845. Neither of the two last-mentioned statutes contains any saving of rights acquired under the statutes which it repealed, but expressly limited the enlarged powers which it gave to purchasers

SALE FOR ARREARS OF REVENUE —*continued.*

5. PURCHASERS, RIGHTS AND LIABILITIES OF—*continued.*

Liability for Government revenue—*continued.*

at sales for revenue arrears to purchasers at future sales. A sale for arrears of revenue cannot of itself merely, and without any act, proceeding, or demonstration of will on the part of the purchaser, alter the character of an under-tenure. *Semble,*—Section 5, Regulation XLIV of 1793, is now of no force for any purpose but that of declaring the general principles upon which all the subsequent legislation has proceeded,—*viz.*, that of putting a purchaser at a sale for arrears of revenue in the position of a party with whom the perpetual settlement of the estate was made. Where an under-tenure existed at the time of the decennial settlement, the only right which the zemindar could exercise over it was that conferred by section 51 of Regulation VIII of 1793. The decision in the case of *Surnomoyee v. Suttees Chunder Roy, 10 Moore's I. A., 123,* commented on, explained, and reiterated. SATYASARAN GHOSAL *v.* MAHESH CHANDRA MITTER . . . **2 B. L. R., P. C., 23**

S. C. SUTTO SURRUN GHOSAL *v.* MOHESH CHUNDER MITTER. SUTTO SURRUN GHOSAL *v.* TARINEE CHUNDER GHOSE **[12 Moore's I. A., 263 : 11 W. R., P. C., 10**

S. C. in High Court, SUTTO CHURN GHOSAL *v.* MOHESH CHUNDER MITTER. SUTTO CHURN GHOSAL *v.* TARINEE CHURN GHOSE **[3 W. R., 178**

56. ——— Certified purchaser.—*Act XI of 1859, s. 36.—Suit by certified purchaser.—Benamidar*—A certified purchaser at a sale for arrears of revenue, suing to recover possession of land from which he has been ousted, is not debarred from the benefit of section 36, Act XI of 1859, unless he has acknowledged himself to be a benamidar. JADUB RAM DEB *v.* RAMLOCHUN MUDDUCK **[5 W. R., 56**

Review rejected . . **S. C. 19 W. R., 189**

57. ——— *Act XI of 1859, ss. 36 and 53.—Purchase by former proprietor.*—One of the co-sharers in an estate which had been sold under Act XI of 1859 sued to recover her share from the certified purchaser (*M.*), himself one of the original owners. Her case was that she provided a portion of the purchase-money, but that her name was not registered on account of *M.'s* having no written authority to act on her behalf. *M.*, however, executed an ikrarnamah in which he admitted receipt of the purchase-money of plaintiff's 2 annas share, and covenanted to give her possession. Defendant denied having received any contribution or consideration-money from the plaintiff, though admitting execution of the ikrarnamah. *Held* that no separate title was given to the plaintiff by the ikrarnamah, and that the suit was substantially one to oust a certified purchaser on the ground that part of the purchase was made on behalf of another person, and

SALE FOR ARREARS OF REVENUE —*continued.*

5. PURCHASERS, RIGHTS AND LIABILITIES OF—*continued.*

Certified purchaser—*continued.*

the suit was therefore barred by section, 36 of Act XI of 1859. *Held,* also, that there is nothing in Act XI of 1859 which makes it illegal for a former proprietor or co-sharer to be a purchaser of his estate at a sale for arrears due on that estate. NEYNUM *v.* MUZUFFUR WAHID . . . **11 W. R., 265**

6. DEPOSIT TO STAY SALE.

58. ——— Right of person making deposit.—*Act I of 1845, s. 9.*—By Act I of 1845, section 9, it is enacted, with reference to sales for arrears of revenue, that Collectors shall, at any time before sunset of the latest day of payment, receive as a deposit, from any party, not being a proprietor of the estate in arrear, the amount of the arrear of revenue due from it, to be carried to the credit of the said estate; and if the party depositing, whose money shall have been so credited as aforesaid, shall prove before a competent Civil Court that the deposit was made in order to protect an interest of the said party which would have been endangered or damaged by the sale of the estate, he shall be entitled to recover the amount of the deposit, with interest, from the proprietors of the estate. *Held* that the person so depositing money for arrears does not thereby acquire any lien on the estate. FAGAN *v.* SREEMOTEE DOSSEE **[Marsh., 226**

S. C. SREEMOTEE DOSSEE *v.* FAGAN **2 Hay, 75**

59. ———. Right of one proprietor against co-proprietors.—*Right against putnidar of co-proprietor.*—A proprietor who has paid his own and his defaulting co-proprietor's share of the Government revenue to save the estate from sale, can recover from him the co-proprietor's share of the revenue, but he cannot recover it from the latter's putnidar, whose only liability was to pay his rent to his lessor. BYKUNTNATH ACHARJEE *v.* GOOROO CHURN BOSE . . . . **7 W. R., 247**

60. ——— Right of person both proprietor and mortgagee.—*Payment made as mortgagee to save estate from sale.*—A person who is both proprietor and mortgagee is not entitled as mortgagee to claim a deduction on account of Government revenue paid by him to save the estate from sale for arrears of revenue, when after resumption it ceased to be a lakhiraj estate, which payment it was his duty to have made in his capacity of proprietor. DOOLAR CHUNDER *v.* DAMOODUR NARAIN **[3 W. R., 162**

61. ——— Voluntary payment.—*Right of mortgagee to recover revenue paid.*—Suit for Government revenue paid by mortgagee in possession of property mortgaged for a debt secured by an instalment-bond executed in his favour by the mortgagor through a mooktear. Although the plaintiff

SALE FOR ARREARS OF REVENUE —*continued.*

6. DEPOSIT TO STAY SALE—*continued.*

Voluntary payment—*continued.*

could not prove the execution by the defendant of the power of attorney in the name of the person alleged to have signed the bond for the defendant, yet as the plaintiff had paid the arrears of revenue due on the mortgaged property in the *bonâ fide* belief that he had a rightful interest in it, and would thereby save the property from sale, and be entitled to recover the money so paid, such payment was held to be not officious, and the suit was decreed. BADAUM KOOWUR *v.* LALLA SEETUL PERSHAD . **5 W. R., 126**

62. ——————— *Act XI of 1859, s. 9.— Suit by mortgagee to recover deposit of arrears of revenue.*—A mortgagee who obtained a decree for possession with mesne profits on 11th May 1864, sued the mortgagor, under section 9, Act XI of 1859, to recover a sum alleged to have been paid by plaintiff on account of Government revenue for the quarterly kist falling due on the 25th June following. *Held* that as at the time the deposit was made the plaintiff was the proprietor of the estate in arrears, he was not a party contemplated in section 9, and the suit did not lie. JUSSODA DOSSEE *v.* MATUNGINEE DOSSEE . **[12 W. R., 249**

63. ——————— *Sale afterwards set aside.—Payment by purchaser made pending proceedings to set aside sale to save estate from further sale.*—Plaintiff, the inchoate owner of an estate purchased by him at a sale in execution of a decree against it, was held justified, whilst the proceedings with regard to the validity of the sale were pending, in preserving the estate from sale to another, whether for arrears of Government revenue or for the amount of a decree for which the estate had been attached, and when the sale to him was set aside and restored to *A.*, entitled to be repaid any amounts *bonâ fide* paid by him for the preservation of the estate. If *A.* made any arrangement with mokurraridars by which the latter stipulated to pay the Government revenue for him, plaintiff could not recover from the mokurraridars, there being no privity between him and them. His remedy was against *A.*, who again had his remedy against the mokurraridars. HOSSEIN BUKSH KHAN *v.* ROY DHUNPUT SING . . . **18 W. R., 289**

64. ——— **Liability of estate held by Hindu widow for debt incurred to person making payment to protect tenure.**—*Act I of 1845, s 9.*—An estate mortgaged was about to be sold for arrears of Government revenue, when it was saved from sale by the mortgagee depositing a sum sufficient to discharge the revenue. The mortgagee brought a suit against the person in possession of the talook, the Hindu widow of the original mortgagor, seeking, under section 9, Act I of 1845, to obtain repayment from her personally of the money paid to save the sale of the talook, not making the reversioners defendants, and not praying that the talook in its entirety might be sold to pay the amount due. A decree was given in that suit to the mortgagee,

SALE FOR ARREARS OF REVENUE —*continued.*

6. DEPOSIT TO STAY SALE—*continued.*

Liability of estate held by Hindu widow for debt incurred to person making payment to protect tenure—*continued.*

and on execution of that decree the reversioners intervened. *Held* that the mortgagee and those claiming under him had no charge on the estate, and were not entitled to have it sold in its entirety to pay the amount which was paid in to stop the sale of the estate. The action brought under section 9, Act I of 1845, was only a personal action, and the decree gave no remedy against the land, the sale of which for arrears of revenue had been stopped by the deposit. In such a suit the question is not whether the person who pays the arrears acquires thereby a charge on the talook which he saves from sale, but whether he seeks to enforce that right: he must do so in a suit properly framed for that purpose, and not merely in a suit which is confined to a personal remedy against the person in possession of the talook. If the person who so pays the arrears of rent seeks repayment only, under the section and law cited, as against the person in possession of the talook, who has only a limited interest therein, and confines his suit to that object, the decree so obtained against the person in possession can only be made effectual against the property of that person, including such interest as he had in the talook. This ruling does not affect the general doctrine that, in a suit brought by a third person, the object of which is to recover, or to charge an estate of which a Hindu widow is the proprietress, she will, as defendant, represent and protect the estate, as well in respect of her own as of the reversionary interest. NOGENDER CHUNDRO GHOSE *v.* DOSSEE . . . **8 W. R., P. C., 17**

S. C NUGENDER CHUNDER GHOSE *v.* KAMINEE DOSSEE . . . **11 Moore's I. A., 241**

65. ——— **Payment by putnidar to save tenure from sale.**—*Mistake in Collectorate in crediting payment as deposit.*—The payment of revenue into the Collectorate by a putnidar to save the estate from sale is equivalent to payment of the putni rents to the zemindar. The fact that the zemindar had himself paid money into the Collectorate which he intended as revenue, but which by mistake was credited to a deposit account, and for which he took a receipt showing that the money was received as a deposit, and not as a payment of revenue, does not render the putnidar liable. JOTENDER MOHUN TAGORE *v.* KISHEN MONEE DABEE **[W. R., 1864, Act X, 11**

66. ——— **Payment by shareholder.** —*Voluntary payment of arrear of revenue.—Right to reimbursement.—Act XI of 1859, s. 13.*—A shareholder voluntarily coming forward and paying an arrear of revenue due by a defaulting co-shareholder who has a separate account, before the share of such defaulter has been put up for sale under the provisions of section 13, Act XI of 1859, cannot claim to be reimbursed by such defaulter, nor is the defaulter under any legal obligation to repay the amount ad-

SALE FOR ARREARS OF REVENUE —*continued.*

6. DEPOSIT TO STAY SALE—*continued.*

Payment by shareholder—*continued.*

vanced. KISHEN CHUNDER GHOSE *v.* MUDDUN MOHUN MOZOOMDAR . . . 7 W. R., 365

67. ——— Right of suit to recover amount of deposit.—*Act XI of 1859, s. 9.—Suit to recover amount paid as deposit to save estate from sale.*—Where a party pays into the Collectorate, under the provisions of section 9, Act X of 1859, arrears of revenue due by a defaulting proprietor of an estate, his suit to recover the amount paid is not inadmissible merely because there exists no privity between plaintiff and defendant. WOOMAMOYEE BURMONYA *v.* HILLS . . . 11 W. R., 377

68. ——— Right of suit to recover amount deposited.—*Payment made by mokurraridar for predecessor.—Payments of revenue in excess of lease.—Voluntary payment.*—Instalments of Government revenue paid by a mokurraridar on account of his predecessor, being necessary payments made to save the estate from sale, are recoverable, but not under Act X of 1859. Payments on account of Government revenue in excess of lease are not recoverable. BUNWAREE KISHORE *v.* JOY CHUNDER GOSSAIN . . . . . 2 W. R., 262

69. ——— Obligation of lender of money to stay sale.—*Necessity.*—A lender is not bound to inquire into the exact amount necessary to be borrowed to save an estate from a sale for arrears of Government revenue. It is sufficient if he satisfy himself of the existence of a necessity to justify him in looking to the estate for repayment. NUFFER CHUNDER BANERJEE *v.* GUDDADHUR MUNDLE . . . . . 3 W. R., 122

7. SALE-PROCEEDS.

70. ——— Right to surplus proceeds. —*Estate subject to mortgage.*—When mortgaged lands are sold for arrears of Government revenue, not accrued through default of the mortgagee, any proceeds which may arise from the sale in excess of the arrears belong to the mortgagee, and he has a right of action for their recovery. HEERA LALL CHOWDHRY *v.* JANOKEENATH MOOKERJEE [16 W. R., 222

71. ——— Right to payment out of surplus proceeds.—*Liability of purchaser to reimburse judgment-debtor.—Act XIX of 1873 (N.-W. P. Land Revenue Act, s. 146.—Act X of 1877, s. 316.*—A share of a mehal, arrears of Government revenue being due in respect of the whole mehal, was sold in execution of a decree. The existence of the arrears was notified at the time of sale. The title of the purchaser to the share vested from the date of the sale, Act X of 1877, section 316, being in force at that date. The Collector attached and realised the amount of the arrears out of the surplus sale-proceeds. *Held* that, inasmuch as at the date of

SALE FOR ARREARS OF REVENUE —*continued.*

7. SALE-PROCEEDS—*continued.*

Right to payment out of surplus proceeds—*continued.*

the realisation of the arrears out of the surplus sale-proceeds, the purchaser was the proprietor of the share, and it and he were responsible under section 146 of Act XIX of 1873 (N.-W. P. Land Revenue Act) for the arrears, the payment of the arrears out of the surplus sale-proceeds must be regarded as a payment made *in invitum* by the judgment-debtor for the purchaser, and the judgment-debtor was entitled to be reimbursed by the purchaser. RAM CHAND *v.* FATEH SINGH . I. L. R., 6 All., 112

72. ——— Suit for sale-proceeds by mortgagee.—*Omission to give notice of charge on estate sold.*—*A.* purchased certain villages in the name of his son *B.* *A.*, being indebted to *C.*, executed a mortgage-bond and deposited the title-deeds of those villages with *C.* as security for the debt. *C.* afterwards sued *A.* for recovery of the mortgage-debt, and ultimately obtained a decree in his favour. Pending this suit *A.* died and was succeeded by *B.*, his heir, against whom the suit was revived. *B.* became a defaulter to Government, when the Government authorities seized the villages, and took steps for bringing them to sale to satisfy the Government demands. *C.* informed the Government officer of his claim, and petitioned to have the sale stayed, but the Collector sold the villages as the property of *B.*, suppressing the notice of the equitable charge of *C.* upon the villages. *C.* then sued *B.*, the Collector, and the auction-purchasers, claiming to be entitled to the sale-proceeds of the villages in the hands of the Government in satisfaction of his mortgage-debt. The Sudder Dewany Court dismissed the plaintiff's claim, on the ground that the decree made in the suit against *A.* was against the effects of *A.*, and only applied to such property as *B.* was in possession of at that time; and that as it had been sold to realise the demands of Government, the decree did not apply to the villages. This decision was reversed on appeal, the Judicial Committee holding, *first*, that the suit was properly instituted for recovery of the sale-proceeds in possession of Government, as the decree obtained by *C.* against *B.* operated as a conversion of the estate of *A.*, making it assets in *B.'s* hands, which *C.* had a right to follow; *secondly*, that as the Government had notice of *C.'s* equitable charge upon the villages, and suppressed that fact at the auction sale to the purchasers, there was a clear equity in *C.* to call upon the Government for payment out of the auction-proceeds received by them, and an account was directed of the amount received by the Collector from the sale of the villages with interest, so far as the amount received would extend to the payment of *C.'s* mortgage-debt. *Semble,*—Where property is sold by Government for general debts and not for arrears of revenue, they sell only the interest of the debtor, and do not guarantee the vendor a title. DOUGLAS *v.* COLLECTOR OF BENARES [5 Moore's I. A., 271

SALE FOR ARREARS OF REVENUE —*continued.*

8. SETTING ASIDE SALE.

(*a*) IRREGULARITY.

73. ——— Irregularity in conduct of sale.—*Act XI of 1859, ss. 25, 26, 27-33.—Substantial injury.—Form of petition.—Remedy by suit.*—The object of the revenue sale law (XI of 1859) is to give a title to the purchaser which shall not be open to challenge by anybody; and the only ground on which a revenue sale can be set aside is (section 25) that of irregularity in conducting the sale, in which case the Commissioner can set it aside on a petition of appeal presented to him within fifteen days of the sale. The petition may disclose a case of hardship or injustice where irregularity does not exist, as, for instance, that the sale has taken place where no arrear is due, and under such circumstances the Government, under section 26, may set aside the sale. If the Commissioner will not interfere, the party aggrieved may, within one year of the sale becoming conclusive (section 27), bring an action in the Civil Court under section 33, and the Court may set aside the sale on proof of irregularity and substantial injury caused thereby. If no irregularity producing substantial injury is proved, the Civil Court cannot entertain an action to set aside a sale for arrears, and the only course open to an injured party is by a suit for damages as provided for in section 33. WOMESH CHUNDER CHATTERJEE *v.* COLLECTOR OF 24-PERGUNNAHS. WOOMESH CHUNDER CHATTERJEE *v.* ISHARUTOOLLAH

[8 W. R., 439

74. ——— Omission to give notice of sale.—*Act XI of 1859, s. 33.—Material injury.—Setting aside sale, Ground for.*—To sell an estate for arrears under Act XI of 1859, after lulling the proprietor into a false security by failure to give him a notice which the law prescribes as a condition precedent of a sale, is of itself a very material injury irrespective of the amount of purchase-money realised, and one amply sufficient to warrant a Court in annulling the sale under section 33. MOHABEER PERSHAD SINGH *v.* COLLECTOR OF TIRHOOT

[15 W. R., 137

75. ——— Irregularity in issue of notice.—*Ground for setting aside sale.—Damage to defaulter.*—A sale under Act XI of 1859 may not be set aside on the ground of irregularity in the issue of notices, unless such irregularity is shown to have caused loss or damage to the defaulter. LULEETA KOOER *v.* COLLECTOR OF TIRHOOT

[19 W. R., 283

76. ——— Notification of sale, Necessary contents of.—*Act XI of 1859, s. 33.*—It is unnecessary to specify in the notification of sale the names of the mouzahs included in the property sought to be sold. All that is necessary is, to specify the estates or shares of estates, and the number they bear in the Collector's office. AMIRUNNESSA KHATOON *v.* SECRETARY OF STATE FOR INDIA IN COUNCIL . . . . **I. L. R., 10 Calc., 63**

SALE FOR ARREARS OF REVENUE —*continued.*

8. SETTING ASIDE SALE—*continued.*

(*a*) IRREGULARITY—*continued.*

Notification of sale, Necessary contents of—*continued.*

S. C. AMIRUNNESSA KHATOON *v.* BROWNE

[13 C. L. R., 131

ZEEKALEE KOOER *v.* LALLA DOORGA PERSHAD

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77. ——— Notification of sale, Omission in.—*Revenue-paying estate.—Sale of share of an estate.—Recorded proprietors.—Omission of names of proprietors.—Irregularity.—Act XI of 1859, ss. 6, 33.*—When a notification of sale of a share in a revenue-paying estate is issued under section 6, Act XI of 1859, the circumstance that such notification does not contain the names of all the recorded proprietors of the share, but only the name of one of them, does not amount to an irregularity within the meaning of section 33, Act XI of 1859. SECRETARY OF STATE FOR INDIA IN COUNCIL *v.* RASHBEHARY MOOKERJEE

[I. L. R., 9 Calc., 591: 12 C. L. R., 27

78. ——— Irregularity in publishing notification of sale.—*Suit to set aside sale.—Act XI of 1859, ss. 6, 20, 35.—Beng. Act VII of 1868, s. 8.—Certificate of title.*—A notification by the Collector under section 6 of Act XI of 1859, fixing the 31st May 1879 as the date for holding the sale, was affixed in the places mentioned in the section on the 2nd May 1879. Subsequently, the 31st May being ascertained to be a holiday, and the 1st June being a Sunday, the Collector, purporting to act under section 20 of the Act, issued a notification on the 26th May, postponing the sale till the 2nd June. On that day the sale was held, and the Commissioner having upheld it on appeal, a certificate of title was given to the purchasers. *Held*, in a suit to set aside the sale, that inasmuch as the notification under section 6 of the Act had not been affixed thirty days before the day fixed by it for holding the same, the requirements of that section had not been fulfilled, and the irregularity was not cured by the notification of the 26th May. *Held*, further, that the Court was not bound, under section 8 of Bengal Act VII of 1868, to presume conclusively that the provisions of section 6 of Act XI of 1859, as regards the fixing of the date of sale, had been complied with. Under section 8 of Bengal Act VII of 1868, the effect of a certificate of title having been given to the purchaser is merely that the Court is bound to presume conclusively the due service and posting of notices. BAL MOKOOND LALL *v.* JIRJUDHUN ROY

[I. L. R., 9 Calc., 271

S. C. BUL MOKUND LAL *v.* TRIJOODHUN ROY

[11 C. L. R., 466

79. ——— *Material irregularity.—Substantial injury.—Act XI of 1859, ss. 6, 7, 20, 28, 33.—Certificate.—Beng. Act VII of 1868, s. 8.—Per* GARTH, *C. J.*, MITTER, PRINSEP, and PIGOT, *JJ.*—A non-compliance with the provisions

SALE FOR ARREARS OF REVENUE —*continued.*

8. SETTING ASIDE SALE—*continued.*

(*a*) IRREGULARITY—*continued.*

Irregularity in publishing notification of sale—*continued.*

of section 6, Act XI of 1859, is not a mere irregularity, and is not one of those errors in procedure which are intended to be cured by section 8 of Bengal Act VII of 1868. Where a sale for arrears of revenue has been held, and non-compliance with section 6 has been found, such a sale is null and void, as not being a sale under the provisions of Act XI of 1859. *Semble*,—That no positive rule can be laid down permitting an inference to be drawn in all cases that the inadequacy of the price realized by a sale is due to the irregularity of the sale proceedings. *Per* TOTTENHAM, *J.*—Where the date fixed for a sale in the sale notification is less than thirty clear days from the date on which the notification is affixed in the Collector's office, there is a legal defect in the notification, which is not cured by section 8 of Bengal Act VII of 1868; but a sale held under such conditions is not *ipso facto* null and void, but is liable to be annulled only on proof that the person whose land has been sold has sustained injury by reason of the informality in the notification: that with regard to the existence of the particular legal defect found in the present case, the Court was not at liberty to infer that the inadequacy of the price realised by the sale was due to the irregularity of the sale proceedings. LALA MOBARUK LAL *v.* SECRETARY OF STATE FOR INDIA IN COUNCIL

[I. L. R., 11 Calc., 200

80. ——— *Civil Procedure Code, 1859, s. 248.—Act XIX of 1873, s. 3.*—In the case of a sale by the Civil Court of forest land, which formed a grant from Government under a deed describing the property as a "Khalisa Mehal," subject to the payment of revenue after a term of years, the sale not having been proclaimed at the site of the grant,—*Held* that the sale was invalid by reason of irregularity in the publication, and because it was not competent to the Civil Court to sell land chargeable with, although not actually paying, revenue at the time of sale, such Khalisa Mehals being revenue-paying lands within the meaning of section 248 of Act VIII of 1859, and section 3, clause 1, of Act XIX of 1873, and that therefore the sale should have been held by the Collector. SHOWERS *v.* GOBIND DAS . . . **I. L. R., 1 All., 400**

81. ——— **Irregular publication of sale.**—*Act I of 1845, ss. 6 and 14, and Act IX of 1854.*—Sale for arrears of revenue set aside,—the sale advertisement being irregular, first, in not being published in conformity with section 6 of Act I of 1845; and, secondly, the mehals not being sold in their consecutive numbers in the towji, or register of the Collector of the district, as provided by section 14 of that Act. Such an irregularity is not cured by Act IX of 1854, which relates only to technical errors of procedure in the lower Court which are not productive of injury to either party. MAHASHUR SINGH BAHADUR *v.* HURRUCK NARAIN SINGH

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SALE FOR ARREARS OF REVENUE —*continued.*

8. SETTING ASIDE SALE—*continued.*

(*a*) IRREGULARITY—*continued.*

82. ——— **Irregularity in refusing fine for non-attendance, tendered by proprietors.**—*Act XI of 1859.—Procedure.—Beng. Act VII of 1868.—Fine for non-attendance of proprietors before Collector in partition proceedings under Beng. Reg. XIX of 1814.*—In sales held by the Collector for the realisation of Government demands realisable as arrears of revenue, the procedure laid down in Bengal Act VII of 1868 is to be followed. Therefore, where a fine had been imposed for non-attendance of proprietors before a Deputy Collector for the purpose of a partition under Regulation XIX of 1814, and the amount had been ordered to be paid on a given day but was not so paid, but tendered subsequently,—*Held* that the Collector ought not to have sold the property of the defaulters. He was bound to receive the amount tendered. MOHAN RAM JHA *v.* SHIB DUTT SING . **8 B. L. R., 230: 17 W. R., 21**

83. ——— **Irregularity in not accepting highest bid.**—*Obligation of Collector to sell to highest bidder.*—At a sale for default of payment of Government revenue, the Collector is bound to sell to the highest bidder, even though (as in this case) that bidder be the husband of the person in arrear. CORNELL *v.* OODOY TARA CHOWDHRAIN

[8 W. R., 372

(*b*) OTHER GROUNDS.

84. ——— **Fraud.**—*Act XI of 1859, ss. 6, 7, 18.—Ground for setting aside sale.*—In a suit to set aside a sale for arrears of Government revenue held on the 26th March 1879, it was alleged as grounds for seting the sale aside (1) that the arrears had been paid into the Collector's treasury on the previous day and a receipt granted for them, and that, according to the custom which had prevailed in the Collectorate of the district on payment of arrears being so made, the property had always been exempted from sale; (2) that the notices issued under sections 6 and 7 of Act XI of 1859 were not served according to law; and (3) that the purchaser at the sale had dissuaded other persons from bidding as alleged. *Held*, that the sale was valid as no order had been made by the Collector in writing exempting the property from sale under section 18 of Act XI of 1859, mere payment of arrears into the treasury without an order under section 18 not having in itself the effect of exempting the property from sale. *Held*, also, that the object of the notification under section 7 of Act XI of 1859 being to give notice to the ryots not to pay rent to defaulting zemindars, non-service of such notification could not be a ground for invalidating the title of the auction-purchaser; and that inasmuch as the irregularity in the service of notice under section 6 of Act XI of 1859 was not taken in the grounds of an appeal which had been presented to the Commissioner, it could not be urged in a regular suit as a ground for setting aside the sale. *Held*, further, that it was no fraud for persons at a sale for

SALE FOR ARREARS OF REVENUE. —*continued.*

8. SETTING ASIDE SALE—*continued.*

(*b*) OTHER GROUNDS—*continued.*

Fraud—*continued.*

arrears of revenue to combine not to bid against each other. See *Bal Mokoond Lall* v. *Jirjudhun Roy, I. L. R., 9 Calc., 271 : 11 C. L. R., 466.* GOBIND CHUNDRA GANGOPADHYA *v.* SHERAJUNNISSA BIBI **[13 C. L. R., 1**

85. ——————— *Act X of 1876. s. 4.—Jurisdiction of Civil Court.—Fraud of officers conducting sale.*—Section 4, clause (*c*) of Act X of 1876, excepts from the jurisdiction of the Civil Court, claims to set aside, on account of irregularity, mistake, or any other ground except fraud, sales for arrears of land revenue. *Quære,*—Whether the exception of fraud in the above enactment is confined to fraud on the part of officers conducting sales for arrears of land revenue. BALKRISHNA VASUDEV *v.* MADHAVRAV NARAYAN . **I. L. R., 5 Bom., 73**

86. ——————— *Act XI of 1859, s. 33.*—Section 33 of Act XI of 1859 should not be read as meaning that under *no possible circumstances* can a suit be brought to set aside a sale on the ground of fraud. AMIRUNNESSA KHATOON *v.* SECRETARY OF STATE FOR INDIA IN COUNCIL **[I. L. R., 10 Calc., 63**

S. C. AMIRUNNESSA KHATOON *v.* BROWNE **[13 C. L. R., 131**

87. ——————— *Beng. Act VII of 1868.—Sale improperly conducted.*—In a suit by a mortgagee for possession of the mortgaged property which had been sold under Bengal Act VII of 1868, where plaintiff alleged that the sale was brought about by fraudulent withholding of the rents, and that the mortgagor had purchased it benami,—*Held* that, where a sale has been held under the provisions of Bengal Act VII of 1868, but improperly and irregularly, it can only be questioned by a suit brought within proper time and against proper parties. RAJ LUKHEE DASSEE *v.* PEARUN BIBEE . **23 W. R., 82**

88. ——— **Sale where no arrears due.** —*Bonâ fide purchase,*—The sale of an estate for arrears of revenue where no such arrears exist is null and void, even though it is regularly conducted and the purchase is made *bonâ fide.* SREEMUNT LALL GHOSE *v.* SHAMA SOONDUREE DASSEE **[12 W. R., 276**

RAM GOBIND ROY *v.* KUSHUFFUDOZA **[15 W. R., 141**

See BAIJNATH SAHU *v.* LALLA SITAL PRASAD **[2 B. L. R., F. B., 1 : 10 W. R., F. B., 66**

89. ——————— *Act XI of 1859.* —Where there has been a sale under Act XI of 1859 for arrears of revenue, but it is found that no revenue is actually due to Government, the sale must be set aside as not coming within the provisions of the Act. MANGINA KHATUN *v.* COLLECTOR OF JESSORE . **3 B. L. R., Ap., 144: 12 W. R., 311**

SALE FOR ARREARS OF REVENUE —*continued.*

8. SETTING ASIDE SALE—*continued.*

(*b*) OTHER GROUNDS—*continued.*

Sale where no arrears due—*continued.*

90. ——————— *Suit to set aside sale.—Sanction of Commissioner.*—A suit to set aside a sale for arrears of revenue on the ground that no arrears were due may be brought without previous sanction of the Commissioner. THAKOOR CHURN ROY *v.* COLLECTOR OF 24-PERGUNNAHS **[13 W. R., 336**

91. ——————— *Act XI of 1859, s 5.—Act XI of 1838.—Suit to set aside sale.—Costs of partition.—Sanction of Board of Revenue. —Reng. Reg. XIX of 1814.*—On 12th June 1867 some of the proprietors of an estate applied to the Collector for a partition under Regulation XIX of 1814. On the same day the Collector issued a notice to all the shareholders, including the plaintiffs in this suit, calling upon them to come in within one month and show such cause and offer such objections, &c., as they should think fit. It did not appear that the plaintiffs did come in or did anything upon this. Similar applications were made by other shareholders. On the 19th August 1867 the Collector drew out a tabular statement, purporting to be in pursuance of section 4, Regulation XIX of 1814. In it was a column giving the shares into which the expenses of the partition were to be divided. On the same day a notice was issued to the proprietors, ordering in them to pay their respective quotas of the expenses accordingly. It was said by the defendants that the apportionment was confirmed by the Commissioner on the 20th January 1868. On the 6th March 1868 it was ordered by the Collector that a proclamation should be issued in accordance with paragraph 4 of section 5 of Act XI of 1859, directing the plaintiffs, as defaulters in two sums of R252-3-2 and R9-9-6, to pay the Government revenue. On the 28th March such proclamation was issued accordingly. Subsequently one of the plaintiffs came in, and offered to pay all that was then due and outstanding. His application was rejected, and on the same day, the 8th April, the sale proceeded, and the whole interest of the plaintiffs was sold for R16,900. The plaintiffs appealed to the Commissioner, but their appeal was dismissed. The plaintiffs therefore brought a suit against the purchasers and the Collector for the recovery of the property and for cancelment of the sale. *Held* that the sale was void. There was no arrear of Government revenue justifying a sale under Acts XI of 1838 and XI of 1859, section 5. There could be no arrear until demand after sanction by the Board of Revenue and by the Lieutenant-Governor of the estimate of expenses prepared by the Collector and fixed by the Commissioner. The Board must give its sanction in each case, and the defendants failed to show that it had done so. But even if the Commissioner had power finally to determine the amount and date of payment, it was not shown that he had done so, or supposing that he had, that any fresh demand had been made upon the parties liable. HAR GOPAL DAS *v.* RAM GOLAM SAHI **[5 B. L. R., 135: 13 W. R., 381**

SALE FOR ARREARS OF REVENUE —*continued.*

8. SETTING ASIDE SALE—*continued.*

(*b*) OTHER GROUNDS—*continued.*

92. ——— **Unauthorised sale by Collector.**—*Want of sanction.—Subsequent confirmation.—Accounts.—Costs.*—The sale by a Collector of a whole talook in one lot for arrears of revenue, without specific authority previously conferred by the Board of Revenue, was held to be an act unauthorised by the general rules and principles of the Regulations, and not rendered valid by the subsequent authorised confirmation of it by the Board, and by the appropriation of the surplus proceeds of the money by the defaulting proprietor. The proprietor's acquiescence in a sale made, as he believed, by the authority of the Board of Revenue, did not give legal efficacy to a sale altogether void for the want of such authority, or bar his claim to annul the sale on that ground. The Courts below, without entering into any investigation of the profits made by the purchaser during his occupation of the estate, assumed that he had reimbursed himself the amount of the purchase-money and interest out of the profits of the estate. The Privy Council, however, saw no ground for such an assumption, and directed that an account should be taken of the principal and interest due to the purchaser in respect of the purchase-money paid by him, and also of the net profits made by him out of the estate during his occupation; and that on payment to him of whatever may appear due to him on taking such account, possession of the talook should be delivered to the proprietor. The Privy Council further, acquitting the purchaser of all blame in the transaction, reversed so much of the decrees of the Courts below as condemned him in costs, and ordered each party to bear his own costs in all the Courts. MITTERJEET SINGH *v.* HEIRS OF THE WIDOW OF JUSWUNT SINGH **[6 W. R., P. C., 15 : 3 Moore's I. A., 42**

93. ——— **Benami purchase for defaulting proprietors.**—*Beng. Reg. XI of 1822.—Void or illegal sale.*—Under Regulation XI of 1822 a benami purchase for defaulting proprietors at a sale for arrears of revenue was not *ipso facto* illegal and void. KALEEDOSS MOOKERJEE *v.* MOTHOORANATH BANERJEE . . . . **5 W. R., 154**

94. ——— **Fraudulent purchase by judgment-debtor.**—*Act XI of 1859.—Right of decree-holder.*—In a suit to recover possession of a share of an estate on the ground of purchase at a sale in execution, which share was alleged to have been knocked down by the Collector to another party in an execution sale under Act XI of 1859, where it was found that the plaintiff's purchase had not been *bonâ fide*, the right, title, and interest of the decree-holder having been previously purchased benami by the judgment-debtor himself,—*Held* that the real purchaser was the judgment-debtor, and that the holder of the rent-decree could properly sell either the estate or the said right, title, and interest. LALLA JUGGESSUR SAHOY *v.* GOPAL LALL. . . **15 W. R., 54**

95. ——— **Failure of consideration.**—*Suit to set aside sale and recover purchase-money on the ground that subject of sale was alluvial land and practically non-existent.*—An estate does not necessarily mean land but may denote julkur, phulkur, or bunkur rights, and even where land has been entirely washed away there still remains the right to possession of any alluvion that may subsequently reappear on the same site, which right may, in accordance with the Privy Council decision in *Lopez* v. *Muddun Mohun Thakoor, 13 Moore's I. A., 467*, be sold as an estate. A suit, therefore, by a purchaser of such an estate to have the sale set aside and recover his purchase-money, on the ground that the subject of his purchase was non-existent at the time of sale, and had since remained so, was held to be not maintainable. GOVERNMENT *v.* RADHAY SINGH **[20 W. R., 117**

96. ——— **Award of compensation to purchaser.**—*Sale set side under Beng. Reg. I of 1821.*—A sale in 1802 of lands for arrears of Government revenue was set aside by the mofussil and sudder commissions constituted under Bengal Regulation I of 1821, although no suit was brought to annul the sale until 1821; and the decision was affirmed by the Judicial Committee. But the sale having taken place by direction of the Government, and there being no fraud on the part of the purchaser, the Judicial Committee, under clause 2, section 4 of Regulation I of 1821, awarded the purchaser compensation to be paid by the Government. ISHUREE PERSAD NARAIN SINGH *v.* LAL CHUTTERPUT SINGH. **3 Moore's I. A., 100**

S. C. DEEP NARAIN SINGH *v.* LAL CHUTTERPUT SINGH . . . . **6 W. R., P. C., 27**

9. MISCELLANEOUS CASES.

97. ——— **Act XI of 1859, s. 5.**—*Effect of notification under Act.—Attachment.*—A notification issued under section 5, Act XI of 1859, is simply a public call on the debtor to pay his debt by a fixed date; it does not operate as an attachment by the Civil Court. NURKOO RAM *v.* RAMJOORAWUN SINGH . . . . . **9 W. R., 481**

98. ——— **Transfer of tenure from one Collectorate to another.**—*Payment of revenue.—Notice of transfer.*—If a tenure is transferred from one Collectorate to another, and the holder of the tenure, after receiving notice of the transfer, continues to pay his revenue into the former Collectorate, he is not entitled to take credit for such payment. But if he pays before notice and obtains a receipt, such receipt is a quittance as against Government. THAKOOR CHURN ROY *v.* COLLECTOR OF 24-PERGUNNAHS . . . . . **13 W. R., 336**

99. ——— **Act XI of 1859, s. 31.**—*Recorded proprietor, Representative of.—Execution of decree.—Purchaser in execution of decree.—Revenue sale.—Deposit.—Assignee.*—Section 31 of Act XI of

SALE FOR ARREARS OF REVENUE —*continued.*

9. MISCELLANEOUS CASES—*continued.*

Act XI of 1859, s. 31—*continued.*

1859 must be read strictly. An assignee of the recorded proprietors is not their representative within the meaning of that section, and the Collector is justified in refusing to pay to such assignee, claiming on his own behalf, money held in deposit on account of the recorded proprietors. SECRETARY OF STATE FOR INDIA IN COUNCIL *v.* MARJUM HOSEIN KHAN [I. L. R., 11 Calc., 359

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I. L. R., 8 Calc., 79, 690
21 W. R., 349
I. L. R., 12 Calc., 299
I. L. R., 10 Bom., 400

See CASES UNDER MORTGAGE—SALE OF MORTGAGED PROPERTY.

See CASES UNDER ONUS PROBANDI—SALE IN EXECUTION OF DECREE.

See PLEADER—PURCHASE OF DECREES BY PLEADER . 4 B. L. R., A. C., 181

See POSSESSION—NATURE OF POSSESSION.
[I. L. R., 4 Calc., 216

See PRE-EMPTION—RIGHT OF PRE-EMPTION . I. L. R., 1 All., 272, 277
[6 N. W., 243, 272
7 N. W., 97, 281
I. L. R., 2 All., 850
I. L. R., 3 All., 112, 827
15 W. R., 455

See RIGHT OF OCCUPANCY—TRANSFER OF RIGHT . I. L. R., 1 All., 353, 547
[I. L. R., 4 Calc., 925
[22 W. R., 169
I. L. R., 2 All., 451.

SALE IN EXECUTION OF DECREE—*continued.*

See CASES UNDER RIGHT OF SUIT—SALE IN EXECUTION OF DECREE.

See TRANSFER OF CIVIL CASE—LETTERS PATENT, HIGH COURT, CL. 13.
[7 B. L. R., 305

See TRANSFER OF PROPERTY.
[I. L. R., 1 Bom., 500

See ZEMINDAR, RIGHTS OF—
[2 Agra, Pt. II, 202, 204
I. L. R., 3 All., 797

1. PERSON SELLING PROPERTY OF WHICH HE IS NOT, BUT AFTERWARDS BECOMES, OWNER.

1. ——— **Obligation to make good the sale out of subsequently-acquired interest.**—*Vendor and purchaser.*—The doctrine—that where a person sells property of which he is not the owner, but of which he afterwards becomes the owner, he is bound to make good the sale to the purchaser out of his subsequently-acquired interest—does not apply to a case where the sale was made through the Court at the instance of an execution-creditor, and was, therefore, compulsory. ALUKMONEE DABEE *v.* BANEE MADHUB CHUCKERBUTTY
[I. L. R., 4 Calc., 677: 3 C. L. R., 473

2. OBJECTION TO SALE.

2. ——— **Dispossession of third party in execution.**—*Resistance or obstruction by stranger on delivery to auction-purchaser.—Civil Procedure Code, 1859, s. 269.*—There was no provision in the Civil Procedure Code, 1877, similar to that contained in section 269 of Act VIII of 1859, which enabled the Court executing a decree to inquire into a complaint made by a person other than the defendant, on the ground of dispossession in the delivery of possession to the purchaser of immoveable property sold in execution of a decree; and, therefore, the only remedy of a person so dispossessed was by regular suit. *A.*, a decree-holder, purchased certain property belonging to *B.*, his judgment-debtor, at a sale in execution of his decree, and delivery of possession to him was ordered. A stranger to the suit thereupon presented a petition to the Court executing the decree, setting up a title to a moiety of the property in question, and prayed for an investigation into his right, and for recovery of possession, on the ground that he had been dispossessed by *A.* *Held* that the application could not be maintained. IN THE MATTER OF HARASATOOLLAH *v.* BROJONATH GHOSE
[I. L. R., 3 Calc., 729: 1 C. L. R., 517

This omission is now rectified, and under the Civil Procedure Code, 1882, the Court has power to make an inquiry on the application of a third party dispossessed in execution.

3. ——— **Decree, Impeachment of, by a stranger as fraudulent.**—*Civil Procedure Code (Act XIV of 1882), s. 287.*—In the execution of

SALE IN EXECUTION OF DECREE—*continued.*

2. OBJECTION TO SALE—*continued.*

Decree, Impeachment of, by a stranger as fraudulent—*continued.*

a decree ordering the sale of immoveable property, it is not competent for the Court to refuse to sell it because a stranger to the suit in which such decree was obtained, who is in possession of such property, impeaches the decree as having been obtained by fraud; the course open to him, if he wishes stay of execution, being to file a suit and obtain an injuction for that purpose. PURSHOTTAM VITHAL *v.* PURSHOTTAM ISWAR . . I. L. R., 8 Bom., 532

3. STAY OF SALE.

4. ——— **Stay of sale in regard to a particular property.**—*Other property of judgment-debtor.*—To save a particular property from sale, a judgment-detor must show the value and condition of other properties in her possession, and the Judge must consider how and by what arrangement such a disposal of different portions of such property may be made so as to avoid the sale of the property already attached. DEB KUMARI BIBEE *v.* RAM LALL MOOKERJEE . 3 B. L. R., Ap., 107: 12 W. R., 66

5. ——— **Stay of sale pending administration suit.**—*Mortgage-decree.—Right of secured creditor.*—In execution of a decree on a mortgage-bond executed by the father of the judgment-debtors, since deceased, which decree directed that the mortgage lien should be enforced, first, by sale of the property specifically mortgaged; and, secondly, if the debt remained unsatisfied by the sale of the other property in the possession of the judgment-debtors, the judgment-creditor proceeded to have the property sold. After issue of the sale notification one of the judgment-debtors applied for stay of the sale, on the ground that an administration suit was pending with respect to the property of his father, the mortgagor, and also asked that a receiver be appointed and arrangements made for paying off the mortgage-debt and saving the property from sale. *Held* that the Court was wrong in passing such order, inasmuch as there were no reasonable grounds why a a secured creditor should be debarred from enforcing his security pending the administration suit. KRISTOMOHINY DOSSEE *v* BAMA CHURN NAG CHOWDRY
[I. L. R., 7 Calc., 733: 9 C. L. R., 344

4. IMMOVEABLE PROPERTY.

6. ——— **Interest in decree against mortgaged property.**—*Civil Procedure Code, 1859, s. 259.—Sale of decree.—Interest in immoveable property.*—A decree for the sale of mortgaged property was attached and sold in execution of a decree. *Held* that the interest in immoveable property thereunder conveyed to the purchaser was immoveable property within the meaning of section 259 of Act VIII of 1859, and that a certificate of sale ought to have been granted to the purchaser. HARI GOVIND JOSHI *v.* RAMCHANDRA PANDURANG JOSHI
[9 Bom., 64

SALE IN EXECUTION OF DECREE—*continued.*

4. IMMOVEABLE PROPERTY—*continued.*

Interest in decree against mortgaged property—*continued.*

7. ——— *Decree creating charge on land.—Interest in immoveable property.*—The sale of a decree charging land for its satisfaction in the course of execution proceedings against the judgment-creditor is a sale of an interest in immoveable property. *Held* that the provisions of the Code of Civil Procedure relating to sales of immoveable property will apply to such sale. BHAWANI KUAR *v.* GHULAB RAI . . **I. L. R., 1 All., 348**

MODKOONISSA *v.* DEWAN ALI MISTREE **[4 W. R., Mis., 22**

5. PURCHASERS, RIGHTS OF—

(*a*) GENERALLY.

8. ——— **What passes by sale.**—*Sale under money-decree.—Right, title, and interest of judgment-debtor.*—Nothing passes to the auction-purchaser at a sale in execution of a money-decree but the right, title, and interest of the judgment-debtor at the time of the sale. ARHE RAM *v.* NAND KISHORE . . . . **I. L. R., 1 All., 236**

KHUB CHAND *v.* KALIAN DAS **[I. L. R., 1 All., 240**

BARTON *v.* BRIJONATH SURMAH . **3 W. R., 65**

RAM ONOOGROHO SINGH *v.* MONTORUN **[6 W. R., 223**

SETH OODEY KURRUN *v.* CHAIT RAM **[2 Agra, 125**

JYKISHOON SOOKUL *v.* SHUNKUR SOOKUL **[3 Agra, 168**

ZALIM *v.* CHOONEE LALL . . **3 Agra, 194**

BHUKAN BHAIBAVA *v.* BHAIJI PRAG **[1 Bom., 19**

9. ——— *Sale under Bom. Reg. IV of 1827.—Right, title, and interest of judgment-debtor.*—All that passed under a Court's sale under Bombay Regulation IV of 1827 was the right, title, and interest of the judgment-debtor whose property was proclaimed for sale. KUSHABA BIN SANKROJI *v.* PITAMBARDHARI . . **12 Bom., 15**

10. ——— *Property sold with specification.—Rights of judgment-debtor.*—Though there is a specification of the subject of sale at the time of sale, yet it is not the property specified, but only the right of the judgment-debtor therein, that is offered for sale and is conveyed, there appearing no provisions in the Procedure Code to contemplate the sale or transfer of anything more than the right and interest of the judgment-debtor; and the auction-purchaser at a sale in execution acquires by the express terms of the conveyance to him, not the presumed title of the person in possession, or the apparent title in the Collector's books, but the right, title, and interest of the judgment-debtor in the property sold. MAHOMED BUKSH *v.* MAHOMED HOSSEIN **[3 Agra, 171: Agra, F. B., Ed. 1874, 145**

See BALUK DOSS *v.* NIMAYE CHUNDER SIRCAR **[17 W. R., 511**

11. ——— *Sale of ryot's interest.—Want of zemindar's consent to alienate.*—An auction-purchaser of a ryot's right and interest in his house in a village could not acquire more title than could have been transferred by private sale, and therefore if by the village custom the ryot cannot alienate the house with the zemindar's consent, and such consent has not been obtained, the sale in execution conveys no rights in it to the purchaser. SHIB LALL *v.* LOCHUN SINGH . **3 Agra, Rev., 7**

12. ——— *Sale of specified share.—Property coming to debtor before sale.*—When there was a sale of a specified share belonging to the judgment-debtor,—*Held* that the auction-purchaser was not entitled to claim property which had before sale descended to the judgment-debtor. AZADEE *v.* AJMEERE KOONWER . **1 Agra, 282**

13. ——— *Interest in purchase-money.—Civil Procedure Code, 1877, s. 266.—Property not subject to attachment and sale.*—The purchaser at a sale in execution of a decree of the right or interest which the vendor of immoveable property has in the purchase-money, where it has been agreed that the same shall be paid on the execution of the conveyance, takes nothing by his purchase, such interest not being subject to attachment and sale under section 266, Civil Procedure Code, 1877. AHMAD-UDDIN KHAN *v.* MAJLIS RAI **[I. L. R., 3 All., 12**

14. ——— *Right to mesne profits.—Civil Procedure Code (Act VIII of 1859), s. 259.—Certificate of sale.*—The possession, with mesne profits, of land comprised in a zur-i-peshgi lease of the year 1851, was decreed to the zur-i-peshgidars in 1860; and litigation as to their rights under the lease was carried on till 1874, when, after their deaths, it ended in favour of their representatives. In 1869 one of the parties to that litigation obtained a decree for money against the zur-i-peshgidars; and in 1874, in execution of this decree, all the right, title, and interest of the representatives of the latter in the lease of 1851 was sold to a third party. *Held* (reversing the decision of the High Court) that the right to the mesne profits awarded by the decree of 1860 did not pass by the sale, but remained in the representatives. GANESH LALL TEWARI *v.* SHAMNARAIN . . **I. L. R., 6 Calc., 213**

15. ——— *Life-interest in property of testator.*—A life-interest in the residue of the real and personal property of a testator, after

SALE IN EXECUTION OF DECREE—*continued.*

5. PURCHASERS, RIGHTS OF—*continued.*

(a) GENERALLY—*continued.*

What passes by sale—*continued.*

all the charges upon it have been satisfied and provided for, and after a full administration has taken place of the assets for the purpose of discharging these several dispositions, cannot be sold under an execution issued in the Supreme Court against the property of the testator. The sale therefore passes nothing to the purchaser. TOKAI SHEROB *v.* DAUOD MULLICK FUREEDOON BEGLAR

[4 W. R., P. C., 87 : 6 Moore's I. A., 510

16. ——————— *Sale of legacy under writ against executor.*—A seizure and sale by the Sheriff of the amount of a legacy under a writ against the executor, declared invalid in the absence of proof of payment extinguishing the legatee's interest. LAZAR *v.* COLLA RAGAVA CHETTY

[5 W. R., P. C., 126 : 2 Moore's I. A., 80

17. ——————— *Right and interest of proprietor of resumed revenue-paying estate.*—By a sale in execution of the rights and interests of a judgment-debtor as recorded proprietor of a Government resumed revenue-paying estate, released rent-free lands lying in the estate do not pass to the purchaser. DOL GOBINDMONY DEBIA *v.* IMDAD ALI . . . . . 5 W. R., 170

18. ——————— *"Right, title, and interest" of a judgment-debtor in a partly-executed decree.—Possession of land attached under Beng. Reg. V of 1812, s. 26.*—A decree of the year 1843 awarded to persons, afterwards represented by the respondents, the possession of a moiety of a talook, which had been since 1837, and remained till 1866, under attachment by the Collector in virtue of an order made under Regulation V of 1812. The Court which granted the decree, intending to execute it, approved the proceedings of an Ameen purporting to put the decree-holders into constructive possession of a certain number of mouzahs of the talook. In 1850 the appellants, in execution of a decree for money obtained by them against the respondents, purchased at a sale, amongst other things, their "right, title, and interest" in the decree of 1843. *Held* (affirming the judgment of the High Court) that possession of the mouzah having been delivered, so far as it could be delivered, considering the attachment to which the talook containing these mouzahs was subject, the decree of 1843 had been so far executed; and that what was acquired by the appellants at the execution sale was only the unexecuted portion of the decree of 1843. GRISHCHUNDER CHUCKERBUTTY *v.* JIBANESWARI DABIA. GRISHCHUNDER CHUCKERBUTTY *v.* BISESWARI DEBIA

[I. L. R., 6 Calc., 243 : 7 C. L. R., 420

19. ——————— *Sale of rights of deceased debtor whose representatives hold certificate of administration.*—In cases where the right of inheritance really vests, the purchaser of the rights of a deceased judgment-debtor, whose representatives hold under a certificate under Act XXVII of 1860, does not acquire the entire estate, but acquires it subject to all legal and equitable rights of inheritance. SHAM COOMAR ROY *v.* JUTTUN BIBEE

[14 W. R., 448

RAJKRISTO SINGH *v.* BUNGSHEE MOHUN

[14 W. R., 448, note

20. ——————— *Sale of zemindari rights.—Building appurtenant to zemindari rights.*—The "rights and interests" of a zemindar in a certain village were sold in execution of a decree. At the time of the sale a certain building was his property *quâ* zemindar. *Held* that, in the absence of proof that such building was excluded from sale, the sale of his "rights and interests" in the village passed such building to the auction-purchaser. ABU HASAN *v.* RAMZAN ALI . I. L. R., 4 All., 381

21. ——————— *Sale of house and lands to different purchasers.—Decree-holder, Purchase of land by, and sale of house to, third person.*—Where a decree-holder who had attached certain land and a house upon it caused the land to be sold in execution and purchased it, and then caused the house to be sold to a third party,—*Held* that he had purchased the land on which the house stood, subject to the right of the person who bought the house to have it continued there. MOOKTA SOONDUREE CHOWDHRAIN *v.* MUTHOORANATH GHOSE . . . . . 22 W. R., 209

22. ——————— *Sale of property with incumbrances.—Right, title, and interest of debtor.*—The purchaser at a Court's sale buys only the right, title, and interest of the debtor, burdened with all valid liens such as a previous sanmortgage. *Mathuradas Ranchoddas* v. *Kalka Khushal, 7 Bom., A. C., 24;* and *Chintaman Bhaskar* v. *Shivram Hari, 9 Bom., 304,* followed. RANCHODDAS DAYALDAS *v.* RANCHODDAS NANABHAI

[I. L. R., 1 Bom., 581

23. ——————— *Interest adverse to judgment-debtor.—Effect of sale.—Incumbrances by debtor after attachment.*—Under an execution sale the purchaser, notwithstanding that he acquires merely the right, title, and interest of the judgment-debtor, acquires that title, by operation of law, adversely to the judgment-debtor, and freed from all the alienations and incumbrances effected by him after the attachment of the property sold. DINENDRONATH SANNIAL *v.* RAMKUMAR GHOSE. TARAKCHANDRA BHUTTACHARJEE *v.* BAIKANTNATH SANNIAL . I. L. R., 7 Calc., 107 : 10 C. L. R., 281

[L. R., 8 I. A., 65

BHUGOBAN CHUNDER DOSS *v.* LALLA THAKOOR PERSHAD . . . W. R., 1864, 359

24. ——————— *Sale free of decree-holder's interest.—Reservation of rights.*—When

SALE IN EXECUTION OF DECREE—*continued.*

5. PURCHASERS, RIGHTS OF—*continued.*

(a) GENERALLY—*continued.*

What passes by sale—*continued.*

a judgment-debtor's property is sold at the instance of the judgment-creditor, the sale, whether directed by the decree or not, must be a sale free of the judgment-creditor's rights in the property, unless these are reserved. DOOLEE CHUND *v.* OOMDA BEGUM . . . . . 24 W. R., 263

See DULLAB SIRKAR *v.* KRISHNA KUMAR BAKSH [3 B. L. R., 407 : 12 W. R., 303

25. ——— *Prior right of former purchaser at unconfirmed sale.—Laches.*—The purchaser at a Court's sale buys only the then existing right, title, and interest of the judgment-debtor, and therefore ordinarily takes, subject to the prior right, contingent on confirmation, of a former purchaser, though such former purchase be confirmed subsequently to his own. *Quære,*—Whether the case might not be different if the delay in the confirmation of the former purchase were accompanied by great laches on the part of the first purchaser, or by other special circumstances. KONAPA BIN MAHADAPA *v.* JANARDAN SUKDEV . . 11 Bom., 193

26. ——— Effect of sale.—*Right of purchaser as compared with purchaser by private sale.—Right as against charges on estate sold.*—A purchaser at a judicial sale is in a position different from that of a mere representative of the old proprietor, or of one who comes in by a voluntary sale made by the latter. A judicial sale transfers to the purchaser the property of the judgment-debtor against the debtor's will, and places the purchaser in a higher position than that which the judgment-debtor, by any private alienation, could confer on him. Such a purchaser is competent to defend his possession and title by showing that the charge which it is sought to establish against the estate is fraudulent and collusive, and therefore void. OOMRAO SINGH *v.* SHIMBOO NATH . 2 N. W., 38

27. ——— *Purchase subject to decree for sale.—Incumbrance.*—A decree-holder having attached certain property in the execution of a decree, *R.* appeared as an objector. The decree-holder was referred to a civil suit, and obtained a decree for the sale of the property in satisfaction of the former judgment-debt. *N.* then sued the judgment-debtor for the return of certain alleged consideration-money and obtained a decree, in execution of which he brought to sale and became purchaser of the same property of which the sale had been decreed as above mentioned. *Held* that *N.* could only purchase the property subject to the decree for sale, and that the transactions subsequent to that decree had no effect to shake it off. NIRUNJUN RAI *v.* RUJJOO RAI . . 5 N. W., 166

See SOORAJ BUKSH *v.* RAMJEEAWUN [4 N. W., 5

28. ——— *Fraudulent alienations before decree.*—An auction-purchaser can question the fraudulent acts and alienations of the old proprietor in fraud of the decree. BAICHOO *v.* HOWARD . . . . . 3 Agra, 15

DEWAN ROY *v.* RIDDELL . 9 W. R., 521

29. ——— *Fraudulent award, Right of purchaser to contradict.*—The *locum tenens* of a purchaser at a sale in execution of a decree is not bound by an award in fraud of the decree to which the judgment-debtors were parties. ALFATUN *v.* RAO KARAN SINGH . . 7 N. W., 362

30. ——— *Right of purchaser to set aside deeds.*—There is no authority for the proposition that the purchaser at a sale in execution of a decree, of the right, title, and interest of the judgment-debtor, acquires by that purchase not merely the right, title, and interest of the judgment-debtor, but any right which the judgment-creditor might have to set aside or question the validity of any deed which had been previously made, even it might be by the judgment-debtor himself. LALLA RAM SURUN LALL *v.* LOKEBAS KOOER [18 W. R., 39

31. ——— *Right to set aside putni.—Mortgage.—Covenant not to alienate.*—*A.* gave a mortgage to *B.* of certain property as a security for money lent; and covenanted not to alienate the property by gift, ijara, putni, or otherwise, by which loss might be caused to the existing actual assets of the property. *A.* subsequently granted a putni to *C.* *B.* obtained a decree against *A.* for the amount of the loan, and the property was sold in default of payment. *D.* was the purchaser at the auction sale. *Held* that *D.* could maintain his suit against *C.* to set aside the putni and for possession. BRAJARAJ KISORI DASI *v.* MOHAMMED SALEM . 1 B. L. R., A. C., 152

S. C. BROJO KISHOREE DOSSIA *v.* MAHOMED SULEEM . . . . . 10 W. R., 151

(b) EASEMENTS.

32. ——— *Right to easements.*—The rule that the right to easements goes with the property when sold by the owner himself, applies also when the property is sold by the Court in execution of a decree against him. HUREE MADHUB LAHIREE *v.* HEM CHUNDER GOSSAMEE [22 W. R., 522

(c) EMBLEMENTS.

33. ——— *Mortgage, Sale under.—Right to emblements.*—On the 14th of July 1876 *B.* obtained a decree against *D.* directing *D.* to pay the amount advanced upon a mortgage of *D.'s* lands within six months from the date of decree, or, in default of payment, the lands to be sold with

SALE IN EXECUTION OF DECREE—*continued.*

5. PURCHASERS, RIGHTS OF—*continued.*

(*c*) EMBLEMENTS—*continued.*

Effect of sale—*continued.*

liberty to *B.* to bid at the sale. Default having been made, the lands were sold on the 21st of June 1877, and *B.* became the purchaser. At the time of the sale the lands were in the occupation of *D.'s* tenants under an agreement to give to *D.* a moiety of the crops. On the 11th December 1877 *P.*, another judgment-creditor of *D.*, attached the crops on those lands which had been cut and stored by *D.'s* tenants since the date of the sale. *Held* that by the sale to *B.* all right, title, and interest of *D.*, including his right to the moiety of the crops in the hands of his tenants, passed to *B.*, and no residual right remained in *D.* on which *P.'s* execution could operate, the crops not having been actually carried away and appropriated by *D.* LAND MORTGAGE BANK OF INDIA *v.* VISHNU GOVIND PATANKAR [I. L. R., 2 Bom., 670

(*d*) RENT.

34. ——————— *Right to rents.—Rents paid for former proprietor after sale.—Notice of title of purchaser.*—The purchaser of a zemindari sold in execution of a decree is entitled to all the rents accruing due from the date of his purchase; and if the tenants or ryots, after having had notice of his title, choose to continue to pay their rents to, or for the use of, the former proprietor, they do so at their peril, and cannot plead such payments in answer to a suit for rent by the new owner. COLLECTOR OF RAJSHAHYE *v.* HURSOONDERY DEBIA [W. R., 1864, Act X, 6

35. ——————— *Purchaser of share of estate.—Apportionment of rents.*—A purchase at a sale in execution of a decree of one of several estates let in one putni is not bound by any agreement between the putnidar and other zemindars regarding their shares of the entire putni rent. Nor can he claim from the putnidar as his own share of the putni rent a sum bearing the same proportion to the whole putni rent as the sudder jumma bears to the sudder jumma of all the estates let out in putni. In order to obtain redress in such a case, either the putnidar or one or all of the zemindars may have their fixed putni rent properly apportioned among the several zemindars by a civil suit in which all the zemindars should be parties. PORESH NATH ROY *v.* BISHROOP DUTT . . W. R., 1864, Act X, 16

6. ERRORS IN DESCRIPTION OF PROPERTY SOLD.

36. ——— **Subject of purchase.**—*Certificate of sale, Description in.—Obligation of purchaser to see that certificate is correct.*—It is the business of an auction-purchaser to see that the sale certificate conveys to him what he supposes himself to have purchased, and it is not open to him to adduce evidence afterwards to prove that he purchased anything more than the certificate shows him to have taken under the sale. PEAREE MOHUN MOOKERJEE *v.* GOSTO BEHARY DEY . . . 26 W. R., 104

37. ——————— *Certificate of sale more extensive than decree.—Right of purchaser.*—Where a decree-holder obtains an order for the sale of the judgment-debtor's interest in certain property, and, becoming purchaser at the sale which follows, receives a sale certificate going beyond the order, he cannot avail himself of anything in the certificate beyond the order. GOWREE KUMUL BHUTTACHARJEE *v.* SURUT CHUNDER DOSS BISWAS . 22 W. R., 408

38. ——— **Subject of sale.**—*Discrepancy between notification of sale and sale certificate.—Right of purchaser.*—Where on an execution sale there is a discrepancy between the conditions in the notification of what is to be sold, and the certificate of what has been sold, the conditions in the notification are to be taken as of superior authority in dealing with the conflicting claims of innocent third parties whose rights are affected by the variation. In execution of a decree for arrears of rent, an application was made for a sale of the tenure for the arrears of which the decree had been obtained. A notification was issued purporting to be a sale proclamation under Act VIII of 1859, section 249, and in pursuance of that notification the sale of the right, title, and interest of the judgment-debtor took place. *Held* that the tenure did not pass by that sale, notwithstanding that the sale certificate stated it was the tenure itself which had been sold. UMA CHURN SEN *v.* GOBIND CHUNDER MOZUMDAR . 1 C. L. R., 460

39. ——————— *Misdescription of tenure sold.—Right of purchaser.*—*A.*, in satisfaction of a decree against *B.*, caused the sale of a tenure, styling it a jote-jumma. *C.*, the superior zemindar, purchased the tenure as such for R900; but failing to pay the balance of the purchase-money, the tenure with the same description was re-sold, and purchased by *C.* for one rupee. *A.*, on discovering his mistake in having advertised the property as a jote-jumma, when in fact it was a shamilat talook (a more permanent and valuable holding), caused a sale of *B.'s* rights and interests in the shamilat talook, and, having purchased them himself, was put into possession. *A.* then sued for rent under Act X of 1859, when *C.* intervened as in enjoyment of the rent, and *A.'s* suit was dismissed. In a suit by *A.* to establish his right to the shamilat talook,—*Held* that *A.* was entitled to succeed, as he had acted *bonâ fide*, and that *C.* could not be considered an innocent purchaser for a valuable consideration, but a purely speculative purchaser, as he must have known that no such tenure as that which he purchased under the denomination of jote-jumma had any real existence HURO NATH ROY *v.* MOTHOORA NATH ACHARJEE [7 W. R., 4

SALE IN EXECUTION OF DECREE—*continued.*

6. ERRORS IN DESCRIPTION OF PROPERTY SOLD—*continued.*

Subject of sale—*continued.*

40. ——————— *Description in notification of sale.—Sale under mortgage-decree.—Vendor and purchaser.*—The proprietors of a talook and mehal called B, assessed with revenue at R6,800-4-7, to which certain lands which had been gained by alluvion appertained, which lands had been formed into a separate mehal and assessed with revenue at R88, mortgaged it in these terms: "We agree mutually to mortgage the said talook B., and accordingly after mortgaging and hypothecating the whole of the mouzahs original and appended, yielding a jumma of R6,800-4-7, along with all original and appended rights, water and forest produce, high and low lands, cultivated and uncultivated lands, &c., &c., and all and every portion of our proprietary, possessory, and demandable rights, without excepting any right or interest obtained or obtainable, &c." Subsequently, the mehal talook B., "together with original and attached mehal and all the zemindari rights appertaining thereto," was sold in the execution of a decree enforcing the mortgage. The auction-purchaser subsequently contracted to sell the "entire talook B., jumma R6,800-4-7," but afterwards refused to perform the contract, and was sued for its specific performance. The plaint in this suit stated that the subject-matter of the contract was the "entire talook B., jumma R6,800-4-7," and the decree which the purchasers obtained for the specific performance of the contract referred to its subject-matter in similar terms. *Held*, in a suit by the purchasers for the possession of the alluvial mehal, that the terms of the mortgage were sufficiently comprehensive to include that mehal, and it was not intended by the entry of the jumma of mehal B., exclusive of the jumma of the alluvial mehal, to exclude the latter from the mortgage, the entry of the jumma being merely descriptive. Also that the alluvial mehal passed to the auction-purchaser at the auction-sale, under the words "attached mehal." Also that the sale to the plaintiffs passed the alluvial mehal, the words "the entire talook B." being sufficient to include it, the entry of the jumma of mehal B. in the sale contract, plaint, and decree being merely descriptive. GANPATJI *v.* SAADAT ALI [I. L. R., 2 All., 787

7. JOINT PROPERTY.

41. ——————— **Sale of joint property as if separate.**—*Effect of sale.—Right taken by purchaser.*—Under a sale in execution of a decree no property can be sold except that which belongs to the defendants in the suit. Accordingly, if under a decree in a suit against *A.* alone, for a debt for which *B.* is jointly liable, an estate be sold in which *B.* is entitled to an equal share with *A.*, the interest of *A.* alone is acquired by the purchaser. KISHEN CHUNDER GHOSE *v.* ASHOORUN . . Marsh., 647

SREEPERSHAD SURMAH BHUTTACHARJEE *v.* SHUROOPA DOSSIA . . . 9 W. R., 452

SALE IN EXECUTION OF DECREE—*continued.*

7. JOINT PROPERTY—*continued.*

42. ——————— **Sole right of member of joint Hindu family in undivided property.**—*Decree in suit for damages for tort.—Costs.*—There may be a valid sale upon an execution in an action of damages for a tort, of the share of undivided family property to which, if a partition took place, a judgment-debtor would be individually entitled. Such damages in the costs recovered constitute a judgment-debt, in respect of which the judgment-creditor's rights are the same as those upon any other judgment for payment of money. VIRASVAMI GRAMINI *v.* AYYASVAMI GRAMINI . 1 Mad., 471

43. ——————— **Partnership property.**—*Sale-decree against one of several partners in mercantile firm.—Right against partnership property.*—A suit was brought by *C.* against "*A.*, as manager of a firm, and also against the firm itself;" and a decree was passed accordingly. *A.* was one of two partners in the firm. The other partner (*B.*) was not named in the plaint. In execution of the decree, the right, title, and interest of *A.* in a stable, which in fact belonged to the firm, was sold to the plaintiff. In a suit brought by the plaintiff against *B.*, the other partner in the firm, to recover possession of the property,—*Held* that the plaintiff was in no better position than a purchaser at a sale of partnership property made in execution of a decree against a single partner, and that he could not be allowed to effect a partial partition, which the judgment-debtor, to whose right he succeeded, would not have been entitled to obtain. All that the plaintiff could do was to bring a suit for an account and settlement of the whole concerns of the firm, and claim that interest in the property which upon a final settlement might be ascertained to belong to his judgment-debtor. KALYANBHAI *v.* MOTIRAM JAMNADAS . . . 10 Bom., 378

See KESHAV GOPAL GINDE *v.* RAYAPA [12 Bom., 165

44. ——————— **Property of coparceners.**—*Share of one of several coparceners.—Undivided Hindu family.—Unascertained share, Purchase of.*—In the Bombay Presidency the share of one of the coparceners in a Hindu undivided family in the ancestral estate may before partition be seized and sold in execution for the separate debt in his lifetime. The purchaser of such an unascertained share cannot before partition insist on the possession of any particular portion of the undivided family estate, and he takes any such share subject to the prior charges or incumbrances affecting the family estate or that particular share. The attachment of a coparcener's share in the family property under an ordinary money-decree should go against the share, right, title, and interest of the judgment-debtor in such parts of the family property (naming and describing them) as the judgment-creditor can specify, and against his share, right, title, and interest in all other parts of the family property. UDARAM SITARAM *v.* RANU PANDUJI . . 11 Bom., 76

45. ——————— *Attachment and sale of the interest of one of several coparceners in*

SALE IN EXECUTION OF DECREE—*continued.*

7. JOINT PROPERTY—*continued.*

Property of coparceners—*continued.*

the undivided estate.—Mortgage by one coparcener.—In 1848 two members of an undivided family mortgaged some land forming a portion of the ancestral estate. The mortgagee, having obtained a decree in 1856 on his mortgage, caused 20 guntas of the mortgaged land to be attached and sold on account of the right and interest of one of the mortgagors only on 24th January 1871. In a suit brought by the purchaser against a third member of the undivided family, in whose possession the 20 guntas then were, to recover the same from him as being the property of the mortgagor whose right and interest therein had been attached and sold. *Held* that the purchaser could take no more than the share of the coparcener whose interest alone had been attached and sold, though this share might be defined as it existed at the time of the mortgage made by him in 1848. PANDURANG ANANDRAV *v.* BHASKAR SHADASHIV . . . . . 11 Bom., 72

46. ——— Property of joint tenants.—*Share in joint family property.—Family dwelling-house.—Service rents.—Right of purchaser.*—Where the interest of one of several joint tenants in a family dwelling-house and in certain lands let out on service tenure is sold in execution, the purchaser is entitled to joint possession of the dwelling-house with the other shareholders, and also to a right to share in the service rents. *Kowar Bijoi Kesal Roy* v. *Samasundari, B. L. R., Sup. Vol., 172 : 2 W. R., Mis., 30,* commented on. RAJANIKANTH BISWAS *v.* RAM NATH NEOGY . . I. L. R., 10 Calc., 244

See ESHAN CHUNDER BANERJEE *v.* NUND COOMAR BANERJEE . . 8 W. R., 239

47. ——— Property of joint tenure-holders.—*Decree against one of several joint sharers.—Effect of sale under such decree.*—In execution of a decree against one of several joint holders of a tenure, when it is clear that what is sold, and intended to be sold, is the interest of the judgment-debtor only, the sale must be confined to that interest, although the decree-holder might have sold the whole tenure had he taken proper steps to do so, or although the purchaser may have obtained possession of the whole tenure under the sale. But if, however, it appears that the judgment-debtor has been sued as representing the ownership of the whole tenure, and that the sale, although purporting to be of the right, title, and interest of the judgment-debtor only, was intended to be, and in justice and equity ought to operate as, a sale of the tenure, the whole tenure must be considered as having passed by the sale. If the question is doubtful on the face of the proceedings, the Court must look to the substance of the matter, and not to the form or language of the proceedings. JEO LAL SINGH *v.* GUNGA PERSHAD [I. L. R., 10 Calc., 996

48. ——— Property of joint family.—*Suit to set aside sale.—Refund of purchase-money.*—The sale of joint property governed by the Mitakshara law, in execution of a decree made on a debt which was not a necessity, is not valid and cannot be upheld, even though the proceeds are used to satisfy another decree on a bond by which money was borrowed on necessity. The parties suing for annulment of such invalid execution sale are bound to pay the auction-purchasers so much of the debt as would have been a burden on the estate. BHYRO PERSHAD *v.* BASISTO NARAIN PANDEY . . 16 W. R., 31

49. ——— *Personal decree against karnavan of tarwad.—Right of purchaser.*—If, in execution of a money-decree obtained against a person who happens to be the karnavan of a Malabar tarwad, the tarwad property is attached and sold, a purchaser at an auction sale obtains nothing, and in such a case the question whether the purchase was made *bonâ fide* and for value is not material. ELAYACHANIDATHIL KOMBI ACHEN *v.* KENATUMKORA LAKSHMI AMMA . I. L. R., 5 Mad., 201

50. ——— *Right of minor brother.—Sale advertisement under decree against entire property.*—A minor brother's share in a joint family estate was held not liable under a sale advertisement which referred solely to the rights and interests of his elder brothers who did not represent him, though the decree was against the entire property. RAM LOCHUN SHAHA *v.* UNNO POORNA DOSSEE . . . . . 7 W. R., 144

NETYE ROY *v.* ODEET ROY . 10 W. R., 241

51. ——— *Mortgage for legal necessity by managing brother of joint family.—Sale in execution of decree obtained against mortgagor alone.—Rights of purchaser and other member of joint family.—A.,* the managing member of a joint Hindu family governed by the Mitakshara law, for joint family purposes and legal necessity mortgaged the joint family property. The mortgagee subsequently sued *A.* alone upon the mortgage, obtained a decree, and had the property comprised in the mortgage put up for sale. *B.*, a brother of *A.'s* who was no party to the mortgage or to the suit thereon, resisted the purchaser at the auction sale in his endeavour to get possession. In a suit by the purchaser against *B.* and *A.*,—*Held* that *B.'s* interest in the joint family property was unaffected by the decree passed in the mortgage suit, and that the purchaser was not entitled to the relief he sought as regards his share. *Subramaniyayyan* v. *Subramaniyayyan, I. L. R., 5 Mad., 125,* followed. ABILAK ROY *v.* RUBBI ROY . . . . I. L. R., 11 Calc., 293

52. ——— *Purchase by decree-holder of family property in execution of decree against member of joint family.—Effect of sale.—Right of purchaser.*—The property of an undivided Hindu family consisting of brothers having been hypothecated by one brother was sold in execution of a decree obtained against him alone upon the hypothecation bond and purchased by the decree-holder.

SALE IN EXECUTION OF DECREE—*continued.*

7. JOINT PROPERTY—*continued.*

Property of joint family—*continued.*

Held, in a suit by another brother to recover his share of the property sold, that the purchaser was only entitled to the interest of the judgment-debtor in the property sold, and could not be permitted to prove that the debt for which the property was sold was contracted for family purposes by the manager of the family. ARMUGAM *v.* SABAPATHI [I. L. R., 5 Mad., 12

53. ——————— In an undivided Hindu family consisting of two brothers, the elder, while managing the property during the minority of the younger, executed a mortgage of family property in renewal of a former mortgage, executed by his deceased father as security for moneys lent for purposes neither immoral nor illegal. The mortgagee having sued the elder brother upon this mortgage, brought to sale and purchased the property mortgaged. The younger having brought a suit for partition against the elder brother and the alienee of the mortgagee and purchaser at the Court sale,—*Held* (TURNER, *C. J.*, and KERNAN, *J.*, dissenting) that the plaintiff was entitled to recover his share of the property without paying his share of the mortgage-debt, and that it was immaterial whether or not the mortgage was executed to discharge a prior mortgage-debt of the father. SUBRAMANIYAYYAN *v.* SUBRAMANIYAYYAN . . . I. L. R., 5 Mad., 125

54. ——————— *Execution of decree against one brother.—Rights of other brothers.*—*J.* purchased a 10 biswas share in a village, and *Y.* purchased a village, both of which properties were, at the time they were respectively purchased, mortgaged to secure one debt. *J.* died, leaving four sons. After *J.'s* death, *Y.*, whose village had been sold in execution of a decree for the sale of the mortgaged property, sued *R.*, eldest son of *J.*, for rateable contribution in respect of the debt secured by the mortgage, and he obtained a decree for R210 and costs, and directing the 10 biswas share to be sold in satisfaction of the decretal amount. Upon attachment of the share in execution of the decree, the three younger sons of *J.* claimed 7½ biswas as belonging to them, and prayed that the same might be released from attachment. This objection was disallowed as made too late, and the sale in execution of the decree took place. The sale certificate showed that the property sold was "the rights and interests" of *R.* in the 10 biswas. The three younger sons of *J.* subsequently brought a suit to establish their right to 7½ biswas out of the 10, and to set aside the sale to that extent. *Held* that the shares of the plaintiffs were unaffected by the sale, and all that passed thereunder to the purchaser was the 2½ biswas share of the judgment-debtor. The plaintiffs were not bound by the decree in a suit to which they were not parties, and by a sale to which they objected, and in the teeth of the terms of the sale certificate put forward to defeat them. SUNDAR LAL *v.* YAKUB ALI [I. L. R., 6 All., 362

SALE IN EXECUTION OF DECREE—*continued.*

7. JOINT PROPERTY—*continued.*

Property of joint family—*continued.*

55. ——————— *Property of Hindu judgment-debtor.—Right of purchaser.*—*Held* that the property in the hands of a Hindu judgment-debtor was liable to sale in the same way and to the same extent as would the other immoveable property of a Hindu having sons be liable; and that the question of the extent of the right to be sold should have been left an open question for adjudication in a suit between purchasers and other persons claiming right therein. BULDEO SINGH *v.* DWARKA DASS . . . . . 1 Agra, 169

56. ——————— *Sale of ancestral family property in execution of decree against father.—Delay in impeaching sale.*—A son's interest may pass on a sale of ancestral property in execution of a money-decree against his father, but whether it does or does not pass will have to be determined by the circumstances of each case. Delay in bringing proceedings to impeach sales is a matter for consideration in determining what interests pass on the sale. BASO KOER *v.* HURRY DASS [I. L. R., 9 Calc., 495 : 12 C. L. R., 292

57. ——————— *Son's interest in joint ancestral property.—Sale of right, title, and interest of father.*—The sale of the right, title, and interest of a father in ancestral property, in execution of a decree for a debt incurred by him, passes as well the right, title, and interest of the son, where the debt was not incurred for an immoral purpose, and where the purchaser has inquired whether there was a decree against the father, and that the property was properly liable to process and sale in satisfaction of the decree, and has purchased the estate *bonâ fide* under the execution, and *bonâ fide* paid a valuable consideration for it. In determining whether the sale passed the right, title, and interest of the son, the nature of the debt and not the nature of the property must be considered. Unless it can be shown that the debt was incurred for an immoral purpose, the question as to the nature of the debt must be held to be determined against the son by there having been a decree against the father, and his right, title, and interest in the family property. PANDIT HAIT RAM *v.* MULU . . . 7 N. W., 110

58. ——————— *Right of father of joint Hindu Mitakshara family.—Suit by sons to set aside sale.*—In execution of a simple money-decree against the father of the plaintiffs, who were members of a joint Mitakshara family, the right, title, and interest of the judgment-debtor in certain joint immoveable property was sold in 1873, and the purchasers took possession of the whole property. In 1878 the plaintiffs sued to recover their shares in such property, on the ground that only the share of their father had legally passed to the purchasers. *Held* that the plaintiffs were entitled to succeed. BHAGWAT DASSA *v.* GOURI KUNWAR [7 C. L. R., 218

SALE IN EXECUTION OF DECREE—*continued.*

7. JOINT PROPERTY—*continued.*

Property of joint family—*continued.*

59. ——————— *Mortgage by father of Mitakshara family.—Notification of sale.—Right, title, and interest.*—In consideration of an antecedent debt the father of a family governed by Mitakshara law mortgaged a certain mouzah M., portion of the joint family property, by a bond containing the following clause: "I have pledged and mortgaged the right and interest of mouzah M." A decree directing "the estate mortgaged under the bond to be held liable" was obtained upon the mortgage, and in execution thereof, under Act X of 1877, "the right, title, and interest of the judgment-debtor" as set out in the proclamation of sale was sold. *Held* that the mortgagor must be taken to have mortgaged the entire interest of the family, and that, looking at the decree which declared the property mortgaged to be liable, the whole interest had passed under the execution sale to the purchaser. STUDD *v.* BRIJ NUNDUN PERSHAD SINGH

[9 C. L. R., 350

60. ——————— *Attachment of family property in execution of decree against Hindu father.—Sale limited to interest of father on objection by sons.—Right acquired by purchaser.*—In execution of a personal decree obtained against the father of an undivided Hindu family and one of his sons, the creditor attached the family estate. The two remaining sons objected, by petition, to the attachment of their shares, and the Court directed that the sale should be confined to the right, title, and interest of the judgment-debtors. The creditor, having purchased at the sale, obtained possession of the whole estate. *Held* that the right, title, and interest of the father purchased by the creditor was only a right to obtain the share of that judgment-debtor by partition. SUBAYYAN *v* RUPPA NAGASAMI AYYAN . . . . . I. L. R., 6 Mad., 155

61. ——————— *Money-decree against father.—Attachment of sons' shares.*—In a suit brought against the father of a Hindu family and his oldest son, on a bond executed by the former, by which family property was hypothecated as security for the repayment of the debt, a decree was passed against the father only, and his share of the property was declared liable to be sold. In execution of this decree, family property was attached, but, on the intervention of the younger sons, the attachment was set aside as to their shares. In a suit brought by the decree-holder to establish his right to sell the younger sons' shares in satisfaction of the decree against their father,—*Held* that, so far as the younger sons were concerned, the decree must be treated as a decree for money against the father, and that all that could be sold in execution of the decree against the father was the share of the father. UMAMESWARA *v* SINGAPERUMAL . . . I. L. R., 8 Mad., 376

62. ——————— *Impartible zemindari.—Money-decree against zemindar.—Attachment and sale of estate.—Suit by son to recover after father's death.—Right of purchaser.*—In execution of a money-decree obtained against the holder of an impartible zemindari, the creditor attached certain immoveable property—portion of the zemindari—which he described as the property of the debtor. This was sold by the Court and purchased by *L.* A suit having been brought by the son of the judgment-debtor after his father's death to recover the property from *L.*,—*Held* that all that *L.* acquired was the life-interest of the judgment-debtor in the property, and therefore the plaintiff was entitled to recover. SIVAGANGA *v.* LAKSHMANA

[I. L. R., 9 Mad., 188

63. ——————— *Joint Hindu family.—Sale of ancestral estate in execution of decree against father.—Effect of sale on son's rights and interests.*—When a decree has been made against the father and manager of a joint Hindu family in reference to a transaction by which he has professed to charge or sell the joint ancestral property, and a sale has taken place in execution of such decree of the joint ancestral property, without any limitation as to the rights and interests sold, the rights and interests of all the coparceners are to be assumed to have passed to the purchaser, and they are bound by the sale, unless and until they establish that the debt incurred by the father, and in respect of which the decree was obtained against him, was a debt incurred for immoral purposes of the kind mentioned by *Yajnavalkya*, chapter II, section 48, and *Manu*, chapter VIII, sloka 159, and one which it would not be their pious duty as sons to discharge. If, however, the decree, from the form of the suit, the character of the debt recovered by it, and its terms, is to be interpreted as a decree against the father alone and personal to himself, and all that is put up and sold thereunder in execution is his right and interest in the joint ancestral estate, then the auction-purchaser acquires no more than that right and interest,—*i.e.*, the right to demand partition to the extent of the father's share. In this last-mentioned case, the coparceners can successfully resist any attempt on the part of the auction-purchaser to obtain possession of the whole of the joint ancestral estate, or, if he obtains possession, may maintain a suit for ejectment to the extent of their shares upon the basis of the terms of the decree obtained against the father, and the limited nature of the rights passed by the sale thereunder. *Girdharee Lall* v. *Kantoo Lall, 14 B. L. R., 187; Deendyal Lall* v. *Jugdeep Narain Singh, I. L. R., 3 Calc., 198; Suraj Bunsi Koer* v. *Sheo Persad Singh, I. L. R., 5 Calc., 148; Bissessur Lall Sahoo* v. *Luchmessur Singh, L. R., 6 I. A., 233; Muttayan Chetti* v. *Sangili Vira Pandia Chinnatombiar, I. L. R., 6 Mad., 1; Hardi Narain Sahu* v. *Rooder Perkash Misser, I. L. R., 10 Calc., 626; Nanomi Babuasin* v. *Modun Mohun, I. L. R., 13 Calc., 21; Ram Narain Lal* v. *Bhawani Prasad, I. L. R., 3 All., 443; Gaura* v. *Nanak Chand, Weekly Notes, All., 1883, p. 194; and Weekly Notes, All., 1884, p. 23; Appovier* v.

SALE IN EXECUTION OF DECREE—*continued.*

7. JOINT PROPERTY—*continued.*

Property of joint family—*continued.*

Rama Subba Aiyan, 11 Moore's I. A., 75; Phul Chand v. *Man Singh, I. L. R., 4 All., 309; Chamaili Kuar* v. *Ram Prasad, I. L. R., 2 All., 267;* and *Rama Nand Singh* v. *Gobind Singh, I. L. R., 5 All., 384,* referred to. BASA MAL *v.* MAHARAJ SINGH

[I. L. R., 8 All., 205

64. ——————— *Son's liability for father's debt.—Sale of ancestral property.—Bonâ fide purchaser.*—By the sale of ancestral property in execution of a mere money-decree against the father for his separate debt, only the right, title, and interest of the father pass to the purchaser and nothing more, and this holds good whether the purchaser is a stranger or the decree-holder himself. A purchaser at a Court sale cannot set up the title of a *bonâ fide* purchaser for value without notice. *Lakhmichand Walchand* v. *Kastur Bechar, 9 Bom., 60;* and *Sobhagchand Gulabchand* v. *Bhaichand, I. L. R., 6 Bom., 192,* followed. BHIKAJI RAMCHANDRA OKE *v.* YASHVANTRAV SHRIPAT KHOPKAR

[I. L. R., 8 Bom., 489

65. ——————— *Mitakshara law.—Alienation, voluntary and involuntary, by the members of a family governed by the Mitakshara law.*—*A.*, a Hindu governed by the Mitakshara law, after the attachment of a property, part of his ancestral estate, to which he and his minor son *B* were jointly entitled as members of a joint Hindu family, conveyed by a deed of gift the whole of his interest in the ancestral property, including the property under attachment, to *B*. Five days after the execution of the deed of gift, the property was sold in execution of the decree of the attaching creditor, *C.*, and was purchased by *C.* at such sale. Ten days after the sale, *A.* instituted proceedings, under section 256 of Act VIII of 1859, to set it aside on the ground of irregularity. These proceedings were afterwards continued in the name of *A.*, but virtually on behalf of the minor *B.*, under the control and direction of the Collector, who had taken charge of his estate, and appointed a manager under Act XL of 1858. These proceedings terminated in 1874 by the application to set aside the sale being dismissed, and the sale was therefore confirmed, and *C.* took possession of the property. In 1877 a suit was instituted on behalf of *B.*, by the manager appointed by the Collector, against *C.* and *A.* to recover possession of the property, on the ground (1) that when it was sold it was not the property of *A.*, the judgment-debtor; and (2) that the property of a joint Hindu family could not be sold or alienated by, or taken in execution of, a decree against a single member of that family. *Held* (1) that the fact that the plaintiff, through his guardian, had actively intervened in the proceedings under section 256 of Act VIII of 1859, was no bar to the institution of the present suit on his behalf; (2) that *C.* at the sale purchased the interest, whatever it was, of *A.* only, and was entitled to have it ascertained and allotted to him on partition; and (3) that although under the Mitakshara law a member of a joint family cannot, or may not, be able to alienate his share or interest in the joint family estate, yet such share or interest can be taken in execution and sold by the holder of a decree against him. COLLECTOR OF MONGHYR *v.* HURDAI NARAIN SHAHAI

[I. L. R., 5 Calc., 425 : 5 C. L. R., 112

66. ——————— *Son's interest in ancestral property.—Death of son before sale.*—Where the son died between attachment and sale, the judgment-creditor was held to have no property in what he had attached, so as to entitle him to sell it in execution of his decree. GOOR PERSHAD *v.* SHEODEEN . . . . . 4 N. W., 137

67. ——————— *Right of purchaser.—Sale of reversionary interest.*—*A.*, a Hindu, was possessed of an undivided moiety in certain property, and was also entitled to a reversionary interest in the other undivided moiety contingent on his surviving his mother. In a suit against *A.*, the Sheriff, under a writ of *fi. fa.*, seized and sold to *B.* the right, title, and interest of *A.* in the premises. In an *ex parte* suit by *B.*, asking for a declaration that he was entitled to the contingent reversionary interest of *A.*, as well as to his present possessory right, MACPHERSON, *J.*, gave a decree for the present possessory right, but refused to make any decree as to the contingent reversionary interest of *A.* KISTO DHONE GANGOOLY *v.* RABUTTY DOSSEE

[1 Ind. Jur., N. S., 324

68. ——————— *Interest of co-widows in estate undivided.*—The co-widows of one and the same husband take a joint interest in one undivided estate. *Semble,*—The interest of one or two such widows cannot be sold in execution of decree. KATHAPERUMAL *v.* VENKABAI

[I. L. R., 2 Mad., 194

69. ——————— *Right of purchaser under joint decree.—Error in certificate.*—Where a joint decree for contribution which had been passed against a Hindu widow and the reversioner was executed against the latter as the sole surviving judgment-debtor, by the sale of his rights and interests in the property, the joint property was held to have been passed even though the sale certificate omitted the word "property." CHOWDHRY ZUHOORUL HUQ *v.* GOOROO CHURN ROY

[15 W. R., 329

8. MORTGAGED PROPERTY.

70. ——————— **Mortgagor, Interest of.**—*Sale under money-decree.—Sale under decree enforcing mortgage.*—There are substantial differences between a sale in execution for a money-decree and a sale under a decree ordering a sale to enforce a mortgage. In the former case the Court proposes to sell whatever interest in the property would, under any

SALE IN EXECUTION OF DECREE—*continued.*

8. MORTGAGED PROPERTY—*continued.*

Mortgagor, Interest of—*continued.*

circumstances, be available to creditors at the date of the attachment; in the latter case, whatever interest the mortgagor was, under any circumstances, competant to create, and did create at the time of the mortgage. PONNAPPA PILLAI *v.* PAPPUVAYYANGAR [I. L. R., 4 Mad., 1

71. ——— Interest taken by purchaser.—Where the rights and interests of a judgment-debtor are sold in execution, the purchaser takes the land to which they relate subject to such mortgages and leases as may be existing. OOJAGUR ROY *v.* RAM KHELAWAN SINGH . 10 W. R., 384

72. ——— *Purchaser of mortgaged property, Rights of.—Right to set aside incumbrances.*—A purchaser of property sold under a decree in favour of a mortgagee cannot claim to set aside, as prejudicial to his rights, a ticca pottah granted by the mortgagee when those rights were not in existence. It cannot be maintained that the purchaser of property sold under a decree in favour of a mortgagee takes the property free from such lease or farm as the owner might have found to be expedient or convenient, provided the value of the property was not impaired and the operation of the mortgagee's lien not impeded. BANKE PERSHAD *v.* REET BHUNJUN SINGH . . 10 W. R., 325

73. ——— *Conditional sale executed before sale in execution, but after mortgagee's decree.*—A purchaser under a decree for sale obtained by a mortgagee under a simple mortgage does not purchase subject to a conditional sale executed by the mortgagor after the prior mortgagee had obtained a decree of sale, but before the property was actually sold. RAJNARAIN SINGH *v.* SHEERA MEAN . . . . . 7 W. R., 67

74. ——— *Nature of mortgagee's security.—Sale by mortgagee.—Rights of subsequent mortgagee.—Civil Procedure Code, 1859, s. 259.*—The security to which a mortgagee becomes entitled under the ordinary form of mortgage in the mofussil is the right to sell the entire estate of the mortgagor as the same existed at the date of the mortgage, and he cannot be deprived of this security by any subsequent charges on the property or prior unregistered charges which the mortgagor may create or have created. When he brings the property to sale, the sale is an out-and-out sale of the estate of the debtor, and the purchaser takes the property subject only to those incumbrances which were in existence at that date, though such of the subsequent incumbrancers as may, at the time of the sale, have taken out execution, may have a right to satisfy their claims from the surplus proceeds of the sale. In applying section 259 of the Code of Civil Procedure to cases of the above description, the words, "the right, title, and interest of the defendant in the property sold," must be understood as meaning the right, title, and interest which the decree ordered to be sold,—*i. e.*, the right, title, and interest which the judgment-debtor had in the property at the time of the mortgage. KASANDAS LALDAS *v.* PRANJIVAN ASHARAM [7 Bom., A. C., 146

BROJO KISHOREE DOSSIA *v.* MAHOMED SULEEM [10 W. R., 151

S. C. BRAJARAJ KISORI DASI *v.* MOHAMMED SALEM . . 1 B. L. R., A. C., 152

75. ——— *Right to redeem.*—Where a decree-holder sells a mortgagor's rights and interests in property already mortgaged and declared liable to sale in liquidation of the debt for which it was mortgaged, the purchaser purchases merely the mortgagor's right to redeem. LALLA JOOGUL KISHORE LALL *v.* BHUKHA CHOWDHRY [9 W. R., 244

76. ——— *Right of purchaser.—Rights of respective mortgagees.*—A mortgage made by way of security for money advanced remains a mortgage until the debt is satisfied, and the mortgagee-creditor has every right to sue to obtain a decree and sell that which is held by him as security for his money, without any regard to the proceeding of any other subsequent mortgagee or purchaser. A purchaser at a sale in execution of such a decree under a prior mortgage, as well as the original holder of a prior mortgage, has rights far superior to those of any other mortgagee or purchaser of a subsequent date. A subsequent purchaser, by payment of an earlier mortgage, and obtaining a decree for the money so paid, does not acquire any rights belonging to that mortgage. His payment was a voluntary act, and his decree against his vendor was a personal one for a simple debt, not secured by any security connected with any portion of the land in dispute. DHOREE ROY *v.* BULDEB NARAIN SINGH . . . W. R., 1864, 345

77. ——— Purchase by mortgagee.—*Lien of mortgagee.—Liability of purchaser.—Incumbrances.*—Certain mouzahs were granted in zur-i-peshgi lease by *G.* to plaintiff's ancestor. After *G.'s* death his heir, *F.*, pledged one of the mouzahs, B., with others as collateral security, in a bond in favour of plaintiff, and some years later executed a zur-i-peshgi pottah in favour of defendant, who obtained possession by paying to plaintiff the money due under the first zur-i-peshgi lease. Plaintiff then sued *F.* alone on his bond and obtained a decree, in execution of which he sold a share in B. and purchased it himself. In a suit for possession and to have the superiority of his lien declared over defendant's zur-i-peshgi,—*Held* that plaintiff was not entitled to possession until he paid off the whole of the amount advanced by the defendant to clear off the debt due under the first zur-i-peshgi lease. *Held*, also, that the holder of a subsequent incumbrance, by paying off a prior incumbrance, acquires all the rights of the latter so far as the amount actually paid by him for that purpose is concerned. BEKON SINGH *v.* DEEN DYAL LALL . 24 W. R., 47

SALE IN EXECUTION OF DECREE— *continued.*

8. MORTGAGED PROPERTY—*continued.*

78. ——— Right of purchaser of mortgaged property.—*First and second mortgages.*—Where a mortgagee sues upon his mortgage-bond and his claim is decreed, the decree should be satisfied out of the mortgaged property, and not out of the right, title, and interest which remain in the mortgagor. The purchaser at the execution sale acquires all the interest which passed by the mortgage to the mortgagee, and any interest which remained in the mortgagor,—*i.e.*, his equity of redemption. If there was a second mortgage, all that it could pass from the mortgagor was his equity of redemption, and the decree in a suit on such mortgage could only authorise the sale of the equity of redemption, unless the first mortgagee was made a party, and his mortgage shown to be invalid and the second mortgage to have priority. DOOLAL CHUNDER DEB *v.* GOLUCK MONEE DEBIA **[22 W. R., 360**

79. ——— *Effect of sale.*—*Parties.*—The usual mode, in the mofussil Civil Courts, of selling in mortgage suits "the right, title, and interest" of the mortgagor or his heir, is not correct, if deemed to be his right, title, and interest at the time of the sale. The intention of the Court is to pass to the purchaser the right, title, and interest both of the mortgagor and mortgagee. What passes to the auction-purchaser under the certificate of sale is the right, title, and interest of the mortgagor as it stood when he made the mortgage, and not merely as it stood at the time of the Court sale. One *U.* mortgaged certain immoveable property to *A. R.* (defendant No. 1) for R400 on the 7th May 1865. On the death of *U.*, the mortgagee *A. R.* brought a suit (No. 311 of 1871) against his widow, *K.* (defendant No. 2), but did not make his (*U.'s*) children (who were minors) parties to it. On the 28th July 1871 *A. R.* obtained a decree for R460, being the amount of principal and interest due on his mortgage, with further interest from the date of suit to date of payment. That decree directed satisfaction of the amount due under it out of the mortgaged property if it were not paid by the widow, *K.* (defendant No. 2). *K.* having failed to satisfy the decree, the Court, on the application of *A. R.* (the decree-holder), sold the mortgaged property on the 19th September 1872 for R400 to the brother of *A. R.* On the 7th August 1873 the auction-purchaser obtained a certificate of sale to the effect that he had purchased at the Court sale "the right, title, and interest of *K.*" (the widow) in the mortgaged property. On the 17th August 1874 the auction-purchaser sold the property for R700 to the father of the plaintiff. In 1877 the plaintiff sued *A. R.* (the mortgagee and decree-holder) to recover possession of the property with mesne profits. *U.'s* widow *K.* and children (two sons and a daughter) were defendants in the suit, the plaintiff alleging, in addition to the facts just stated, that these defendants had colluded with the tenants of the property in dispute, and collected the produce thereof. Defendant No. 1 (*A. R.*) denied his liability. The answer of defendants Nos. 2, 3, 4, and 5 (respectively the widow, two sons, and a daughter of *U.*) substantially was that the Court sale did not affect the rights of defendants Nos. 3, 4, and 5, as they had not been parties to the mortgage suit No. 311 of 1871, and that they were entitled to hold the property. The Subordinate Judge awarded the plaintiff's claim, holding that both the sales—*viz.*, the Court sale under the mortgage-decree in suit No. 311 of 1871, and the subsequent private sale by the auction-purchaser—were *bonâ fide* and binding on defendants Nos. 2, 3, 4, and 5, inasmuch as the debt for which the property was sold had been contracted by *U.* This decree was reversed, on appeal, on the ground that the Court sale extended only to the right, title, and interest of *K.* (defendant No. 2) in the mortgaged property, and did not affect the rights of defendants Nos. 3, 4, and 5, who were not parties to it. On appeal to the High Court,—*Held* that the defect in the title of the purchaser (plaintiff) arose from the circumstance that the suit of *A. R.* (No. 311 of 1871) for foreclosure and sale was sufficiently constituted as to parties, both the sales having been found to be unimpeachable in all other respects, and that the defendants Nos. 3, 4, and 5 were only entitled to the same relief which they would have obtained if they had been made parties to that suit—*viz.*, the right of redeeming the property by paying off the mortgage. The High Court accordingly reversed the decree of the District Judge, and directed the defendants Nos. 3, 4, and 5 to pay to the plaintiffs, within six calendar months from date, the sum of R460, with interest on the principal (R400) from date of the institution of suit No. 311 of 1871 until payment. The Court further directed that, in default of payment, the mortgage should be foreclosed, and defendants Nos. 3, 4, and 5 precluded from redeeming the property, which should be delivered up to the plaintiff. ABDULLA SAIBA *v.* ABDULLA **[I. L. R., 5 Bom., 8**

See also SHRINGAPURE *v.* PETHE **[I. L. R., 2 Bom., 662**

80. ——— *Decrees enforcing mortgages.* — *Priority.* — Certain immoveable property was sold on the same day in the execution of two decrees, one of which enforced a charge upon such property created in 1864, and the other a charge created in 1867. *Held* that the purchaser of such property at the sale in the execution of the decree which enforced the earlier charge was entitled to the possession of such property in preference to the purchaser of it at the sale in the execution of the decree which enforced the later charge, notwithstanding the latter had obtained possession of the property in virtue of his purchase. *Ajoodhya Pershad* v. *Moracha Kooer, 25 W. R., 254,* distinguished. JANKI DAS *v.* BADRI NATH . **I. L. R., 2 All., 698**

81. ——— *Right of prior mortgagee.*—On the 31st August 1863 *A.* mortgaged his house to *B.*, who brought a foreclosure suit, and on the 7th July 1866 obtained a decree against *A.* for the sale of the house if the mortgage-debt was

SALE IN EXECUTION OF DECREE—*continued.*

8. MORTGAGED PROPERTY—*continued.*

Right of purchaser of mortgaged property—*continued.*

not paid on or before the 24th March 1868. The debt not having been paid, the house was sold at a Court's sale on the 15th July 1870 and purchased by *C.* In an action brought by the plaintiff to recover possession of the house, on the ground that he had purchased it on the 2nd August 1868 at an execution sale under a common money-decree against *A.*, —*Held* that the plaintiff's sale was subject, not only to the mortgage of 1863, but also to the decree upon it under which the right, title, and interest of the mortgagor *A.* passed in 1870 to *C.*, whose purchase was entitled to preference to the plaintiff's purchase in 1868. RAVJI NARAYAN *v.* KRISHNAJI LAKSHMAN [11 Bom., 139

82. ——— *Sale under mortgage for payment of Government revenue.—Rights of respective purchasers.*—In 1855 a decree for an account was passed in the Supreme Court of Calcutta against *A.*, an executor. *A.* died in 1856, and the suit, which was revived against his representatives, came on for consideration on further directions on 29th August 1866. It was then found that *A.'s* estate was liable for R132,406-11-8, and his representatives were ordered to pay this money into Court. The representatives having made default in payment, a writ of *fieri facias* was issued, under which the property was sold by the Sheriff of Calcutta, and conveyed by him to *B.* on 1st April 1867. Previously to this the representatives of *A.* had, on 11th January 1865, mortgaged the same property, together with other lands, "for the purpose of paying the Government revenue of certain talooks belonging to *A.* deceased;" and the mortgagee having obtained a decree on his mortgage, the property was sold to *C.* under that decree on 30th March 1867. In a suit for possession by *C.* against *B.*,—*Held* that, though the sale to *B.* was made for the express purpose of paying the debts of *A.*, *B.'s* title was not to be preferred to that of *C.*, who claimed under the mortgage of 1865, which was made for the purpose of paying Government revenue; and, *semble*, the result would be the same even if the mortgage of 1865 had not been made for the purpose of paying Government revenue, as it did not appear that the mortgagee, at the date of the mortgage, knew that there were unpaid creditors of *A.*, and that *A.'s* representatives intended to misapply the money so advanced to them. *Greender Chunder Ghose* v. *Mackintosh*, I. L. R., 4 Calc., 897, followed. KASSIMUNNISSA BIBEE *v.* NILRATNA BOSE [I. L. R., 8 Calc., 79 9 C. L. R., 175: 10 C. L. R., 113

83. ——— *Money-decree.—Decree enforcing hypothecation.—Act X of 1877 (Civil Procedure Code), ss. 287, 316.—Act VIII of 1859 (Civil Procedure Code), ss. 249, 259.*—Certain immoveable property was put up for sale, under the provisions of Act X of 1877, in execution of a decree for money, and was purchased by *C.*, with

SALE IN EXECUTION OF DECREE—*continued.*

8. MORTGAGED PROPERTY—*continued.*

Right of purchaser of mortgaged property—*continued.*

notice that *L.* held a decree enforcing a lien on such property. Subsequently *L.* applied for the sale of such property in execution of his decree, and such property was put up for sale in execution of that decree, and was purchased by *S.* *S.* sued, by virtue of such purchase, to recover possession of such property from *C.* *Held* that, inasmuch as under Act X of 1877 what is sold in execution of a decree purports to be the specific property, and as *C.* had purchased the property in suit with notice of the existing lien on it, and subject to its re-sale in execution of the decree in execution of which *S.* had purchased it, what actually was sold in execution of that decree to *S.* was such property, and *S.* was entitled to possession of such property under such sale. Sales under Act VIII of 1859 and Act X of 1877 distinguished. SHEO RATAN LAL *v.* CHOTEY LAL . . I. L. R., 3 All., 647

84. ——— *Unauthorized sale of mortgaged property.—Payment by vendor of mortgage-debt.—Lien of vendee.*—The plaintiff as purchaser at a Court's sale sued to recover land in possession of the defendant. The defendant alleged that he had bought the land from the widow of the previous owner by whom it had been mortgaged, and that he (the defendant) had paid off the mortgage. The previous owner had left a minor son. The lower Courts passed a decree for the plaintiff, on the ground that the sale by the widow to the defendant was invalid, as she had not obtained a certificate of administration to her husband under Act XX of 1864. *Held* that the defendant had a lien upon the land for the amount of the mortgage-debt which he had paid, and that the plaintiff could not set aside the sale to the defendant without refunding the amount secured by the lien. KUVARJI *v.* MOTI HARIDAS [I. L. R., 3 Bom., 234

85. ——— *Sham mortgage.*—In 1861 *J.* mortgaged certain lands to the defendant, who in 1864 sued upon the mortgage, and obtained a decree for sale. The decree remained unexecuted by the defendant. In 1869 the lands were sold in execution of a money-decree against *J.*, and the plaintiff became the purchaser. Thereupon the defendant attached the land in execution of the decree obtained by him in 1864. The Court found that the mortgage of 1861 was not a *bonâ fide* mortgage. In a suit for possession,—*Held* that the plaintiff was entitled to succeed. The decree obtained in 1864, being based upon a colourable mortgage, gave the defendant no claim as against a subsequent *bonâ fide* purchaser for value. What was purchased by the plaintiff at the execution sale in 1869 was the real interest of *J.* in the lands in question, not his interest as diminished by a fictitious derogation arising out of a sham transaction. GOPI WASUDEV *v.* MARKANDE NARAYAN BHAT . . I. L. R., 3 Bom., 30

86. ——— *Suit for rent after execution of mortgage-decree.*—*P.* got a decree

SALE IN EXECUTION OF DECREE—*continued.*

8. MORTGAGED PROPERTY—*continued.*

Right of purchaser of mortgaged property—*continued.*

on a mortgage-bond in the terms of a compromise by *C* and others to the effect that the amount due should be paid by instalments, the property mortgaged remaining hypothecated. Meantime one *M.* got a decree against *C.*, and in execution sold part of the property,—*viz.*, a house,—subject to the lien of *P.*, bought it in herself, and sold it again by private sale to plaintiff, who realised rent for some months. When *M.* was put in possession, *P.* petitioned the Court, objecting, but being referred to a regular suit he executed his original decree, bringing the hypothecated property to sale and bought it himself, without, however, getting possession from the Court till many months later. Plaintiff then sued the tenant of the house in the Small Cause Court for rent, and *P.* intervened as a party to the suit, claiming the rent which had fallen due from the date of his getting possession. *Held* that the plaintiff was not in a position to maintain the suit, his possession having been put an end to by *P.*, whose lien on the property was anterior to the sale under which plaintiff purchased. POORNO CHUNDER BOSE *v.* NOBIN CHUNDER GHOSE [14 W. R., 77

87. ——————— *Sale of decree-holders' rights and interests.—Notice of assignment.*—Where the rights and interests of decree-holders in a decree are sold in execution, the party purchasing *bonâ fide* without any knowledge of a previous assignment of those rights and interests is entitled to the proceeds of the purchased decree free from any trust or obligation in favour of the assignees. NUNHUK SAHOO *v.* JUGGESSUR OOPADHYA [20 W. R., 408

88. ——————— *Notice.*—*G.* borrowed money from *S.* He then borrowed money from *D.*, mortgaging as security the property in suit. After that he borrowed from plaintiffs, executing a bond by which he again mortgaged the same property. Subsequently plaintiffs obtained a decree by which the mortgaged property was declared liable to sale for the amount decreed, sold the property in execution, and purchased it themselves. They were disturbed from possession by defendants in execution of a rent-decree under which they ousted plaintiffs, and got their own names registered as proprietors. Plaintiffs now sued for declaration and enforcement of their rights as purchasers at the above sale. Defendants claimed as purchasers in execution of a money-decree obtained against *G.* by the first creditor, *S.*, alleging that they paid off the money due to the second creditor, *D.*, and were entitled to hold possession, their purchase having been previous to that of the plaintiffs. *Held* that, in purchasing the rights and interests of *G.*, defendants purchased his right to redeem property already subject to two mortgages, and as they purchased with full notice, they could only retain possession by paying off both mortgages. *Held*, also, that plaintiffs purchased not

SALE IN EXECUTION OF DECREE—*continued.*

8. MORTGAGED PROPERTY—*continued.*

Right of purchaser of mortgaged property—*continued.*

merely the equity of redemption, but *G.'s* rights and interests as they were when the mortgage was created, subject to the mortgage held by *D.*, but free from subsequent incumbrances. NARAIN SAHOO *v.* OCHOOT SAHOO . . . . 14 W. R., 233

See WAJED HOSSEIN *v.* HAFEZ AHMED REZAH [17 W. R., 480

89. ——————— *Money-decree.—Mortgage-decree.—Notice.—Civil Procedure Code (Act XIV of 1882), s. 287.*—A creditor obtained two decrees against his debtor, one being a mortgage-decree to enforce his lien on certain property, and the other a simple money-decree. In execution of the second decree the property over which the judgment-creditor had a lien was sold and was purchased by a third person. Subsequently, in execution of the first decree at the instance of the judgment-creditor, this same property was advertised for sale, but on the auction-purchaser objecting, the judgment-creditor brought a suit against him to enforce his lien on the property in the hands of the auction-purchaser. *Held* that it lay on the plaintiff, in order to entitle him to recover in the suit, to show that the defendants purchased with notice of the lien. *Held*, further, that the fact that for some purpose, at some time or other, the judgment-creditor informed the Court of the mortgage, is not evidence of notice on the auction-purchaser. NURSING NARAIN SINGH *v.* ROGHOOBUR SINGH . . . I. L. R., 10 Calc., 609

90. ——————— *Priority.*—The defendant advanced to *A.* four sums of money on four bonds, in each of which certain property was hypothecated. The first two bonds contained a stipulation that, until the debt was discharged, the borrower would not mortgage or sell the property hypothecated. The defendant brought a suit to recover the amounts due on all his bonds, and obtained a simple money-decree, in execution of which he brought the property mentioned above to sale, and became the purchaser. The plaintiff now sued for a re-sale of the property by virtue of a mortgage of the same, duly registered. The last two of the defendants' bonds were executed after the Registration Act of 1864 came into force, but were, however, unregistered. *Held* that if the plaintiff had come in and offered to satisfy so much of the decree obtained by the defendant as related to the first two bonds, he would have been clearly entitled to assert that nothing could pass by the sale in execution of the decree on the other bonds, but the rights of the judgment-debtor, subject to his mortgage; but that as he did not do so, the auction sale, having been made in satisfaction, *inter alia*, of the debts due on the mortgage-bonds containing the condition against alienation, passed the full proprietary right to the defendant. RAJAH RAM *v.* BAINEE MADHO [5 N. W., 81

91. ——————— *Effect of sale.—Estoppel.*—On 10th September 1863 *A.* mortgaged

SALE IN EXECUTION OF DECREE—*continued.*

8. MORTGAGED PROPERTY—*continued.*

Right of purchaser of mortgaged property—*continued.*

a house to *B.*, who registered the deed, but did not obtain possession of the premises. On 2nd July 1868 *A.* mortgaged the same house to *C.*, who registered the mortgage-deed and took possession of the premises. On 10th October 1868 *B.* sued on his mortgage, and obtained a decree against *A.'s* son, who was a minor, and who was represented by his mother as his guardian. She, however, had obtained no certificate of administration under the Minors Act, XX of 1864. On 17th December 1869 the mortgaged property was sold by the Court in execution of *B.'s* decree. The plaintiff bought it, and obtained a certificate of sale. On the plaintiff's attempting to take possession of the property, the defendant, who was *C.'s* widow and heiress, resisted him, and he thereupon sued to recover it. *Held* that the plaintiff was entitled to possession. He stood, at least, in the same position as had been occupied by *B.* before the sale, and *B.*, as prior mortgagee, had a superior title to that of defendant, who claimed under a subsequent deed. Where mortgaged property is sold in execution of a decree in a suit brought upon the mortgage, the interest of the mortgagee, at whose instance the sale is made, is held to pass to the purchaser, and the mortgagee is estopped from disputing that such is the effect of the sale. KHEVRAJ JUSRUP *v.* LINGAYA . . . . . **I. L. R., 5 Bom., 2**

92. ——————— *San-mortgage.—Registration of certificate of sale.—Civil Procedure Code, 1877, s. 287.—Notice.—Warranty of title.*—A buyer of property at an execution sale who registers his certificate of sale does not thereby acquire a title free from the obligation arising from a san-mortgage of previous date. When the Court sells the right, title, and interest of a judgment-debtor in property, it cannot be regarded as selling more than the judgment-debtor himself could honestly sell. He could honestly sell only subject to any equities existing against himself on the property, and if by concealment of a san-mortgage he sold property as free of that charge, he would commit a fraud. The Court cannot be deemed to do that which would be a fraud if done by the judgment-debtor. If, then, the Court sell only the right, title, and interest of the judgment-debtor subject to all existing equities against the property sold, the registration of the Court's conveyance (*viz.*, certificate of sale) cannot enlarge the scope of that conveyance and discharge the property from any unregistered incumbrance which was binding on the judgment-debtor. Per MELVILL, *J.*—In the case of execution sales under section 287 of the Civil Procedure Code (Act X of 1877), notice is given to purchasers that the sale only extends to the right, title, and interest of the judgment-debtor, and that the Court ordering the sale does not warrant the title. This being so, it seems clear that a person who buys an avowedly doubtful title, and pays for it on that understanding, cannot claim to be a purchaser without notice. SOBHAGCHAND GULABCHAND *v.* BHAICHAND . . . **I. L. R., 6 Bom., 193**

SALE IN EXECUTION OF DECREE—*continued.*

8. MORTGAGED PROPERTY—*continued.*

Right of purchaser of mortgaged property—*continued.*

See LAKSHMANDAS SARUPCHAND *v.* DASRAT **[I. L. R., 6 Bom., 168**

and RUPCHAND DAGDUSA *v.* DAVLATRAV VITHALRAV . . . **I. L. R., 6 Bom., 495**

93. ——————— *Mortgagee not in possession.—Registered lease.—Effect of sale in transferring property to purchaser.*—*A.* mortgaged his land to *B.* in 1861, which mortgage was then registered, but the mortgagee did not enter into possession. Subsequently, in 1866, *A.* leased the same land to *C.* That lease was registered, and *C.* entered into possession. In 1867 *B.* obtained a decree upon his mortgage, and in execution attached and sold the mortgaged property. *C.*, who had applied to have this attachment of the land removed and failed in his application, sued to establish his right under the lease and recover possession. *Held* that, under the lease of 1866, he could only take what the mortgagor had to give him, *viz.*, a lease subject to the registered mortgage. Where a decree is obtained upon his mortgage by a mortgagee, and the mortgaged property is sold under the decree for the purpose of paying off the mortgagee, the interest of both mortgagor and mortgagee passes to the purchaser. The mortgagee is estopped from disputing that such is the effect of the sale, so far as his interest is concerned, although the officer of the Court may only have described the sale as one of the right, title, and interest of the mortgagor. It is not the practice in the mofussil to require the mortgagee to convey to the purchaser: the transfer takes place by estoppel. SHESHGIRI SHANBHOG *v.* SALVADOR VAS **[I. L. R., 5 Bom., 5**

94. ——————— *Mortgage without possession.—Right of mortgagee as against the purchaser.—Difference between a mortgage valid as against a private purchaser for valuable consideration and one valid as against a purchaser at a Court sale.—Priority.—Optional registration.*—On the 19th September 1871 the land in dispute was mortgaged by *L.* (defendant No. 1) to the plaintiff for R25. The deed of mortgage was not registered. By it defendant No. 1 agreed to pay interest at the rate of one pice per rupee per mensem, and it was provided that the mortgagee was to remain in possession for a period of twenty-five years in lieu of principal and interest, and that the mortgagor was not to claim the property back, unless he paid the principal and interest that might accrue due in twenty-five years from the date of the bond. On the 8th July 1872 the land was sold in execution of a decree against the father of *L.* and purchased by *B.* (defendant No. 2), who obtained possession under the certificate of sale. In 1874 the plaintiff (the mortgagee) sued *L.* and *B.* for possession of the property. It was contended for *B.* (defendant No. 2) that the mortgage did not bind him, because he was a purchaser for value without notice of the mortgage, and because it was not accompanied with possession. *Held* that, although the

SALE IN EXECUTION OF DECREE—*continued.*

8. MORTGAGED PROPERTY—*continued.*

Right of purchaser of mortgaged property—*continued.*

mortgage to the plaintiff might have been without possession, it would bind the mortgagor himself, and was therefore binding as against defendant No. 2, who purchased at a Court sale under a decree obtained against the mortgagor. A purchaser at such a sale takes only that which the judgment-debtor could himself honestly dispose of. Possession or registration is necessary to validate a mortgage in the Deccan or elsewhere in the Presidency of Bombay (except Gujarat) against a private purchaser for valuable consideration, but not against a purchaser at a Court sale. BAPUJI BALAL *v.* SATYABHAMABAI **[I. L. R., 6 Bom., 490**

See SHIVRAM *v.* GENU . **I. L. R., 6 Bom., 515**

9. DECREES AGAINST REPRESENTATIVES.

95. ——— Liability of legal representative of deceased person.—*Right of bonâ fide purchaser without notice at execution sale.*—A *bonâ fide* purchaser without notice for valuable consideration at an auction sale is, as a general rule, entitled to protection, notwithstanding any irregularity or defect in the proceedings or decree in the suit. But when the decree is against the representative of a deceased person, the purchaser is bound to satisfy himself that the party sued as the representative of the deceased is his legal representative. The legal representative of a deceased person, though not a party to the suit, will be bound by the execution sale, if he either knowingly allowed the suit to be defended by another person claiming to be the legal representative, or if, knowing of the sale, he stood by and allowed the purchaser to pay in the belief that he acquired a good title. *Edalji Hormasji* v. *Mahabu Begum, Special Appeal No. 266 of 1869,* considered. NATHA HARI *v.* JAMNI **[8 Bom., A. C., 37**

96. ——— Decree against widow in representative capacity.—*Right and interest acquired by purchaser.*—A suit was brought against *A.'s* widow upon a bond given by *A.* In execution of the decree obtained against the widow, *A.'s* property was put up and sold. The advertisement of sale in one place said that the property to be sold was the property of the widow, and in another the rights and interests of the debtor. *Held* that the property intended to be sold, and sold, was the rights and interests, not of the widow personally, but of the widow as *A.'s* representative. (*Dissentiente,* CAMPBELL, *J.,* who held that a public sale carried only the rights which were expressed, and not those which ought to have been expressed, in the proclamation of sale.) BUKSH ALI SOWDAGUR *v.* ESSAN CHUNDER MITTER . . . **W. R., F. B., 119**

S. C. ISHAN CHUNDER MITTER *v.* BUKSH ALI SOUDAGUR . . . . **Marsh., 614**

See also COURT OF WARDS *v.* COOMAR RAMAPUT SINGH . . . . **10 B. L. R., 294**

SALE IN EXECUTION OF DECREE—*continued.*

9. DECREES AGAINST REPRESENTATIVES—*continued.*

Decree against widow in representative capacity—*continued.*

S. C. GENERAL MANAGER, RAJ DURBUNGHA *v.* RAMPUT SINGH . **14 Moore's I. A., 605 [17 W. R., 459**

and SOTISH CHUNDER LAHIRY *v.* NILCOMUL LAHIRY . . **I. L. R., 11 Calc., 45**

97 ——— Property sold as right and interest of widow.—*Property wrongly described.*—*Right of deceased debtor.*—*Purchaser, Right acquired by.*—Where in execution of a decree in the presence of the widows of the original debtor, the property in dispute was sold as the right and interest of the widows,—*Held* that the auction-purchaser, under the circumstances of the case, acquired by the purchase the right and interest of the original debtor in the property, though in the sale notification those of the widows were advertised to be sold. TARAKANT BHUTTACHARJEE *v.* LUCKHEE DABEA. TARAKANT BHUTTACHARJEE *v.* WISE . **2 Hay, 8**

98. ——— Interest of persons as representatives.—*Property wrongly described.*—*Civil Procedure Code, 1859, s. 203.*—Where a property is described at the time of an execution sale as the property of judgment-debtors who were sued as mere representatives of a deceased judgment-debtor, *primâ facie* what is sold is the property of the deceased debtor; and even if the decree is in terms as if it were a personal decree, and does not follow the wording of Act VIII of 1859, section 203, yet it must be construed as if it was for the debt of the deceased. LALLA SEETA RAM *v.* RAM BUKSH THAKOOR **[24 W. R., 383**

99. ——— ——— *Contents of application for execution and of notification and proclamation of sale.*—*Sale of interests of minor.*—*Civil Procedure Code, 1859, ss. 212, 249.*—Where an application for execution of a decree omits to give the names of all the parties as required by section 212, Act VIII of 1859, even if it shall appear from other parts of the proceedings who those parties are, the parties named must be understood to be the parties defendants against whom the execution of the decree is sought. Parties present at a sale are not bound to refer to the decree as laid down in *Ishan Chunder Mitter* v. *Buksh Ali Soudagur, Marshall, 614,* nor must they be considered as knowing its contents unless they are stated in the notification of sale. The proclamation and notification under section 249 are intended to inform persons what is to be sold, and to give the names of the parties defendants whose rights and interests in it are to be sold. In the case of a sale in execution of a decree against a party as a representative of a deceased person, the proper course is to give in the description of the property to be sold the name of the defendant against whom the decree was obtained, and, in describing what was to be sold, to say the right, title, and interest of the defendant as the

SALE IN EXECUTION OF DECREE—*continued.*

9. DECREES AGAINST REPRESENTATIVES —*continued.*

Interest of persons as representatives—*—continued.*

representative of the deceased. A guardian has no right or interest in a minor's property, and the Courts ought to be extremely careful with regard to allowing the property of minors to be sold in execution of a decree. The purchaser in this case was held to have acquired under his purchase no title to the property of the minor, the property not having been described as the property of the minor. ABDOOL KURREM *v.* JAUN ALI . . **18 W. R., 56**

100. ——— *Guardian not properly appointed.—Act XX of 1864.—Parties.—Mad. Reg. V of 1804.—Form of decree.*—*J.* (defendant No. 1) brought a suit (No. 374 of 1861) against the plaintiff's father, *G.* On a mortgaged bond, dated the 2nd April 1856, *G.* having died before any decree was passed, his widow (plaintiff's mother) was substituted as defendant, and a decree was made against her *ex parte.* It was, however, set aside after her death on the application of *M.* (defendant No. 2), the sister of *G.*, on the ground of want of due service of process upon *G.* and his widow. *M.* was substituted as defendant in the suit, and a new decree was made in her favour. That decree was reversed, on appeal, by the District Court, which allowed *J.'s* claim. In execution of the decree of the Appellate Court, the mortgaged property was sold and purchased by *J.* for R250. *J.* obtained a certificate of sale headed thus: "*J.*, son of *L.*, plaintiff; *G.*, son of *N.*, deceased, supplement or (substitute) his sister *M.*, defendant;" and it certified that *J.* had purchased "all the right, title, and interest which the said defendant had in the said property." *J.* was put into possession of the property. In 1877 the plaintiff (son of the original mortgagor *G.*) filed the present suit against *J.* and *M.*, alleging that the mortgage-bond on which *J.* had obtained his decree had been forged by *J.*; and contending that the decree and subsequent proceedings under it did not affect his rights, inasmuch as he had not been made a party to them. The prayer in the plaint was that the decree and sale should be set aside, and the property restored to his possession. The defence of *J.* substantially was that the suit and appeal were defended by persons who were proper guardians of the plaintiff, and had been in the management of his property. *M.* did not appear. The Subordinate Judge rejected the plaintiff's claim, holding that *M.* was his guardian and manager of his property in the previous suit and appeal, and that the mortgage-bond was genuine. On appeal that decree was reversed by the District Judge, on the ground that the plaintiff had not been represented in the previous litigation by a guardian duly appointed under Madras Regulation V of 1804, and was no party to it. He accordingly allowed the plaintiff's claim. On second appeal to the High Court,—*Held* that on the death of *G.* the plaintiff was his sole heir; that the equity of redemption in the mortgaged property vested in him; and that the inheritance was wholly unrepresented in the previous litigation, inasmuch as *M* was not appointed guardian of the plaintiff's person or administratrix of his estate, either under Madras Regulation V of 1804, sections 2, 19, 23, or under Act XX of 1864; nor was she appointed his guardian *ad litem* in the mortgage suit. *Ishan Chunder Mitter* v. *Buksh Ali Soudagur, Marsh., 614,* distinguished. JATHA NAIK *v.* VENKTAPA **[I. L. R., 5 Bom., 14**

101. ——— **Representatives of deceased Mahomedan.**—*Sale subject to mortgage.—Power of heirs to alienate.*—The heirs of a deceased Mahomedan mortgaged some property of their ancestor. After the mortgage a judgment-creditor, in respect of a debt due from the estate of their ancestor, attached and sold the mortgaged property in execution of his decree. *Held* that the sale was subject to the mortgage. *Held,* also, that the question with respect to the powers of the heirs, and the rights acquired by the mortgagee and the purchaser under the execution, in a suit between the latter, was to be determined, not by Mahomedan law, but by the principles of "justice, equity, and good conscience." *Semble,*—That even if the Mahomedan law applied, the sale in execution would be subject to the mortgage. CAMPBELL *v.* DELANEY . . . **Marsh., 509**

102. ——— *Purchaser of share of estate, Rights of.—Purchase from some of the heirs.—Absent heir, Reappearance of.*—*B. R.*, a Mahomedan, had incurred debts for repairs to a house of which he owned an 8 annas share, and after his death, his daughter *S.*, who was entitled to a 5 annas share of his estate, and who had taken charge of his property and obtained a certificate under Act XXVII of 1860, directed further repairs to be done to the estate. The debts then incurred by *B. R.* and *S.* not having been paid, the creditor brought a suit against *S.*, as representing her father's estate, to recover them, and having obtained a decree, the house was sold in execution thereof, and purchased by *H.* in May 1874. *B. R.* at his death left also a sister, who was entitled to a 3 annas share of his estate, but who had been for some years absent on a pilgrimage to Mecca. On her return she, in January 1874, sold her interest in the house to *M* In a suit by *M.* against *S.* and *H.* for possession of the share so purchased by him,—*Held* that *S.* did not represent the whole estate of *B. R.*, and the share purchased by the plaintiff did not pass under the execution sale to *H.*; the plaintiff, therefore, was entitled to recover. HENDRY *v.* MUTTY LALL DHUR **[I. L. R., 2 Calc., 395**

103. ——— *Purchase of interest of some of the heirs.—Heir not party to suit.—Right acquired by purchaser.*—*A.*, a Mahomedan,

SALE IN EXECUTION OF DECREE—*continued.*

9. DECREES AGAINST REPRESENTATIVES—*continued.*

Representatives of deceased Mahomedan—*continued.*

died possessed of immoveable property, and leaving a widow, a daughter, and a sister, *B.*, his heiresses according to Mahomedan law. *B.* was entitled to a one-sixth share of an undivided moiety of a certain portion of the property, which was situated in Calcutta. After *A.'s* death, the *L.* Bank sued his daughter and her husband and two of her husband's brothers in a mofussil Court to realise certain mortgage securities executed by *A.* to the Bank, and obtained a decree by consent. Neither the widow, nor *B.*, who was then absent from the country, were parties to this suit. The Bank, in execution of their decree, caused certain property of *A.*, including the undivided moiety of the Calcutta property, to be sold by the Sheriff of Calcutta. The defendant became the purchaser at this sale, and obtained possession of the property. The certificate of sale stated that what was sold was "the right, title, and interest of *A.*, deceased, the ancestor, and of the defendants (naming them), the representatives, in a moiety of a piece of land situate," &c. *B.* afterwards sold and assigned her share in (among other properties) the above-mentioned undivided moiety of the Calcutta property to the plaintiff, who now sued the purchaser at the execution sale to recover the subject of his purchase. *Held* by GARTH, *C. J.*, KEMP and JACKSON, *JJ.* (MARKBY and AINSLIE, *JJ.*, dissenting), that the decree and the execution founded upon it did not affect the share of *B.* in the estate of *A.*, and consequently that the property in question did not pass to the defendant under the sale made by the Sheriff. ASSAMATHEMNESSA BIBEE *v.* LUTCHMEEPUT SINGH . **I. L. R., 4 Calc., 142**

S. C. ASHRUF ALI *v.* LUTCHMIPUT SINGH **[2 C. L. R., 223**

104. ———— *Mahomedan law.*—*Decree against heir of deceased Mahomedan.* —Under Mahomedan law a decree against one heir of a deceased debtor cannot bind the other heirs. A mortgage having been executed by a Mahomedan, a suit was after his death brought against two of his heirs, his sister, who was entitled to a 6 annas share in his property, not having been made a party to the suit. A decree was made by consent, and in execution of that decree the right, title, and interest of the mortgagor were sold. The assignee of the sister then sued the purchaser to recover her 6 annas share without making the original mortgagee a party. *Held* that the mortgagee was not a necessary party to the suit, and that the share of the sister, notwithstanding that the right, title, and interest of the mortgagor had been sold, was not affected by the sale, and that the plaintiff as her assignee was entitled to recover. SITA NATH DASS *v.* LUCHMIPUT SINGH . . . . **11 C. L. R., 268**

105. ———— Mortgage by one of the heirs of deceased.—*Direction in will for payment of debts.—Decree against heirs for debt of ancestor.—Charge on property.*—A testator by his will directed payment of all his debts, and subject thereto devised his property to his heirs. After one of the testator's creditors had obtained a decree against the heirs in their representative capacity, which by its terms was to be satisfied out of the assets left by the testator, one of the heirs mortgaged his share in twelve properties left by the testator. Subsequent to the mortgage, one of the mortgaged properties was sold in execution of the creditor's decree. The mortgagee afterwards brought a suit against the mortgagor and obtained a decree on his mortgage. *Held* that as neither the direction in the will for payment of debts nor the decree in the creditor's suit created a charge on the property of the testator, the property sold in execution of the creditor's decree had been sold subject to the mortgage, and the mortgagee was entitled to execute his decree against that property. *Bazayet Hossein* v. *Dooli Chund, I. L. R., 4 Calc., 402*, distinguished. RAM DHUN DHUR *v.* MOHESH CHUNDER CHOWDHRY . **I. L. R., 9 Calc., 406 : 11 C. L. R., 565**

And *see* cases under MAHOMEDAN LAW—DEBTS.

10. RE-SALES.

106. ———— Defaulting purchaser, Liability of.—*Civil Procedure Code (Act X of 1877), ss. 293, 297, 306, 308.*—The provisions of section 293, Act X of 1877 (Civil Procedure Code), for making a defaulting purchaser at a sale liable for any deficiency on a re-sale, extend to all sales, whether of moveable or immoveable property, and also to re-sales held under sections 297, 306, and 308. RAMDHANI SAHAI *v.* RAJRANI KOOER **[I. L. R., 7 Calc., 337 : 9 C. L. R., 23**

107. ———— Time allowed for payment of purchase-money.—*Civil Procedure Code, 1859, s. 251.—Discretion of officer conducting sale to allow reasonable time for payment of purchase-money.*—The provisions of section 251 of the Civil Procedure Code give the officer conducting a sale of moveable property a discretion to allow the purchase-money to be paid at a reasonable time after the sale has been made. FAREED ALUM *v.* SHEO CHARUN RAM . . . . **4 N. W., 37**

108. ———— *Civil Procedure Code, 1859, s. 254, Computation of period under.*—In computing the fifteen days allowed for payment of the balance of the purchase-money under section 254, Act VIII of 1859, the day of sale was excluded. AMANEE BEGUM *v.* KOORBAN ALI **[3 Agra, 204**

109. ———— Failure of purchaser to pay deposit.—*Civil Procedure Code, 1859, s. 254.—Failure to deposit, Re-sale on.*—According to

SALE IN EXECUTION OF DECREE—*continued.*

10. RE-SALES—*continued.*

Failure of purchaser to pay deposit—*continued.*

section 254, Civil Procedure Code, 1859, the property had to be put up again for sale on the purchaser failing to make deposit; and it was the deposit only which could be forfeited, and not any right which a decree-holder might have under his decree. In the case of a re-sale the judgment-debtor is entitled to credit for the full amount bid for his property at the time of the first sale. JOOBRAJ SINGH *v.* GOUR BUKSH LALL . . . . . 7 W. R., 110

110. ——— Defaulting purchaser.—*Amount leviable from defaulting purchaser.—Interest.—Civil Procedure Code, 1859, s. 254.*—When the proceeds of an eventual sale were less than the price bid by a defaulting purchaser, the difference was leviable from him under section 254, Code of Civil Procedure, but was levied without interest. SOORJ BUKSH SINGH *v.* SREEKISHEN DOSS . 9 W. R., 500

See SOORUJ BUKSH SINGH *v.* SREEKISHEN DOS [6 W. R., Mis., 126

111. ——— *Failure to pay deposit.—Failure to pay balance of purchase-money.—Civil Procedure Code, 1859, s. 253.*—The provisions of section 253, Act VIII of 1859, were held applicable in a case where the re-sale did not forthwith take place on the day of the sale, but on a subsequent date. It was only on failure of a purchaser to pay in the balance of the purchase-money under section 254, and not on failure of the purchaser to make the deposit required by section 253, that the purchaser could be compelled to pay up the difference between the first and second sales. AJOODHYA PERSAD *v.* GOPAL DUTT MISSER . . 17 W. R., 271

112. ——— *Civil Procedure Code, 1877, ss. 293, 294.—Failure to pay deposit.—Re-sale.—Redress against defaulter.—Bidding without permission of Court.—Benami purchase.*—A purchaser of property at a Court sale who fails to pay the deposit (25 per cent. on the purchase-money) directed to be paid by section 306 of the Civil Procedure Code is a defaulting purchaser within the meaning of section 293 of that Code, and liable, as such, to make good any deficiency of price which may happen on a re-sale, and all expenses attending the same. JAVHERBHAI *v.* HARIBHAI [I. L. R., 5 Bom., 575

113. ——— *Civil Procedure Code, 1859, s. 254.*—A purchaser at an execution sale having defaulted to pay in the purchase-money, the property was ordered to be re-sold. Before, however, the re-sale took place, another sale of the same property was effected at the instance of another judgment-creditor, but at a lower price than on the first occasion. *Held* that there was no re-sale such as was contemplated in sections 253 and 254, Act VIII of 1859, and that the first purchaser was not liable for the difference between his bid and the price obtained at the same sale. BISOKHA MOYEE CHOWDHRAIN *v.* SONATUN DOSS . . . . . 16 W. R., 14

SALE IN EXECUTION OF DECREE—*continued.*

10 RE-SALES—*continued.*

Defaulting purchaser—*continued.*

114. ——— *Act VIII of 1859, s. 254.*—In execution of a decree, certain property of the judgment-debtor was attached and put up for sale, and a portion thereof was knocked down to a purchaser for a sum sufficient to satisfy the decree. The purchaser, however, having made default in payment of the purchase-money, the property was again put up for sale, and the portion previously sold was purchased by the decree-holder at a price less than the amount bid for it in the former sale. *Held* that the decree-holder was not debarred by what took place at the former sale from proceeding to satisfy his decree by sale of other portions of the attached property than that originally sold. KHERODA MAYI DASI *v.* GOLAM ABARDARI [13 B. L. R., 114: 21 W. R., 149

115. ——— *Civil Procedure Code, 1859, s. 254.—Held* by PHEAR, *J.* (AINSLIE, *J.*, *dissentiente*), that if for any good reason the auctioneer at an execution sale under the Code of Civil Procedure does not accept as purchaser the person named by the highest bidder as his principal, he cannot make the bidder himself purchaser against his will; he must simply declare that no sale has been effected and re-open the bidding. *Held* by PHEAR, *J.* (AINSLIE, *J.*, dissenting), that where the Judge countersigned the certificate of sale in the following terms, "*H. P.*, having made the purchase for R700, stated that he made the purchase for *D. K.*," he accepted *D. K* as purchaser in *H. P.'s* bid; and that when a second sale became necessary, the difference of price became recoverable from the apparent first purchaser under Act VIII of 1859, section 254, and recourse should first have been had to *D. K.*, who should have been allowed to show cause against an order of payment. HUREE RAM *v.* HUR PERSHAD SINGH [20 W. R., 80

Held (on appeal under the Letters Patent confirming the judgment of PHEAR, *J.*) that the party purchasing at an execution sale under the Civil Procedure Code in the character of an agent cannot be made liable as a principal; and a proceeding upon the contract under section 254 in such a case must be taken against the principal. HUREE RAM *v.* HUR PERSHAD SINGH . . 20 W. R., 397

116. ——— *Civil Procedure Code, 1859, s. 254.*—Where property had been sold under a decree, and the purchaser at the execution sale had made default in paying the purchase-money, the remedy of the judgment-creditor was not limited by section 254 of Act VIII of 1859 to a suit against the defaulting purchaser. He was entitled to recover the balance of his debt from his judgment-debtor, who might perhaps have his remedy against the defaulting purchaser.—ANANDRAV BAPUJI *v.* SHEKH BABA [I. L. R., 2 Bom., 562

117. ——— Re-sale by Collector.—*Suit to set aside sale.*—The plaintiff purchased the right, title, and interest of a judgment-debtor in a certain

SALE IN EXECUTION OF DECREE—*continued.*

10. RE-SALES—*continued.*

Re-sale by Collector—*continued.*

jumma sold in execution of a Small Cause Court decree. Subsequently the same land was sold by the same creditor in execution of another decree obtained in the Collector's Court, and the defendant purchased. In a suit to set aside the second sale,—*Held* that when a tenure has once been sold in execution of a decree of a Civil Court, the Collector's Court has no power to put it up again as the property of the former tenant. SAMIRADDI KHALIFA *v.* HARIS CHANDRA

[3 B. L. R., A. C., 49: 13 W. R., 451, note

WAHID ALI *v.* SADIQ ALI

[12 B. L. R., 487, note: 17 W. R., 417

MOJON MOLLO *v.* DULA GHAZI KULAN

[12 B. L. R., 492, note

PRAN BANDHU SIRKAR *v.* SARBASUNDARI DEBI

[3 B. L. R., A. C., 52, note: 10 W. R., 434

TIRTHANUND THAKOOR *v* PARESMON JHA

[10 B. L. R., 142, note: 13 W. R., 449

DOWLUT GAZI CHOWDHRY *v.* MUNWAR

[12 B. L. R., 485, note: 15 W. R., 341

11, PURCHASERS, TITLE OF—

(*a*) GENERALLY.

118. ——— **Title given by sale.**—*Implied warranty of title.—Caveat emptor.*—In a sale of immoveable property made by a Civil Court in execution of a decree, there is no implied warranty by the execution-creditor of the title of the judgment-debtor, the maxim "*caveat emptor*" applying. DHONDU MATHURADAS NAIK *v.* RAMJI VALAD HANMANTA KAKDA . . . 4 Bom., A. C., 114

KRISHNAPA VALAD SANTU *v.* PANCHAPA VALAD GURPADAPA . . 6 Bom., A. C., 258

JUMMAL ALI *v.* TIRBHEE LALL DOSS

[12 W. R., 41

119. ——— *Principle of "caveat emptor."*—Where a party purchases an estate sold in execution after notice that parties other than the judgment-debtor claim rights and interests in the property, the rule of *caveat emptor* applies. SHAHABOODEEN CHOWDHRY *v.* RAMGUTTY CHUCKERBUTTY . . . . . 9 W. R., 556

120. ——— *Ground for setting aside sale.—Writ of fieri facias.*—A sale by the Sheriff to a *bonâ fide* purchaser for valuable consideration will not be set aside on the ground that the judgment-creditor had communicated with the Sheriff and desired him to stay the sale. The purchaser need not trace back his title beyond the *fi. fa.* KAMINEE (CAMINEE) DOSSEE *v.* GOURMONEY DOSSEE . . . 1 Ind. Jur., N. S., 359

121. ——— *Warranty.*—*Caveat emptor.*—In a sale in the execution of a decree of the rights and interests of a judgment-debtor

SALE IN EXECUTION OF DECREE—*continued.*

11. PURCHASERS, TITLE OF—*continued.*

(*a*) GENERALLY—*continued.*

Title given by sale—*continued.*

in an estate of which he is the recorded proprietor in the revenue registers, it is usual to describe such rights and interests in the sale proceedings as recorded in such registers, but such description does not amount on the part of the decree-holder or the officer conducting the sale to a warranty that such rights and interests are correctly described. Where, therefore, according to the usual practice, the rights and interests of a judgment-debtor in a share of a village of which he was the recorded proprietor in the revenue registers were proclaimed for sale in the execution of a decree and sold, described as recorded, and the sons of the judgment-debtor subsequently sued the auction-purchaser to recover their interests in such share and obtained a decree for such interests, and the auction-purchaser thereupon sued the decree-holder for a refund of the purchase-money proportionate to such interests and for the costs of defending such suit,—*Held*, there being no fraud or misrepresentation on the part of the decree-holder, or anything of an exceptional nature showing an express or implied warranty on his part, that the suit was not maintainable *Neelkunth Sahee* v. *Asmun Matho, 3 N. W., 67,* distinguished. RAM NARAIN SINGH *v.* MAHTAB BIBEE . . I. L. R., 2 All., 828

122. ——— *Caveat emptor.—Suit to recover purchase-money where judgment-debtor is found to have no interest.*—*K.*, the plaintiff purchased a house from *H.* on the 16th March 1870, and conveyed it to his wife by deed of gift on 1st October. In execution of a decree obtained by *G.*, the defendant, in 1269 (1862), against *H.*, the property was attached *K.'s* wife objected under section 246 of Act VIII of 1859, but her objection was disallowed, and the rights and interests of *H.* in the property were sold and purchased by *K.* *K.'s* wife sued to have the sale set aside, and obtained a decree and possession of the house. *K.* then sued *G.* to recover the money paid by him as auction-purchaser under *G.'s* decree. *Held* that the principle of "*caveat emptor*" applied, and the defendant was not responsible for the plaintiff's mistake in purchasing and paying his money for the house without inquiring into or considering the title to it. KELLY *v.* SETH GOBIND DASS

[6 N. W., 168

123. ——— *Suit to recover purchase-money.— Warranty of title.— Caveat emptor.— Right of purchaser.— Civil Procedure Code, 1859, ss. 256, 257.*—The right, title, and interest of *G.* in certain immoveable property was attached and notified for sale in the execution of a money-decree held by *T.* It was also attached and notified for sale in the execution of a money-decree held by *S.* and *R.* The same date was fixed for both sales. The officer conducting the sales first sold the property in execution of *T.'s* decree, and *T.* purchased the property. He then sold the property in execution of the decree held by *S.* and *R.*, and *K.* purchased the property. The Court executing the de-

SALE IN EXECUTION OF DECREE—*continued.*

11. PURCHASERS, TITLE OF—*continued.*

(*a*) GENERALLY—*continued.*

Title given by sale—*continued.*

crees confirmed the sale to *T.*, granting him a sale certificate, and disallowing *K.'s* objection to the confirmation. It also confirmed the sale to *K.*, ordering the purchase-money to be paid to *S.* and *R.*, and disallowing *K.'s* objection to the confirmation; but it refused to grant *K.* a sale certificate, on the ground that, as the sale to *T.* had been confirmed and a sale certificate granted to him, it could not give *K.* possession of the property. In a suit by *K.* against *S.* and *R.* to recover his purchase-money,—*Held*—distinguishing the suit from the cases in which it had been held that, when the right, title, and interest of a judgment-debtor, in a particular property is sold, there is no warranty that he has any right, title, or interest, and therefore the auction-purchaser cannot recover his purchase-money if it turns out that the judgment-debtor had no interest in the property—that the rule of *caveat emptor* did not apply, and the suit was maintainable. The provisions of section 257 of Act VIII of 1859 apply to applications made under section 256 of that Act, and to those only. *Held*, therefore, that inasmuch as *K.* objected to the confirmation of the sale to him on the ground that the Court was not competent to confirm a sale which had by its previous order been nullified, and not on any of the grounds mentioned in section 256 of Act VIII of 1859, *K.* was not precluded by the terms of section 257 of that Act from maintaining his suit. COURT OF WARDS *v.* GAYA PRASAD [I. L. R., 2 All., 108

(*b*) CERTIFICATES OF SALES.

124. ——— Position of purchaser with certificate.—*Certificate of purchase by Registrar.—Conveyance.—Suit for partition.—Declaration of right to share.—Rules of Court, 415, 431.*—The position of a purchaser at a sale in execution of a decree of the High Court after he has obtained a certificate from the Registrar under Rule 415 of the Rules of Court, is that of a person clothed with a right to a conveyance in virtue of a contract; he does not hold, save as regards the parties to the contract of sale, the position of an owner. When the sale is confirmed, the purchaser is entitled to a conveyance, and until he obtains a conveyance the property in the estate purchased does not, having regard to Rule 431, pass to him so as to give him rights as against parties not bound by the decree under which the sale took place. All that passes to him as against the defendant in that suit is an equitable estate and a right to a conveyance of the property; and, therefore, as the estate in the property purchased has not passed, the purchaser is not entitled to maintain a suit for partition. In such a suit he could not on partition give a good conveyance to the parties interested in the estate, nor would he be entitled to a declaration of his share in the property. JOHUR MULL KHOORBA *v.* TARANKISTO DEB . . . . I. L. R., 10 Calc., 252

SALE IN EXECUTION OF DECREE—*continued.*

11. PURCHASERS, TITLE OF—*continued.*

(*b*) CERTIFICATES OF SALE—*continued.*

125. ——— Title of purchaser without certificate.—*Possession.—Unregistered certificate of sale.—Valid title.—Codes of Civil Procedure, Acts VIII of 1859 and XIV of 1882.*—A purchaser of immoveable property at a Court sale under the Civil Procedure Code, Act VIII of 1859, who has been put into possession by the Court, has thereupon a complete title against all persons bound by the decree, notwithstanding that he has no certificate of sale, or one only which has not been registered. *Rajkishen Mookerjee* v. *Radha Madhub Holdar, 21 W. R., 349*, followed. *Quære*,—How far the above ruling will be affected by the language of section 316 of Act XIV of 1882. SHIVRAM NARAYAN *v.* RAVJI SAKHARAM . . . I. L. R., 7 Bom., 254

126. ——— *Suit to recover possession of property purchased.—Semble*,—If it is admitted that the plaintiff purchased immoveable property at a Court sale, he can recover without producing the certificate of sale. SADAGOPA EDINTARA MAHA DESIKA SWAMIAR *v.* JAMUNA BHAI AMMAL . . . I. L. R., 5 Mad., 54

127. ——— Evidence of title of purchaser.—*Sale of immoveable property.—Confirmation of sale.*—The order confirming a sale of immoveable property in execution of a decree is sufficient to pass the title in the property to the purchaser, and its production is sufficient evidence of the purchaser's title. The production of the sale certificate is not essential. *Doorga Narain Sen* v. *Baney Madhub Mozoomdar, I. L. R., 7 Calc., 199*, followed. TARA PRASAD MYTEE *v.* NUND KISHORE GIRI [I. L. R., 9 Calc., 842: 12 C. L. R., 448

128. ——— Completion of title of purchaser.—*Payment of purchase-money and confirmation of sale.—Civil Procedure Code, s. 316.*—Under section 316 of the Civil Procedure Code (Act X of 1877), the title of a purchaser at a Court sale becomes complete upon his payment of the purchase-money and confirmation of the sale by the Court. When the sale is admitted, production of a certificate is not necessary to entitle the purchaser to maintain a suit. *Padu Malhari* v. *Rakhmai, 10 Bom., 435; Lalbhai Lakhmidas* v. *Naval Mir Kamaludin Husen, 12 Bom., 247*; and *Harkisandas Narandas* v. *Rai Ichha, I. L. R., 4 Bom., 155*, distinguished. NAIGAR TIMAPA *v.* BHASKAR PARMAYA [I. L. R., 10 Bom., 444

129. ——— *Sale in execution of decree of Revenue Court.—Delivery of possession.—Act XVIII of 1873 (N.-W. P. Rent Act), s. 76.—Act XII of 1881 (N.-W. P. Rent Act), s. 172.*—Property sold in execution of a decree of a Revenue Court vests in the purchaser on completion of the sale and payment of the full price. In order to perfect his title, it is not necessary that he should obtain a sale certificate or should be

SALE IN EXECUTION OF DECREE—*continued.*

11. PURCHASERS, TITLE OF—*continued.*

(*b*) CERTIFICATES OF SALE—*continued.*

Completion of title of purchaser—*continued.*

put into possession by the Collector. *Held*, therefore, that a suit by a purchaser at a sale in execution of a decree of a Revenue Court for possession of the property was maintainable, although his sale certificate might be an invalid document and the Collector had not put him into possession. MUZAFFAR HUSAIN *v.* ALI HUSAIN . I. L. R., 5 All., 297

130. ——————— *Purchaser at execution sale.—Suit for possession of property.—Proof of title.—Act VIII of 1859, ss. 257, 259.*—*Held* that it was not incumbent on a purchaser at an execution sale under Act VIII of 1859, which was confirmed in his favour under that Act, when suing for possession of the property, to produce a sale certificate, but it was competent for him to prove his purchase *aliunde*. The confirmation of the sale in his favour was *primâ facie* evidence of his title to the property, and was sufficient to pass such title to him, of which a certificate, if afterwards obtained by him, would merely be evidence that the property had so passed. *Doorga Narain Sen* v. *Baney Madhub Mozoomdar, I. L. R., 7 Calc., 199*, referred to. JAGAN NATH *v.* BALDEO [I. L. R., 5 All., 305

KALEE DASS NEOGEE *v.* HUR NATH ROY CHOWDHRY . . . . W. R., 1864, 279

131. ——————— *Purchasers at successive execution sales.—Purchaser at second sale obtaining certificate of sale and possession of property prior to grant of certificate to purchaser at first sale.—Priorities.*—On the 9th December 1876 the plaintiff purchased a house at an auction sale in execution of a decree against the owner, one *S.* The sale was confirmed on the 9th January 1877, but the certificate of sale was not issued until the 16th June 1880. On the 20th January 1880 the defendant purchased the same house at a sale in execution of a money-decree against *S.* That sale was confirmed on the 28th February 1880, and a certificate was issued on 20th March 1880. The defendant got possession from the judgment-debtor in April 1880. The plaintiff now sued for possession. It was contended for the defendant that, having completed his title under the auction sale and obtained possession before the plaintiff had taken out his certificate, he had acquired a better title than the plaintiff. *Held* that the plaintiff was entitled to recover. By his prior purchase he had obtained an equitable interest in the property, although he had not obtained a sale certificate. The defendant therefore purchased subject to the plaintiff's equitable interest; and that title having subsequently been perfected by the issue of the certificate, the plaintiffs were in a position to sue for possession. YESHWANT BABURAV *v.* GOVIND SHANKAR [I. L. R., 10 Bom., 453

SALE IN EXECUTION OF DECREE—*continued.*

11. PURCHASERS, TITLE OF—*continued.*

(*b*) CERTIFICATES OF SALE—*continued.*

132. ——————— **Period from which title of purchaser dates.**—*Date of sale.—Date of confirmation of sale.*—The title of a purchaser at a judicial sale which has been confirmed and been made absolute relates back to, and takes effect from, the date of the sale, and does not commence only on the date of the confirmation of the sale. LUCHMIN NATH *v.* MAHARAJA OF VIZIANAGRAM [7 N. W., 310

133. ——————— *Confirmation of sale.—Liability of purchaser for Government revenue.*—The defendant became a purchaser at an execution sale of a share of certain property, of which the plaintiff held another share partly as zemindar and partly as putnidar. The sale took place in September 1872, but the defendant did not obtain possession until confirmation of the sale in May 1873. Between the date of the sale and the confirmation a considerable sum became due for Government revenue on the whole property, and to prevent its being sold the plaintiff paid the whole of the revenue due. In a suit to recover the proportion due in respect of the share purchased by the defendant,—*Held* that, on confirmation of the sale, the share purchased by the defendant must be considered to have vested in her from the date of the sale; and, therefore, she was liable for the amount of Government revenue in respect of her share which became due between the date of the sale and its confirmation. BHYRUB CHUNDER BUNDOPADHYA *v.* SOUDAMINI DABEE . . . . I. L. R., 2 Calc., 141

134. ——————— *Application for possession.—Period from which right to apply accrues.—Civil Procedure Code, 1859, ss. 263, 264.—Civil Procedure Code, 1877, ss. 318, 319.*—*A.* obtained a money-decree against *B.* on the 25th January 1872, in execution of which property belonging to *B.* was sold on the 9th of September 1874, *A.* himself becoming the purchaser. The sale was confirmed on the 9th of October 1874, but the certificate of sale was not issued till the 23rd of January 1878. *A.* applied for possession on the 2nd of April 1879. *Held* that the right to apply for possession contemplated in sections 263 and 264 of the Civil Procedure Code (Act VIII of 1859 (corresponding with sections 318 and 319 of the Civil Procedure Code (Act X) of 1877) accrued on the date the certificate of sale was issued, and not on that on which the sale was confirmed; and that, therefore, the period of limitation against the purchaser counted from the former date. BASAPA *v.* MARYA [I. L. R., 3 Bom., 433

12. DISTRIBUTION OF SALE-PROCEEDS.

135. ——————— **Civil Procedure Code, 1882, s. 295 (1859, ss. 270, 271).**—*Effect of, on rights by contracts.—Object of procedure under those sections.*—The purport of sections 270 and 271 of Act VIII of 1859 (with which section 295 of

SALE IN EXECUTION OF DECREE—*continued.*

12. DISTRIBUTION OF SALE-PROCEEDS —*continued.*

Civil Procedure Code, 1882, s. 295 (1859, ss. 270, 271)—*continued.*

Act X of 1877 corresponds) was not to alter or limit the rights of parties arising out of a contract, but simply to determine questions between rival decree-holders standing on the same footing, and in respect of whom there is no rule for otherwise determining the mode in which proceeds of property sold in execution shall be distributed. HASOON ABRA BEGUM *v.* JAWADOONNISSA SATOODA KHANDAN [I. L. R., 4 Calc., 29

RAJCHUNDER SHAHA *v.* HUR MOHUN ROY [22 W. R., 98

136. ——— (1859, s. 270).—*Property not sold in execution of decree.*—Section 270 of the Civil Procedure Code did not apply to a case in which property has not been sold in execution of a decree. BISHEN CHUNDER SURMA CHOWDHRY *v.* MUN MOHINEE DABEE . . 8 W. R., 501

BALAJI RAMCHANDRA *v.* GAJANAN BABAJI [11 Bom., 159

137. ——— *Imperfect attachment of immoveable property.—Private alienation after such attachment.—Civil Procedure Code, ss. 274, 276, sch. IV, No. 141.*—A judgment-debtor whose property had been attached in execution of a money-decree, sold the property, and out of the price, paid into Court the amount of the decree, and prayed that the attachment might be removed. While the attachment was subsisting, and prior to the sale, the holders of other money-decrees against the same judgment-debtor preferred applications purporting to be made under section 295 of the Civil Procedure Code, and praying that the proceeds of the sale of the property might be rateably divided between themselves and the attaching creditor. The Court refused to remove the attachment until these creditors had been paid. It was found that the sale by the judgment-debtor was a *bonâ fide* transaction, entered into for valuable consideration. *Held* that, inasmuch as no order for attachment of the property was passed in favour of the decree-holders in the manner provided by section 274 of the Civil Procedure Code, their claims were not entitled to the protection conferred by section 276 against private alienations of property under attachment; that these claims were not enforceable under the attachment which was made; that the sale by the judgment-debtor was valid; and that execution of the decrees could not take place. Also, *per* MAHMOOD, *J.*—While section 295 of the Code gives a special right to judgment-creditors as distinguished from simple creditors, it is an essential condition precedent to the exercise of that right that there should be a sale in execution, and that its result should appear in assets realised by the sale; and therefore, until the sale takes place, no such right can be enforced. *Bishen Chunder Surma Chowdhry* v. *Mun Mohinee Dabee, 8 W. R., 501*, referred to. GANGA DIN *v.* KUSHALI [I. L. R., 7 All., 702

SALE IN EXECUTION OF DECREE—*continued.*

12. DISTRIBUTION OF SALE-PROCEEDS —*continued.*

Civil Procedure Code, 1882, s. 295 (1859, s. 270)—*continued.*

138. ——— *Rateable distribution.—Assets realised "by sale or otherwise."*—The words of section 295 of the Code of Civil Procedure, "assets realised by sale or otherwise in execution of a decree," provide only for a case where, by the process of the Court in execution of a decree, property has become available for distribution amongst judgment-creditors. The words "by sale or otherwise" should be construed as meaning by sale or by other process of execution provided for by the Civil Procedure Code. SEW BUX BOGLA *v.* SHIB CHUNDER SEN . . I. L. R., 13 Calc., 225

139. ——— *"Assets."*—Moneys paid into Court by sale or otherwise in execution of a decree are assets from the moment of their payment into Court, and are available, under section 295 of the Code of Civil Procedure (Act X of 1877), for rateable distribution only amongst decree-holders who have applied for execution prior to that time. VISVANATH MAHESHVAR *v.* VIRCHAND PANACHAND [I. L. R., 6 Bom., 16

140. ——— *Money paid by debtor under arrest in satisfaction of decree.—Assets.*—Money paid by a judgment-debtor under arrest, in satisfaction of the decree against him, are not assets realised by sale or otherwise, under section 295 of the Civil Procedure Code (Act X of 1877). Section 295 of the Civil Procedure Code (Act X of 1877) must be read as if the words "from the property of the judgment-debtor" were inserted after the word "realised." PURSHOTAMDASS TRIBHOVANDASS *v.* MAHANANT SURAJBHARTHI HARIBHARTHI . . . I. L. R., 6 Bom., 588

141. ——— *Execution of decree.—Attachment of property.—Payment into Court of money due under decree.—Assets realised by sale or otherwise.*—*G.* and *C.* held decrees against *B.*, and took out execution of them and the judgment-debtor's property was attached, but no sale took place. The judgment-debtors paid into Court the sum of R1,200 on account of *G.'s* decree. *Held* that *G.* was entitled to the sum of R1,200 paid into Court by the judgment-debtor, and it could not be regarded as assets realised by sale or otherwise in execution of a decree, so as to be rateably divisible between the decree-holders under section 295 of the Civil Procedure Code, inasmuch as it could not be said that there was a realisation from the property of the judgment-debtor. GOPAL DAI *v.* CHUNNI LALL [I. L. R., 8 All., 67

142. ——— *Right of rival decree-holder to show decree of another is barred.*—Where property has been attached in execution of decree, it is competent to a rival decree-holder to show that the attachment should not issue, as the decree under which it issued was barred by lapse of

SALE IN EXECUTION OF DECREE—*continued.*

12. DISTRIBUTION OF SALE-PROCEEDS—*continued.*

Civil Procedure Code, 1882, s. 295 (1859, s. 270)—*continued.*

time; and the Court, if satisfied that the decree is so barred, is competent to see that the decree-holder who took out execution does not share in the distribution of the sale-proceeds. RADHA GOBIND SHAH *v.* OOZEER . . . . **15 W. R., 219**

143. ——————— *Court to adjudicate on conflicting claims.*—The Court having jurisdiction to adjudicate the conflicting claims of attaching creditors is the Court in which the attached money is deposited. WOOMA MOYEE BURMONYA *v.* RAM BUKSH CHETLANGEE . . . **16 W. R., 11**

144. ——————— *Decree of Small Cause Court.—Judge sitting as Small Cause Court and as Subordinate Judge.*—The Judge of a Court of Small Causes sitting in the exercise of his powers as a Subordinate Judge is not one and the same Court but two different Courts. *Held*, therefore, that the holder of a decree made by the Judge of a Small Cause Court in the capacity of Subordinate Judge, who had applied to such Judge acting in that capacity for execution of his decree, was not thereby entitled to share rateably, under section 295 of Act X of 1877, assets subsequently realised by sale in execution of a decree made by such Judge in the capacity of Judge of such Small Cause Court. HIMALAYA BANK *v.* HURST . **I. L. R., 3 All., 710**

145. ——————— *Decree passed by Subordinate Judge.—Decree by same Court in exercise of its Small Cause jurisdiction.—Rateable distribution of assets.*—Certain moveable property was at first attached in execution of a money-decree passed by a Subordinate Judge in his Small Cause jurisdiction, of which a part was afterwards sold. In execution of a money-decree passed by the same Subordinate Judge in his ordinary jurisdiction the remaining property was attached and sold. Prior to the date of this sale the applicant applied for execution of a money-decree passed in his favour by the same Subordinate Judge in his Small Cause jurisdiction, and prayed for rateable distribution of the proceeds along with other decree-holders. *Held* that the application must be allowed. Although a Subordinate Judge invested under Act XIV of 1869, section 28, with Small Cause powers acquires the jurisdiction of two Courts, he does not become the Judge of two Courts, but remains the Judge of a Subordinate Court. MALHARI *v.* NARSO KRISHNA **[I. L. R., 9 Bom., 174**

146. ——————— *Rateable distribution of assets.—Transfer of application for execution.*—Where property attached in execution of a decree of a Munsif's Court is, or becomes, subject to an attachment issued from a Subordinate Judge's Court, the holder of the decree in the Munsif's Court, in order to share rateably in the assets under section 295 of the Code of Civil Procedure, must apply

SALE IN EXECUTION OF DECREE—*continued.*

12. DISTRIBUTION OF SALE-PROCEEDS—*continued.*

Civil Procedure Code, 1882, s. 295 (1859, s. 270)—*continued.*

to the District Court to transfer his application to the Subordinate Court. *Gopeenath Acharjee* v. *Achcha Bibee, I. L. R., 7 Calc., 553*; and *Jetha Madhavji* v. *Najeralli Abhramji, I. L. R., 4 Bom., 472*, approved. MUTTALAGIRI *v.* MUTTAYYAR **[I. L. R., 6 Mad., 357**

147. ——————— *Attachment by more than one judgment-creditor of property of judgment-debtor in Court.—Priority.—Civil Procedure Code (Act X of 1877), s. 272.*—In execution of a decree of a Munsif's Court, the plaintiff attached certain money, the proceeds of decrees which her judgment-debtor had obtained against third parties, then lying in a Small Cause Court to her credit, and subsequently obtained an order from the Munsif directing the same to be paid to her in satisfaction of her decree, which order was duly communicated to the Small Cause Court Judge. Subsequently the defendant, who held another decree against the same judgment-debtor, attached the same sale-proceeds. The Small Cause Court Judge then proceeded, under section 272 of the Civil Procedure Code, to inquire whether the plaintiff was entitled to any priority over the second attaching creditor, and having decided that question in the negative, divided the sale-proceeds rateably between them. In a suit brought by the plaintiff, under the above circumstances, to recover from the defendant the portion of the sale-proceeds so paid to him,—*Held* that section 295 of the Civil Procedure Code had no application, inasmuch as the plaintiff had not applied to the Small Cause Court Judge to execute her decree, and it had never been transferred to that Court for execution; and that the proviso in section 272 is merely intended to mean that any question of title or priority is to be determined by the Court in which or in whose custody the property is, and not by the Court which made the order of attachment. *Held* also that, previous to the order by the Munsif directing the payment to be made to the plaintiff, the Small Cause Court Judge would have had jurisdiction to deal with the question he had tried; but as that order was made prior to the attachment by the defendant, the judgment-debtor had no interest in the money which could be so attached, the effect of that order being to vest the property in the money in the plaintiff, and to take it out of the disposal of the Small Cause Court Judge; and consequently the order for distribution was wrong, and the plaintiff was entitled to the decree she sought. *Quære*,—Whether an order made by a Court under section 272 was intended by the Legislature to be a final order. GOPEE NATH ACHARJEE *v.* ACHCHA BIBEE **[I. L. R., 7 Calc., 553: 9 C. L. R., 395**

148. ——————— *Rateable distribution of assets.—Civil Procedure Code, 1877, s. 266.—Attachment of salary.*—The salary of a karkun, who was employed in the second class Subordinate

SALE IN EXECUTION OF DECREE—*continued.*

12. DISTRIBUTION OF SALE-PROCEEDS —*continued.*

Civil Procedure Code, 1882, s. 295 (1859, s. 270)—*continued.*

Judge's Court of Anklesvar, was attached, in execution of a decree of the first class Subordinate Judge's Court of Surat, by an order issued by the Surat Court, directing the Anklesvar Court to stop and remit every month a moiety of the said karkun's salary to itself (the Surat Court), until satisfaction of the decree. While the decree of the Surat Court was thus in course of execution, another judgment-creditor of the karkun, who had obtained a decree in the Anklesvar Court, applied to it for a rateable distribution of the moiety between himself and the Surat decree-holder, under section 295 of the Civil Procedure Code, Act X of 1877. *Held* that the application was not sustainable, inasmuch as the decree of the Surat Court was being executed by itself, and not by the Anklesvar Court, to which the order of attachment was sent as the head of a department, or as "the officer whose duty it was to disburse the salary," and not as a Court executing the decree of another Court. KRISHNASHANKAR *v.* CHANDRASHANKAR . . . **I. L. R., 5 Bom., 198**

149. ——————— *Attachment.—Rateable distribution of assets.—Proceeds of sale under decrees of Small Cause Court.*—Certain moveable property was attached in execution of decrees of the Small Cause Court at Ahmedabad. After the attachment, but before the sale of the attached property, other creditors of the same judgment-debtor obtained decrees against him in the Court of the Subordinate Judge at the same place, and applied to it for the attachment of the same property in execution of their decrees. The Subordinate Judge accordingly attached it by prohibitory orders issued to the Judge of the Small Cause Court. After the sale, the holders of the decrees obtained in the Subordinate Judge's Courts claimed a rateable share in the assets realised by the Small Cause Court, under section 295 of Act X of 1877. *Held* that they were not entitled to any share in the assets until after satisfaction of the decrees of the Small Cause Court. JETHA MADHAVJI *v.* NAJERALLI ABHRAMJI **[I. L. R., 4 Bom., 472**

150. ——————— *Rateable distribution of assets.—Preliminaries to right to share in application for execution.*—An application for execution must not only have been made before the assets come into the hands of the Court, but must also be on the file and undisposed of, to entitle a decree-holder under section 295 of the Code of Civil Procedure to share rateably in the assets realised by another decree-holder in execution of his decree against the same judgment-debtor. TIRUCHITTAMBALA CHETTI *v.* SESHAYYANGAR . . . **I. L. R., 4 Mad., 383**

151. ——————— *Rateable distribution of assets, Preliminaries to right to share in.—Prior application for execution requiring amendment.*—The circumstance that the petition of one of several decree-holders in applying for execution requires amendment because of the list of property being incomplete, is no ground for declaring such application, to be superseded by a later application, made before the completion of the necessary amendment, by another co-decree-holder for execution. AHMED CHOWDHRY *v.* KHATOON . . . **7 C. L. R., 537**

152. ——————— *Rateable distribution of assets, Preliminaries to right to share in.*—Several decree-holders executing various judgments, for the most part of very ancient date, against the estate of one *R.*, were in contest in respect of the proceeds of a Government promissory note, which had long been under attachment, but was eventually sold with accumulated interest for R69,000, in accordance with an expression of the High Court's opinion upon appeals presented by two of the decree-holders. Upon that opinion being made known, one of the decree-holders, *K. K.*, made, as it were, a fresh attachment of the note, and applied for the sale of it; whereupon it was sold in the Court of the Subordinate Judge, who ordered payment in full to *K. K.* and two others (*B.* and *S.*), who were acting jointly in execution, and the surplus to be rateably divided among the other execution-creditors. One of these then brought a suit to establish a preferential claim. *Held* that *K. K.*, who, as soon as it was ascertained that the fund might be so made use of, first applied for the sale of it, was the person who came under the Code of Civil Procedure, section 270, and was entitled to payment in full; and that *B.* and *S.* had been overpaid, and were liable to repay the surplus to the other decree-holders. SRISH CHUNDER SIRCAR CHOWDHRY *v.* SHIB NARAIN PAL. SHIB NARAIN PAL *v.* KOONJO KAMINEE DABEE **[22 W. R., 466**

153. ——————— *Order as to proceeds on application of third party.*—An order by a Principal Sudder Ameen made on the application of a third party, that certain sale-proceeds which he had already directed to be rateably distributed among certain decree-holders should be withheld from one of them, was held to have been made without jurisdiction. MAHARAJAH OF BURDWAN *v.* HEERALALL SEAL . . . . . **11 W. R., 54**

S. C. IN THE MATTER OF THE PETITION OF DHIRAJ MAHTAB CHAND BAHADOOR **[2 B. L. R., A. C., 217**

154. ——————— *Rival decree-holders.—Claimants under same decree.*—Section 270, Act VIII of 1859, applied only to rival decree-holders claiming under different decrees, and not to persons claiming under the same decree. ABID ALI *v.* MUNNOO BYAS . . . . . **2 Agra, 183**

155. ——————— *Separate sales in execution of decrees.*—Application was made for execu-

SALE IN EXECUTION OF DECREE—*continued.*

12. DISTRIBUTION OF SALE-PROCEEDS—*continued.*

Civil Procedure Code, 1882, s. 295 (1859, s. 270)—*continued.*

tion of a decree for money against *R.*, and also for execution of a decree for money against *R.* and another person jointly and severally. Certain immoveable property belonging to *R.* was sold in execution of the first decree, the assets which were realised by such sale being sufficient to satisfy the amounts of both decrees. Such property was then sold a second time in execution of the second decree. *Held*, under these circumstances, that the second sale should be set aside, not being allowable with reference to the provisions of section 295 of Act X of 1877. RATI RAM *v.* CHIRANJI LAL . . I. L. R., 3 All., 579

156. ——————— *Rateable distribution of sale-proceeds.—Same judgment-debtor.—Sale in execution of decree.—Execution proceedings.*—Where a judgment-creditor has obtained a decree against two judgment-debtors, *A.* and *B.*, and in execution of that decree has attached and caused to be sold joint property belonging to such judgment-debtors, another judgment-creditor holding a decree against *A.* alone, who has also applied for execution, is not entitled to claim under the provisions of section 295 of the Civil Procedure Code to share rateably in the sale-proceeds, the decree not being against the same judgment-debtor, and a Court having no power in execution proceedings to ascertain the respective shares of joint judgment-debtors. In *Shumbhoo Nath Poddar* v. *Luckynath Dey, I. L. R., 9 Calc., 920*, it was not intended to lay down that a person who has obtained a decree for money against a single judgment-debtor is entitled to come in and share rateably with a person who has obtained a decree against the same judgment-debtor and other persons. DEBOKI NUNDUN SEN *v.* HART . . . I. L. R., 12 Calc., 294

157. ——————— *Decree-holders sharing rateably in sale-proceeds must be bonâ fide decree-holders.*—The words "decree-holders" or "persons holding decrees for money against the same judgment-debtor" in section 295 of the Code of Civil Procedure, signify *bonâ fide* decree-holders. A Court is bound, in cases falling within this section, to satisfy itself whether the claimants are *bonâ fide* decree-holders within the meaning of the section; and where it is unable to satisfy itself as to the *bonafides* of the claim, the Court should exclude such claimant from the distribution of assets. IN RE SUNDER DASS [I. L. R., 11 Calc., 42

158. ——————— *Rateable distribution.—Creditor with joint decree.*—Where property belonging to *A.* has been attached under a decree, and other decree-holders than the attaching creditor have applied before realisation of assets to participate in the sale-proceeds, and amongst them a creditor who has obtained a decree against *A.* and *B.*, such latter creditor is entitled under section 295 of the Civil Procedure Code to share in the proceeds of the sale

SALE IN EXECUTION OF DECREE—*continued.*

12. DISTRIBUTION OF SALE-PROCEEDS—*continued.*

Civil Procedure Code, 1882, s. 295 (1859, s. 270)—*continued.*

of *A.'s* property. SHUMBHOO NATH PODDAR *v.* LUCKYNATH DEY . . I. L. R., 9 Calc., 920

159. ——————— *Sale-proceeds.—Competing decree-holders.—Purchase by permission of Court.*—Where there are competing decree-holders, who have applied for execution of their decrees, section 294 of the Civil Procedure Code (Act X of 1877) must be taken as subject to the provisions of section 295, so that the decree-holder, who has been permitted under the former section to purchase the property in execution of his own decree, must share the proceeds of the sale rateably with such competing decree-holders, and will not be allowed to set off the purchase-money against the amount due to him on his decree. SHRINIVAS *v.* RADHABAI [I. L. R., 6 Bom., 570

160. ——————— *Rateable distribution.—Decree-holder for unascertained mesne profits who has applied for execution, Right of.—Civil Procedure Code, 1882, s. 294.*—The holder of a decree for unascertained mesne profits who has applied to the Court to ascertain the amount thereof and to attach immoveable property under section 255 of the Code of Civil Procedure comes within the purview of section 295, and is entitled to share rateably with the attaching creditor in the assets realised. Section 294 must be read with section 295, and to give effect to both sections the receipt to be given by the decree-holder, who has obtained leave to bid from the Court and has purchased the property sold, can only be accepted for so much of the judgment-debt as the assets applicable to its discharge may suffice to satisfy. VIRARAGAVA AYYANGAR *v.* VARADA AYYANGAR . . I. L. R., 5 Mad., 123

161. ——————— *Sale in execution for creditor who has not attached.*—Where the sale-proceeds of a portion of several parcels of property are sufficient to satisfy the decree of a judgment-creditor who has attached the property, another judgment-creditor, although he has not attached the property, is still entitled to have the remainder of the property sold to satisfy his decree under the provisions of section 295 of the Civil Procedure Code. MEGH LALL POOREE *v.* SHIB PERSHAD MADI [I. L. R., 7 Calc., 34

S. C. MEGH LAL POOREE *v.* MOHAMMED DUTT JHA . . . . . 8 C. L. R., 369

162. ——————— *Rateable distribution.—Civil Procedure Code, 1882, s. 266.*—One *C.* obtained a decree against *L.* and *M.* for rent due from them, and, in execution thereof, applied for the attachment and sale of two houses, with their compounds and the ground underneath them (in respect of which property the said rent had fallen due), belonging, respectively, one to each of his judgment-debtors. The properties were accordingly sold on

SALE IN EXECUTION OF DECREE—*continued.*

12. DISTRIBUTION OF SALE-PROCEEDS —*continued.*

Civil Procedure Code, 1882, s. 295 (1859, s. 270)—*continued.*

the 23rd July 1879, and the sale-proceeds handed over to *C.* In the meantime, on the 18th February 1879, *D.*, a judgment-creditor of *M.* under a money-decree, applied for the attachment and sale of the same immoveable property (excepting the houses) of his judgment-debtor which had been previously attached under *C.'s* decree for rent. On the realisation of the sale-proceeds, *D.* applied, under section 295 of Act X of 1877, for a rateable proportion of the assets realised by the sale of *M.'s* property in execution of *C.'s* decree. *Held* that *D.* was not entitled to such rateable proportion of the assets. MANIKLALL *v.* LAKHA MANSING

[I. L. R., 4 Bom., 429

163. ——————— *Pauper suit.—Civil Procedure Code, 1859, s. 309.—Prerogative of the Crown.*—With a view to recover the amount of court fees which *J.* would have had to pay had he not been permitted to bring a suit as a pauper, the Government caused certain property belonging to *B.*, the defendant in such suit, who had been ordered by the decree in such suit to pay such amount, to be attached. This property was subsequently attached by the holder of a decree against *B.* which declared a lien on the property created by a bond. The property was sold in the execution of this decree. *Held* that the Government was entitled to be paid first out of the proceeds of such sale the amount of court fees *J.* would have had to pay had he not been allowed to sue as a pauper, the principle that Government takes precedence of all other creditors not being liable to an exception in the case of lien-holders. The decision in *Ganpat Putaya* v. *Collector of Kanara, I. L. R., 1 Bom., 7,* applied in this case. COLLECTOR OF MORADABAD *v.* MUHAMMAD DAIM KHAN . . . . . I. L. R., 2 All., 196

164. ——————— (1859, s. 271).—*Property sold subject to mortgage.*—The proviso of section 271 of Act VIII of 1859 was intended to apply to a case where the property is actually sold subject to a mortgage, and where the transaction is such that the purchaser is buying only the equity of redemption; it did not apply to a case where there is merely the right by law in the mortgagee to enforce his mortgage against the purchaser. FAKEER BUX *v.* CHUTTURDHAREE CHOWDHRY

[12 B. L. R., 513, note: 14 W. R., 209

FUTEH ALI *alias* NANNA MEAH *v.* GREGORY

[6 W. R., Mis., 13

JOY CHUNDER GHOSE *v.* RAM NARAIN PODDAR

[21 W. R., 43

See PURMESSUREE DOSSEE *v.* NOBIN CHUNDER TARUN . . . . . 24 W. R., 805

165. ——————— *Right of mortgagee who has obtained money-decree to share in surplus proceeds.*—Where a mortgagee suing upon his bond obtains a money-decree without any declaration of

SALE IN EXECUTION OF DECREE—*continued.*

12. DISTRIBUTION OF SALE-PROCEEDS —*continued.*

Civil Procedure Code, 1882, s. 295 (1859, s. 271)—*continued.*

lien, he is in the same position as if he had not taken any mortgage at all; and in taking out execution his claim to a rateable distribution of surplus sale-proceeds of attached property is founded upon section 271 of the Civil Procedure Code, 1859. RADHA KANT ROY *v.* SADAFUT MAHOMED KHAN

[21 W. R., 86

166. ——————— *Right of mortgagee to take residue of sale-proceeds and retain his lien as mortgagee.*—Plaintiff in a suit on an instalment-bond on which he had obtained a money-decree having asked for and obtained the residue of the sale-proceeds after all the judgment-creditors had been fully satisfied, was held not to have abandoned his right as mortgagee. BOLAKEE LAL *v.* CHOWDHRY BUNGSEE SINGH . . . 7 W. R., 309

167. ——————— *Execution of decree.—Attachment by mortgagee.—Surplus proceeds.*—Pending a suit against *A.* and *N.* upon a bill of exchange, *A.* deposited with the plaintiff, as security for the amount due upon the bill, the title-deeds of property belonging jointly to *N.* and himself. The plaintiff subsequently got a decree for the amount due upon the bill. Thereafter one *S.*, in execution of a decree against *A.* and *N.*, attached certain property of theirs, including the mortgaged property, and caused it to be sold; and the surplus sale-proceeds, after satisfaction of *S.'s* decree, were paid into Court to the credit of his suit. Intermediately between this attachment and sale, the plaintiff also attached under his decree on the bill of exchange the mortgaged and other property of *A.* and *N.*, and after the plaintiff's attachment *N.* ratified the equitable mortgage made by *A.* The sale under *S.'s* attachment having taken place, the plaintiff sued *A.* and *N.* and the purchasers at such sale of the mortgaged property for foreclosure or sale thereof, and obtained a decree declaring that he had a good equitable mortgage of *A.'s* share in the joint property, and for an account and sale in default of payment; and the plaintiff subsequently, on 26th May 1873, got an order under his decree upon the bill of exchange for payment to him of the surplus sale-proceeds lodged in Court to the credit of *S.'s* suit, and for sale of certain of the properties, other than the mortgaged property, which he had attached. Under this order the money was paid out to the plaintiff, and the properties were advertised for sale. MACPHERSON, *J.*, having, on an application by *A.*, set aside this order, and directed that the plaintiff should refund into Court the money paid out to him, and that the sale should be stayed, the Court on appeal refused to set aside the order of the 26th May, but made the plaintiff undertake to pay into Court the mortgage-money with interest if the same should be received by him from the defendants in the mortgage-suit. BANK OF BENGAL *v.* NUNDOLALL DOSS

[12 B. L. R., 509

SALE IN EXECUTION OF DECREE—*continued.*

12. DISTRIBUTION OF SALE-PROCEEDS —*continued.*

Civil Procedure Code, 1882, s. 295 (1859, s. 271)—*continued.*

168. ——————— *Satisfaction of mortgage-lien out of surplus proceeds.*—Where seven different properties belonging to the same mortgagor had been hypothecated to three different persons, and all of them sued upon their bonds and obtained decrees which were followed by simultaneous sales in execution,—*Held* that, as all the properties were sold at the instance of all the mortgagees for the satisfaction of their decrees, and therefore of their respective mortgage-liens, and the decrees of the mortgagees should be satisfied out of the entire sale-proceeds in the order in which the liens on the properties had been created. GOPEE SING *v.* KISHA LALL . . . 25 W. R., 187

169. ——————— *Provisoes.—Lis pendens.—Sale subject to mortgage.*—Where two mortgagees, in execution of their several decrees, attached the same property, of which a moiety without further specification was respectively mortgaged to each of them, and subsequent to the attachments the property was sold in execution of one of the decrees,—*Held* that, notwithstanding the whole interest of the mortgagor was intended to be sold, the purchaser took one of the moieties subject to the lien of the unsatisfied mortgagee, and that omission or neglect on the part of the Court executing the decree to give specific direction as provided by clause (*b*) of section 295 of the Civil Procedure Code did not prejudice the rights of the unsatisfied mortgagee or discharge his incumbrance. JANOKY BULLUBH SEN *v.* JOHIRUDDIN MAHOMED ABU ALI SOHEB CHOWDHRY [I. L. R., 10 Calc., 567

170. ——————— *Mortgage.—Allowance of set-off of purchase-money against amount of decree.—Suit for share of sale-proceeds.—Principle of distribution.*—In execution of a decree against *M.* the plaintiff attached and advertised for sale certain property in mouzah A. At that time there were pending proceedings in execution of two other decrees obtained against *M.* by the first and second defendants respectively. These two decrees were obtained on a bond executed by *M.*, by which an 8 annas share of mouzah A. was hypothecated as collateral security; and in execution of these decrees the defendants brought to sale, and themselves purchased, not an 8 annas share only, but the whole of mouzah A., and were allowed by the Court to set off the purchase-money against the amounts due to them under their decrees. At the same time the plaintiff's execution case was struck off on 30th June 1880. In a suit brought by the plaintiff under section 295 of the Civil Procedure Code for his share of the sale-proceeds of mouzah A., in which the defendants contended that a set-off having been allowed to the defendants, the plaintiff was not entitled to any rateable distribution; and that if any rateable distribution were allowed, they were entitled to have an allowance made in respect of a mortgage which the plaintiff held in a 2 annas share of mouzah A., which they had paid off subsequently to the transactions now in question;—*Held* that the fact of the set-off being allowed in exercise of the power given in section 294 of the Code, instead of actual payment into Court, did not alter the substantial nature of the transaction, so as to render the purchase-money less applicable to the satisfaction of the debts of other attaching creditors. *Held*, further, that the defendants were not entitled to deduct the sum paid by them to clear off the plaintiff's mortgage from the amount of the purchase-money before the Court could determine the amount rateably distributable among the parties concerned. *Quære,*—Whether they were even entitled to reckon the amount so paid as one of the claims in respect of which, with others, a rateable distribution should be made. TAPONIDI HORDANUND BHARATI *v.* MATHURA LALL BHAGAT . . I. L. R., 12 Calc., 499

171. ——————— *Decree for money.—Causes of action.—Mortgage-decree.—Mortgagee purchasing under his own decree, Execution of decree by.*—The cause of action given by the last paragraph but one of section 295 of the Civil Procedure Code does not arise until the money has been actually paid over to the person who is alleged not to be entitled to receive the same, and a suit brought by a person claiming to be entitled to be paid a share of sale proceeds under that section, and to recover the same from another to whom such sale-proceeds have been ordered to be paid, if brought before they have been actually paid to such other person, is premature and should be dismissed. Every decree, by virtue of which money is payable, is to that extent a "decree for money" within the meaning of that term as used in section 295, even though other relief may be granted by the decree; and the holder of such decree is entitled to claim rateable distribution of sale-proceeds with holders of decrees for money only under that section. There is nothing in section 295 which takes away the right from a mortgagee who has obtained a decree upon his mortgage to proceed against the property of his mortgagor other than that subject to his mortgage. Thus the holder of a mortgage-decree which directs that the amount be realised from the mortgaged property and from the mortgagor personally, is entitled to claim rateable distribution under that section, and is not in the first instance bound to proceed against his mortgage security and exhaust that. A mortgagee who has obtained a decree on his mortgage is not restricted to proceedings in the first instance against his mortgage security before proceeding against other property of his mortgagor, but when he sells any portion of the property, the subject of his mortgage, and purchases it himself, he is bound, before he can proceed further against the mortgagor or claim rateable distribution under section 295, to prove that there is still a balance due to him, and that the property sold and purchased by him realised a fair amount,—the mere fact of the property having been

SALE IN EXECUTION OF DECREE—*continued.*

12. DISTRIBUTION OF SALE-PROCEEDS —*continued.*

Civil Procedure Code, 1882, s. 295 (1859, s. 271)—*continued.*

sold at auction not being alone sufficient to prove its value,—and this ought to be inquired into most carefully by the Court to which an application is made to further execute the decree or to share rateably under section 295. HART *v.* TARA PRASANNA MUKHERJI [I. L. R., 11 Calc., 718

172. ——————— *Mortgage.—First and second mortgagees.—Sale of mortgaged property in execution of decree of second mortgagee.—Suit by first mortgagee for re-sale of property in execution of his decree.*—On the 22nd March 1878 the first mortgagee of certain property obtained a decree enforcing his mortgage. On the 25th March 1878 the second mortgagee obtained a decree enforcing his mortgage. Both decrees were made by the same Court. On the 20th June 1878 the property was put up for sale in execution of the second mortgagee's decree. The first mortgagee subsequently brought a suit for a re-sale of the property in satisfaction of his decree. *Held* that this was the only course open to him, and he could not have enforced satisfaction of his decree in accordance with the provisions of section 295 of the Civil Procedure Code, inasmuch as the provisions of the first and second provisos to that section refer only to sales in execution of simple money-decrees, whereas the property in question had been sold in execution of a decree ordering its sale, and the provisions of the third proviso relate to subsequent and not prior incumbrances. JAGAT NARAIN RAI *v.* DHUNDHEY RAI [I. L. R., 5 All., 566

See GUR SAHAI *v.* RAM DIAL . 7 N. W., 91

173. ——————— *Mortgage.—Sale by first mortgagee.—Arrears of rent.—Lien.—Claim by puisne mortgagee on proceeds of sale.*—Certain land was mortgaged to *A.* with possession to secure the repayment of a loan of R2,000 and interest. It was stipulated in the deed that the interest on the debt should be paid out of the profits, and the balance paid to the mortgagors. By an agreement subsequently made it was arranged that the mortgagors should remain in possession and pay rent to *A.* *A.* obtained a decree for R2,000 and arrears of rent and costs, and for the sale of the land in satisfaction of the amount decreed. The land was sold for R2,855 in March 1881. In May 1881 *B.*, a puisne mortgagee, applied to the Court for payment to him of R500 of this sum, alleging that *A.* was entitled only to R2,000 and R280 costs, but not to arrears of rent, in preference to his claim as second mortgagee. The claim of *B.* was rejected on the 27th May 1881 and the whole amount paid out to *A.* In February 1882 *B.* (who had filed a suit on the 23rd March 1881) obtained a decree upon his mortgage. On the 23rd May 1884 *B.* sued to recover R510 paid to *A.* on account of rent on the 27th May 1881. The lower Courts dismissed the suit on the grounds (1) that *A.* was entitled to treat the arrears of rent as interest, and (2) that the suit was barred by limitation. *Held* on second appeal that *B.* was entitled to recover the sum claimed. SIVARAMA *v.* SUBRAMANYA [I. L. R., 9 Mad., 57

174. ——————— The meaning of section 295 of the Civil Procedure Code is that when immoveable property is sold in execution of decrees ordering its sale for the discharge of incumbrances, the sale-proceeds are to be applied in satisfaction of incumbrances according to their priority. SHAHI RAM *v.* SHIB LAL . . I. L. R., 7 All., 378

175. ——————— *Execution of decree.—Payment out of proceeds before confirmation of sale.—Interest on purchase-money from date of sale to date of confirmation.—Civil Procedure Code, 1882, ss. 284, 315.*—Although there is no express provision in the Code laying down that a decree-holder may take out of Court the proceeds of an execution sale before the date on which the sale is confirmed, yet section 315 of the Code implies that this may be done. The Court, however, under special circumstances, may refuse to pay over to the decree-holder the purchase-money until the sale is confirmed, but in such case it should provide for due payment of interest on the money detained. *Held* that, under the special circumstances of this case, the decree-holder was not entitled to receive interest from his judgment-debtor from the date of the sale to the date on which the sale was confirmed. JOGENDRO NATH SIRCAR *v.* GOBIND CHUNDER ADDI [I. L. R., 12 Calc., 252

176. ——————— *Execution proceedings.—Rateable distribution.—Application for further execution.—Notice.—Civil Procedure Code, 1882, s. 622.*—*A.*, and subsequently *B.*, obtained decrees against *X.*, in execution of which the same land was attached, and *B.* obtained an order for rateable distribution. Neither decree was satisfied. *A.* then applied for attachment of other property and the sale was fixed for 28th September. On 25th September *B.* filed a petition for further attachment under sections 250, 274, and also a petition for rateable distribution under section 295 of the Code of Civil Procedure. The District Judge rejected the application for execution as being too late, and then the application under section 295, because no application for execution was pending. *Held* on appeal that the petition for execution was wrongly rejected, but that the High Court could not, under section 622 of the Code of Civil Procedure, revise the order rejecting the application under section 295 for rateable distribution. The proper remedy was by a suit. VENKATARAMAN *v.* MAHALINGAYYAN [I. L. R., 9 Mad., 508

13. WRONGFUL SALES.

177. ——— Wrongful attachment in execution.—*Attachment under warrant issued by*

SALE IN EXECUTION OF DECREE—*continued.*

13. WRONGFUL SALES—*continued.*

Wrongful attachment in execution—*continued.*

Court.—A party is not liable to damages in respect of an attachment made under a warrant issued by a Court. RAJ BULLUB GOPE *v.* ISSAN CHUNDER HAJRAH . . . . . 7 W. R., 355

178. ——— **Wrongful attachment.**—*Liability of decree-holder and purchaser to refund to owner loss caused by sale of property wrongly seized and sold.*—In execution of a decree against a judgment-debtor, his right, title, and interest in an elephant was sold. In a suit by a third party against the decree-holder and the purchaser for recovery of the elephant or its value, on the ground that the elephant was his property, and not the property of the judgment-debtor,—*Held* that the decree-holder, as well as the purchaser, was liable to make good the loss caused by such sale. KANAI PRASAD BOSE *v.* HIRACHAND MANU

[5 B. L. R., Ap., 71: 14 W. R., 120

See SUBJAN BIBEE *v.* SARIUTULLA

[3 B. L. R., A. C., 413: 12 W. R., 329

RAYNOR *v.* SUNGHEEE SINGH . 5 N. W., 211

179. ——— **Goods wrongly sold in execution.**—*Suit by owner.*—A person whose goods are illegally sold under an execution does not lose his right to them although he may have claimed them unsuccessfully in the execution proceedings. He may follow them into the hands of the purchaser or of any other person, and sue for them or their value without reference to anything which has taken place in the execution proceedings. SHIBOO NARAIN SINGH *v.* MUDDEN ALLY. NATABAR NANDI *v.* KALI DASS PALI

[I. L. R., 7 Calc., 608: 9 C. L. R., 8

180. ——— **Property of co-sharers wrongly seized and sold.**—*Suit to recover shares.*—Where, under colour of buying *A.'s* rights and interests sold in execution, the purchaser usurps the shares of *A.'s* partners, they need not sue to reverse the sale, but merely to recover their shares, nor are they bound to sue to establish their right as part owners of the land within the time allowed for actions to set aside sales in execution. ATHUROONISSA *v.* RUGHOONATH BANERJEE

[W. R., 1864, 322

GUNGA NARAIN BEHUTTA *v.* COLLECTOR OF MIDNAPORE . . . 6 W. R., 47

181. ——— *Co-sharer, Suit by.*—*Suit for damages for sale against decree-holder.*—The defendant, in execution of a decree against *A.*, seized certain moveable property, which was claimed under section 246, Act VIII of 1859, by *B.* *B.* was on investigation found to be part owner of the property. *B.'s* claim was rejected and the sale took place, the property being made over to the purchaser, and the proceeds handed to the defendant in satisfaction of his decree. The sale proclamation declared

SALE IN EXECUTION OF DECREE—*continued.*

13. WRONGFUL SALES—*continued.*

Property of co-sharers wrongly seized and sold—*continued.*

that the sale extended only to the right, title, and interest of the debtor *A.*, but made no mention of *B.'s* claim. In a suit by *B.* for damages against the defendant occasioned by the loss of the property of which he was a joint owner,—*Held* the defendant was not liable. TAMIZUDDIN MULLA *v.* NYANUTOLLA SIRKAR

[5 B. L. R., Ap., 73, note: 11 W. R., 528

14. INVALID SALES.

(*a*) DEATH OF DECREE-HOLDER BEFORE SALE.

182. ——— **Effect of decree-holder's death on validity of sale.**—*Civil Procedure Code, 1877, ss. 365, 366.—Order confirming sale.*—A judgment-debtor applied that an execution sale of property belonging to him should be set aside, as the decree-holder was dead when such sale took place, and such sale was in consequence invalid. This application was disposed of by the Court executing the decree in the presence of the judgment-debtor and the purchaser. The Court held that the fact of such sale having taken place after the decree-holder's death was no ground for setting it aside, and disallowed such application and made an order confirming such sale. *Held per* PEARSON, *J.*, that the application for execution of the decree abated on the death of the decree-holder, not having been prosecuted by his legal representative, and such sale was under the circumstances improper and invalid, and the order confirming it should be set aside. *Per* SPANKIE, *J.*, that such sale was not invalid by reason of the decree-holder's death before it took place. The order confirming it, however, was improper, and should be reversed, and the case should be remanded to be dealt with under the provisions of sections 365 and 366 of Act X of 1877, as the Court executing the decree should have proceeded under those sections. *Per* OLDFIELD, *J.*, and STRAIGHT, *J.*, that the death of the decree-holder prior to such sale did not render it void. The provisions of sections 365 and 366 of Act X of 1877 could not be adapted to execution proceedings. As such sale had been published and conducted according to law, it had properly been confirmed. DULARI *v.* MOHAN SINGH

[I. L. R., 3 All., 759

(*b*) DEATH OF JUDGMENT-DEBTOR BEFORE SALE.

183. ——— **Effect of judgment-debtor's death on validity of sale.**—*Sale to mortgagee.—Civil Procedure Code, 1882, ss. 234, 368.*—The first mortgagee of certain immoveable property obtained a decree for the sale of the property, caused the property to be attached, and then ceased to prosecute the execution proceedings. The second mortgagee then obtained a decree for sale of the property, caused it to be attached and put up for sale, and purchased it himself. The first mortgagee then applied for sale, and the property was put up for sale and purchased by

SALE IN EXECUTION OF DECREE—*continued.*

14. INVALID SALES—*continued.*

(*b*) DEATH OF JUDGMENT-DEBTOR BEFORE SALE—*continued.*

Effect of judgment-debtor's death on validity of sale—*continued.*

him. After the order for this sale was made, and before it took place, the judgment-debtor died, and the sale took place without his legal representatives being made parties to the execution proceedings. *Per* OLDFIELD, *J.*, that the sale to the first mortgagee was not void because the judgment-debtor had died before it took place, and it took place without his legal representatives being made parties to the execution proceedings, inasmuch as the provisions of section 368 of the Civil Procedure Code were not applicable to the case of the death of a judgment-debtor, and there was nothing in section 234, even if that section is applicable to a case where the judgment-debtor dies while execution is proceeding and after sale of his property has been ordered, to imply that the sale is absolutely void if no legal representative has been brought on the record. *Dulari* v. *Mohan Singh, I. L. R., 3 All., 759*; and *Gulabdas* v. *Lakshman Narhar, I. L. R., 3 Bom., 221*, referred to. *Per* STRAIGHT, *J.*, that there was no legal obligation on the first mortgagee to resort to the procedure of section 234 of the Civil Procedure Code, since the sale to the second mortgagee had passed to him the rights and interests of the judgment-debtor, and the legal representatives of the judgment-debtor had none of his property in their hands; and there is no provision in the Code of Civil Procedure which required the first mortgagee to make the second mortgagee a party to the proceedings in execution of the former's decree, and the latter could not have successfully objected to the sale in execution of that decree, and therefore that sale was not voided by the death of the judgment-debtor antecedent to its taking place. STOWELL *v.* AJUDHIA NATH . . . . **I. L. R., 6 All., 255**

(*c*) FRAUD.

184. ——— Application of ss. 256, 257, Civil Procedure Code, 1859 (1822, ss. 311, 312).—*Application to set aside sale.*—Sections 256 and 257, Act VIII of 1859, did not apply to a suit in which fraud is imputed vitiating the sale *in toto.* UMBIKA CHURN CHUCKERBUTTY *v.* DWARKA NATH GHOSE . . . . . **8 W. R., 506.**

VIRSINGAPPA BIN BASLINGAPPA *v.* SADASHIVAPPA APPA GOLKHANDI . **7 Bom., A. C., 74**

185. ——— Application to set aside sale.—*Irregularity.—Failure to prove fraud.—Civil Procedure Code, 1859, s. 256.*—Where the facts connected with an execution sale fell far short of establishing fraud, and merely amounted to irregularity resulting in detriment to the judgment-debtor, his remedy was held to lie in an application under section 256 of Act VIII of 1859 to set aside the sale. GOBIND SINGH *v.* MUNNO RAM DOSS **[19 W. R., 414**

SALE IN EXECUTION OF DECREE—*continued.*

14. INVALID SALES—*continued.*

(*c*) FRAUD—*continued.*

Application to set aside sale—*continued.*

186. ——— ——— *Civil Procedure Code, 1859, ss. 256, 257.—Suit to set aside sale after failure of application.*—A plaintiff was not debarred by reason of the failure of an application under sections 256 and 257, Act VIII of 1859, from suing to set aside a sale on the allegation of fraud in connection with the irregularities first complained of, such fraud forming a distinct cause of action. NUND LALL DOSS *v.* DELAWUR ALI . **11 W. R., 244**

Contra, GOBIND SINGH *v.* MUNNO RAM DOSS **[19 W. R., 414**

187. ——— Suit to set aside sale.—*Sufficiency of proof.—Irregularity, Proof of want of.*—In a suit to set aside an execution sale on the ground of fraud, it is not sufficient for a Court to find that the mode of making the attachment and proclamation was according to law, but it is necessary to consider the surrounding circumstances. CHOONEE SAHOO *v.* MUNNOO LALL **[14 W. R., 325**

188. ——— ——— *Rights of bonâ fide auction-purchasers.*—When no fraud has been alleged, a sale in execution cannot be set aside as regards the auction-purchaser, whether the order of Court under which it took place was legal or not. Even if the decree in execution of which the sale took place were a collusive one, the rights of the auction-purchaser would not be affected if he was no party to the fraud, and there would be no ground for setting aside the sale. MAHOMED KUZULBASH KHAN *v.* MAHOMED SHAH . . **12 W. R., 48**

189. ——— ——— *Suit for money secured by the mortgage of immoveable property situate partly in the family domains of the Maharajah of Benares.—Fraudulent representation by decree-holder.—Sale of decree enforcing hypothecation of immoveable property.*—A suit was instituted in the Court of the Subordinate Judge of Benares for money secured by the mortgage of immoveable property situate within the limits of the district of Benares, and of immoveable property situate within the limits of the family domains of the Maharajah of Benares. The Subordinate Judge had not jurisdiction to proceed with this suit in so far as it related to the latter property, and he was authorised to proceed with it, under the provisions of section 13 of Act VIII of 1859, by the High Court in concurrence with the Board of Revenue. He accordingly proceeded with the suit, and on the 18th November 1874 gave the plaintiffs a decree for the recovery of the money claimed by the sale of the mortgaged property. With a view to bring the mortgaged property situate within the limits of the family domains of the Maharajah of Benares to sale, this decree was sent for execution to the Subordinate Judge at Kondh, within whose jurisdiction such property was situate; and such property was sold in the execution of this decree on the 29th

SALE IN EXECUTION OF DECREE—*continued.*

14. INVALID SALES—*continued.*

(c) FRAUD—*continued.*

Suit to set aside sale—*continued.*

August and the 4th September 1877. Subsequently the defendants in the present suit, who held decrees for money against *H.*, one of the plaintiffs in the suit above mentioned, applied to the Subordinate Judge of Benares for the attachment and sale of *H.'s* interest in the decree above mentioned, falsely representing that the sales in execution of that decree of the 29th August and 4th September 1877 had been set aside. Such interest was accordingly put up for sale on the 29th May 1878 at Benares by the Subordinate Judge of Benares, and was purchased by the plaintiffs in the present suit, who were induced to purchase by such false representation. The plaintiffs in the present suit claimed the avoidance of the sale of the 29th May 1878 and the refund of the purchase-money, on the ground that they were induced to purchase by such false representation, and on the ground that the sale of the interest of *H.* in the decree of the 18th November 1874, being of the nature of immoveable property situate within the limits of the family domains of the Maharajah of Benares, could not legally be sold at Benares by the Benares Court. *Held* that such false representation must be held to constitute in law such fraud as vitiated the sale of the 29th May 1878. Also that the Benares Court acted *ultra vires* in selling at Benares an interest in immoveable property situate within the family domains of the Maharaja of Benares. RAGHU NATH DOS *v.* KAKKAN MAL

[I. L. R., 3 All., 568

(d) EXECUTION PROCEEDINGS STRUCK OFF.

190. ——— Effect on validity of sale.—*Beng. Reg. XX of 1795.—Title of purchaser.*—Regulation XX of 1795 directed that when any Court of Civil Judicature should have occasion to sell lands in execution of a decree, it should transmit a copy thereof to the Board of Revenue, which was with all practicable dispatch to cause the lands to be disposed of at the presidency, or in the district in which the lands were situated, as they might deem most advantageous to the proprietor. In 1843 a copy of a decree was transmitted for execution to the Board of Revenue in compliance with the Regulation, but no sale was then effected. Afterwards two other futile attempts to sell the lands under the decree were made, and then the decree-holder sold the lands to a third party, upon whose application the decree was executed by the sale of the lands of the judgment-debtor under it by order of the Court, and without any further recourse to the Revenue Board. Previous to such sale the proceedings had been taken off the file, and the number of villages, owing to some inaccuracy, was differently stated in the later order, and the total sum was increased by adding the interest which had accrued due between the two orders. *Held* that the purchaser at the sale acquired a good title; for it would be contrary to general principles, and a senseless addition to all the vexations of delay in the course of procedure, to hold that when for any reason, satisfactory or not, the execution of a final decree in a suit fails or is set aside, and the proceedings as regards that execution are taken off the file, the whole suit is discontinued thereby, and the further proceedings for the same purpose were to be considered as taken in a new suit. Nor was it true in any material sense that either the properties to be sold or the sums to be recovered were different; and the principal object of the Regulation being the security of public revenues, that object had been fully answered by the communication to the Commissioner in 1843, and the proceedings which were taken by him upon it. MOHESH NARAIN SINGH *v.* KISHNANUND MISSER

[Marsh., 592: 2 Ind. Jur., O. S., 1
9 Moore's I. A., 324
5 W. R., P. C., 7

(e) DECREES AFTERWARDS REVERSED.

191. ——— *Title of purchaser.*—If a sale takes place in execution of a decree in force and valid at the time of sale, the property in the thing sold passes to the purchaser. *Per* NORMAN, *J.*—If the decree or judgment be afterwards reversed, the reversal does not affect the validity of the sale or the title of the purchaser. CHUNDER KANT SURMAH *v.* BISSESUR SURMAH CHUCKERBUTTY . . . . . 7 W. R., 312

FYAZOODDEEN BHOOYA *v.* SHUMSUNNISSA BEEBEE . . . . . 12 W. R., 508

BEHAREE LALL *v.* RAJAH RAM

[6 N. W., 291

192. ——— *Reversal of portion of decree relating to costs.—Sale in execution for costs.*—A sale in execution of a decree for costs is not cancelled when that part of the decree which made the plaintiff answerable for the costs is set aside. PEAREE MONEE DOSSEE *v.* COLLECTOR OF BEERBHOOM . . . . . 8 W. R., 300

193. ——— *Sale made after order for postponement.*—*Held* that an auction sale which was made *bonâ fide* under the authority of an order which at the time of the sale was not in force, but had been superseded by a subsequent order postponing the sale, was made without jurisdiction, and was null and void. FOUJDAR KHAN *v.* BAINEE DOOBEY . . . . . 3 Agra, 398

194. ——— *Sale pending appeal.—Decree reversed on appeal.—Right of judgment-debtor.*—*S.*, having obtained a decree against *M.* and another, brought to sale and purchased his property pending appeal. The decree having been reversed,—*Held* that *M.* was entitled to the restoration

SALE IN EXECUTION OF DECREE—*continued.*

14. INVALID SALES—*continued.*

(*e*) DECREES AFTERWARDS REVERSED—*continued.*

Effect on validity of sale—*continued.*

of his property, and not merely to the proceeds of the sale. SADASIVAYYAR *v.* MUTTU SABAPATHI CHETTI [I. L. R., 5 Mad., 106

See LATI KOOER *v.* SOBADRA KOOER [I. L. R., 3 Calc., 720: 2 C. L. R., 75

NAGINDAS DEVCHAND *v.* NATHA PITAMBAR [10 Bom., 297

195. ——————— *Reversal of decree on appeal before confirmation of sale.—Purchaser, Right of.*—Plaintiff's title to certain land in dispute was derived from the purchaser at a Court's sale, under a decree which was reversed on appeal subsequently to the sale before it had been confirmed. *Held* that the Court which had made the decree ceased, from the moment of the reversal, to have jurisdiction to take any further steps to execute the decree. Though the Court, when it confirmed the sale, was probably not informed that its decree had been reversed, and the purchaser was probably ignorant of it, yet the act of the Court in completing the sale was none the less without jurisdiction, and, being without jurisdiction, could confer no title. If a decree be reversed after a sale under it has become absolute, and a certificate has been granted to the purchaser, the title of the purchaser is not affected by the reversal of the decree. A purchaser is bound to satisfy himself as to the jurisdiction of a Court to order a sale, and this obligation continues until the sale is completed. Before he applies to the Court to confirm the sale and grant him a certificate, the purchaser ought to ascertain that the decree under which the sale was ordered is still in existence. BASAPPA *v.* DUNDAYA . I. L. R., 2 Bom., 540

196. ——————— *Remedy of parties aggrieved.—Suit for reversal of sale.*—When a property is sold in execution of a decree which had been in force at the time of sale, but which was eventually set aside on appeal, the remedy of the party aggrieved is by a suit for the reversal of the sale, and not by a suit for the recovery of damages for the loss sustained. ANNUNDO CHUNDER BANERJEE *v.* SHUBHUL CHUNDRA DEBEA [2 Hay, 624

197. ——————— *Right to recover land.*—A sale in execution of a decree, made while that decree is under review, cannot stand if the decree is subsequently reversed. The party dispossessed under the decree is entitled to recover the land with mesne profits. BHOOLLOO *v.* RAMNARAIN MOOKERJEE . . . W. R., 1864, 129

198. ——————— *Suit to recover possession.—Return of purchase-money.—A.* had sued *R.* and others for possession of two mouzahs with mesne profits and obtained a joint decree against them in the absence of *R.* In execution *A.* was about to put up the rights and interest of *R.* in mouzah G. when *R.* applied for a re-trial under

SALE IN EXECUTION OF DECREE—*continued.*

14. INVALID SALES—*continued.*

(*e*) DECREES AFTERWARDS REVERSED—*continued.*

Effect on validity of sale—*continued.*

Act VIII of 1859, section 119. The petition was rejected and the property sold, the decree-holders becoming purchasers. *R.* appealed, and the High Court remanded the case to the Judge, who, after investigation, set aside the *ex parte* decree and revived the suit, holding, after re-trial, that *R.* had no interest in the mouzahs in suit, and was not liable to the claim of *A.* The latter appealed, and the High Court decided that *R.* had been in possession of mouzah J. and was liable for the mesne profits. *R.* then brought a suit for possession of a share of the mouzah which had been sold in execution. *Held* that the plaintiff could not in justice seek to recover this property from the defendants without offering to pay them the debt which he owed them, and which formed part of the consideration-money. GOWREE BOYJO NATH PERSHAD *v.* JODHA SINGH [19 W. R., 416

199. ——————— *Suit for possession against auction-purchaser by setting aside sale.—Civil Procedure Code (Act X of 1877), s. 244.*—In execution of a decree certain property was sold in pursuance of an order under section 244 of the Civil Procedure Code, and purchased by a person not a party to the suit, who subsequently obtained possession of the property. That order was subsequently set aside. In a suit by the judgment-debtor to recover possession of the property from the auction-purchaser by setting aside the sale,—*Held* that the order directing the sale had the force of a decree, and that the plaintiff was not entitled to the relief claimed. *Jap Ali* v. *Jan Ali Chowdhry, 1 B. L. R., A. C., 56; 10 W. R., 154,* followed. MURARI SINGH *v.* PRYAG SINGH . . I. L. R., 11 Calc., 362

200. ——————— *Ex parte decree the validity of which is impeached.—Notice to purchasers.*—In a suit by *S.* in his own right as well as on behalf of his minor brother, to cancel an execution sale held in execution of an *ex parte* decree, to cancel the said decree and two bonds entered into by members of their family during the plaintiff's minority, and to recover possession of a share in the ancestral property which had been sold, it was found that the advances of money for which the bonds were executed were made without proper inquiries as to the necessity for the loan, and that the minors were not properly represented in the suit in which the *ex parte* decree was obtained. *Held* that the mortgage bonds under such circumstances were invalid against the plaintiffs, and that it would be carrying presumption too far to say that a decree so obtained must be taken to be valid as against the minors. *Held* that the auction-purchasers could not protect themselves by relying on the decree and execution sale after having received distinct notice that the mother of the plaintiffs challenged the validity of the whole proceedings. JUNGEE LALL *v.* SHAM LALL MISSER [20 W. R., 120

SALE IN EXECUTION OF DECREE—*continued.*

14. INVALID SALES—*continued.*

(*e*) DECREES AFTERWARDS REVERSED—*continued.*

Effect on validity of sale—*continued.*

Where no such notice has been given, the sale would continue valid. RAM JEWUN LALL *v.* SHAM LALL MISSER . . . . . 20 W. R., 123

(*f*) DECREE FOUND TO HAVE BEEN SATISFIED.

201. ——————— *Purchase by one of several judgment-debtors.—Full Bench ruling.*—Where a decree was purchased by one of the judgment-debtors, and afterwards executed and property of the other judgment-debtor sold in execution of the decree, and it was eventually held by a Full Bench in the case that the purchase of the decree by one of the debtors was a satisfaction of the decree,—*Held*, in a suit against the execution-purchaser to have the sale declared invalid, that the sale must be set aside. DIGAMBUREE DEBIA *v.* ESHAN CHUNDER SEIN . . . . . 15 W. R., 372

(*g*) DECREE AGAINST WRONG PERSON.

202. ——————— *Right to have sale set aside where decree was against wrong person as representative.—Subsequent claim by proper representative.—Estoppel.—Quiescence.*—One *S.* died indebted to the second defendant, *M.* On his death his widow, *T.*, became his heir, as he left neither son nor brother surviving. In 1878 *M.* brought a suit to enforce payment of the debt due by the deceased *S.*, and he made *B.*, the mother of *S.*, defendant in the suit, omitting *T.* altogether. On 30th August 1878 *M.* obtained an *ex parte* decree, and on the 26th July 1880 the house of *S.*, then in the possession of *B.*, was sold in execution, and the first defendant, *R.*, purchased it. On 6th September 1880 the sale was confirmed, and on 26th November 1880 *R.* was put into possession. On the 10th of December 1880 one *S.* presented a petition on behalf, as he alleged, of the plaintiff *T.*, the widow of *S.*, to set aside the sale. He did not produce any authority from her, and his application was rejected on the 14th June 1881. On the 31st October 1878 *T.* adopted the plaintiff *B.* under an authority, as she alleged, of her deceased husband, *S.* In 1881 *T.* filed the present suit on behalf of her adopted son, *B.*, to set aside the sale and to recover the house. *Held* that the plaintiff was entitled to have the sale set aside, and to recover possession of the house. The estate was vested in *T.* as legal representative of her deceased husband. Had *T.* wilfully put forward *B.* as the representative of *S.* so as to deceive and mislead *M.*, then, no doubt, she might be held bound by the decree obtained by the latter against *B.* Her mere quiescence while *M.* wilfully sued the wrong person could not affect her legal rights, or deprive her adopted son, the plaintiff *B.*, of his rights. He could not be bound by a suit and sale to which he was not a party either in person or by representation. BASWANTAPA SHIDAPA *v.* RANU [I. L. R., 9 Bom., 86

SALE IN EXECUTION OF DECREE—*continued.*

14. INVALID SALES—*continued.*

(*h*) WANT OF SALEABLE INTEREST.

203. ——————— Civil Procedure Code, 1877, s. 313.—*Purchase knowing judgment-debtor has no interest.*—A person who purchases immoveable property at a sale in execution of a decree, knowing that the judgment-debtor has no saleable interest therein, is not entitled to the benefit of the provisions of section 313 of Act X of 1877, which were designed for the protection of persons who innocently and ignorantly purchase valueless property. MAHABIR PRASHAD *v.* DHUMAN DAS [I. L. R., 3 All., 527

204. ——————— Civil Procedure Code, 1882, s. 313.—*Setting aside sale.—"Saleable interest."*—The fact that property sold in execution of a decree is subject to a mortgage upon which a decree has been obtained, which fact is not disclosed prior to the proclamation of sale, is not sufficient to enable an auction-purchaser to set aside the sale on the ground that the judgment-debtor had "no saleable interest" in the property, within the meaning of section 313 of the Civil Procedure Code. *Naharmul Marwari* v. *Sadut Ali*, 8 *C. L. R.*, 468, distinguished. PROTAP CHUNDER CHUCKERBUTTY *v.* PANIOTY [I. L. R., 9 Calc., 506: 12 C. L. R., 488

205. ——————— *Application to set aside sale—"Saleable interest."*—A misrepresentation or concealment in the sale notification which induces a purchaser to buy a property for much more than it is really worth (although that misrepresentation or concealment may be fraudulent), is no ground for setting aside a sale under section 313 of the Civil Procedure Code. The meaning of section 313 is, that when a purchaser under an execution sale buys a property which turns out to have no existence at all, or to be of no saleable value whatever, the Court may then set aside the sale under section 313. DURGA SUNDARI DEVI *v.* GOVINDA CHUNDRA ADDY . . . I. L. R., 10 Calc., 368

206. ——————— *Decree against insolvent.—Official Assignee.—Purchaser at execution sale.—Setting aside sale.*—Where, in execution of a decree passed against a person who had previously been adjudicated an insolvent, portions of his property (then vested in the Official Assignee) are attached and sold, the purchaser is entitled to have the sale set aside under section 313 of the Code of Civil Procedure, notwithstanding that the Official Assignee acquiesces in the sale, and is content to receive the sale-proceeds. DINOBUNDHOO PAL *v.* SHOSHEE MOHUN PAL . I. L. R., 9 Calc., 217

S. C. DENOBUNDHOO PAL *v.* SHUSHI MOHUN PAL CHOWDHRY . . . 12 C. L. R., 60

S. C. RAM SOONDUR DEY *v.* SHOSHI MOHUN PAL CHOWDHRY . . . 11 C. L. R., 389

207. ——————— *Property covered by mortgage.—Saleable interest.*—In execution of a rent-

SALE IN EXECUTION OF DECREE—*continued.*

14. INVALID SALES—*continued.*

(*h*) WANT OF SALEABLE INTEREST—*continued.*

Civil Procedure Code, 1882, s. 313—*continued.*

decree, dated 26th May 1879, certain immoveable property was sold in execution and purchased by the appellant on the 21st February 1880, no mention having been made of any incumbrances. On the 9th May 1879 a decree was obtained upon a mortgage executed by the original judgment-debtor, and in execution of that decree the property which had already been sold was attached, and, on the 11th March, again sold in execution of the second decree, it being alleged that the property was covered by the mortgage which was prior in date to the former decree. The appellant thereupon applied that the sale of the 21st March should be set aside under section 313 of the Civil Procedure Code, and his purchase-money directed to be returned to him. *Held* that if, as a fact, the property sold was covered by the mortgage, there was, under the circumstances, no such saleable interest in the judgment-debtor at the time of the sale on the 21st February 1880 as would prevent the operation of section 313 of the Civil Procedure Code, inasmuch as under that sale the purchaser would be unable to get the particular property purchased by him, and that the sale must be set aside. NAHARMUL MARWARI *v.* SADUT ALI

[8 C. L. R., 468

208. ——————— *Sale under attachment during subsistence of prior attachment.—Saleable interest.*—In execution of a decree obtained on the 15th August 1876, the property of the judgment-debtor was attached on the 17th August 1877. The sale of the attached property was postponed pending a suit instituted under the direction of the Court by a claimant to the attached property. This suit having been dismissed on the 13th September 1878, the decree-holder on the 25th September applied for a sale of the property, and the 16th December was fixed for the sale. Meanwhile, on the 13th December 1877, a decree had been obtained by another party against the judgment-debtor, and in execution of this decree the same property was attached on the 13th September 1878, and under this attachment a sale took place on the 15th November following. On the 16th December, as fixed, the property was again sold under the first attachment. The auction-purchasers at that sale, on the 6th January 1879, applied under section 313 of the Civil Procedure Code to set aside the sale, on the ground that the judgment-debtor had no saleable interest. *Held* (reversing the decision of the lower Court) on the authority of the following cases: *Gogaram* v. *Kartick Chunder Singh, B. L. R, Sup. Vol., 1022: 9 W. R., 514; Lalla Joogul Lall* v. *Bhukha Chowdhry, 9 W. R., 244;* and *Kartick Chunder Singh* v. *Gogaram, 2 W. R., Mis., 48,* which the Court felt bound to follow, while it doubted their correctness,—that the sale must be set aside. CHUTKA PANDA *v.* GOBURDHONE DASS

[6 C. L. R., 85

SALE IN EXECUTION OF DECREE—*continued.*

14. INVALID SALES—*continued.*

(*h*) WANT OF SALEABLE INTEREST—*continued.*

Civil Procedure Code, 1882, s. 313—*continued.*

209. ——————— *Debtor having no saleable interest in portion of property.*—Section 313 of the Civil Procedure Code only applies to cases in which the judgment-debtor has no saleable interest in the property sold. It does not apply to cases where the judgment-debtor has no saleable interest in a portion only of the property. IN THE MATTER OF THE PETITION OF RAM COOMAR DEY. RAM COOMAR DEY *v.* SHUSHEE BHOOSHUN GHOSE

[I. L. R., 9 Calc., 626

210. ——————— *Judgment-debtor.—Representative.—Sale of immoveable property.—Setting aside sale.*—In the event of the death of the judgment-debtor, notice must issue to his representative before the sale of immoveable property can be set aside under section 313 of the Code of Civil Procedure, albeit that the section makes no express provision for the appearance of the representative. BALA KADAR *v.* GULAM MOHIDIN

[I. L. R., 7 Bom., 424

(*i*) WANT OF JURISDICTION.

211. ——— **Effect on validity of sale.** —*Property attached in execution of decrees of Munsif and District Judge.—Sale of property under order of Munsif.—Civil Procedure Code, 1882, s. 285.*—Where certain immoveable property, which had been attached in execution of two decrees, one made by a Munsif and the other by the District Court to which such Munsif was subordinate, was sold under the order of the Munsif,—*Held,* following *Badri Prasad* v. *Saran Lal, I. L. R., 4 All., 359,* that the sale was bad, by reason of the Munsif's want of jurisdiction to order it. AGHORE NATH *v.* SHAMA SUNDARI

[I. L. R., 5 All., 615

212. ——————— *Civil Procedure Code, 1877, s. 285.—Attachment of property in execution of decree of two Courts.—Postponement of sale by Court of higher grade.—Sale of property under order of Court of lower grade.*—When several decrees of different Courts are out against a judgment-debtor, and his immoveable property has been attached in pursuance of them, the Court of the highest grade where such Courts are of different grades, or the Court which first effectuated the attachment where such Courts are of the same grade, is, under section 285 of the Civil Procedure Code, the Court which has the power of deciding objections to the attachment, of determining claims made to the property, of ordering the sale thereof and receiving the sale-proceeds, and of providing for their distribution under section 295. *Held,* therefore, where the immoveable property of a judgment-debtor was attached in execution of several decrees, one a Munsif's decree, and the rest a Subordinate Judge's decrees, and the Subordinate Judge postponed the sale of such property, but the Munsif refused to do so, and

SALE IN EXECUTION OF DECREE—*continued.*

14. INVALID SALES—*continued.*

(i) WANT OF JURISDICTION—*continued.*

Effect on validity of sale—*continued.*

such property was sold in execution of the Munsif's decree, that the sale was void as having been made in pursuance of the order of a Court which had no jurisdiction to direct it. IN THE MATTER OF THE PETITION OF BADRI PRASAD. BADRI PRASAD *v.* SARAN LAL . . . I. L. R., 4 All., 359

213. ——————— *Civil Procedure Code, 1877 (1882, s. 285).—Attachment and sale in execution of decrees of several Courts.*—Certain immoveable property was attached in execution of a decree made by a Subordinate Judge and also in execution of a decree made by a Munsif. These decrees were held by the same person and the judgment-debtor was the same person. Such property was sold in execution of both decrees. On the application of the judgment-debtor, who brought into Court the amount due on the decree made by the Subordinate Judge, and with the consent of the decree-holder and the auction-purchaser, the Subordinate Judge made an illegal order setting aside such sale. Subsequently, on the application of the decree-holder and the auction-purchaser, the Munsif made an order confirming such sale. *Per* SPANKIE, *J.*—That the Subordinate Judge had not any jurisdiction under section 285 of the Civil Procedure Code to deal with such sale as regards the decree made by the Munsif, and the Munsif was not precluded by that section from confirming such sale as regards the decree made by him, by reason that the Subordinate Judge, a Court of a higher grade, had made an order setting it aside. *Per* OLDFIELD, *J.*—That, having regard to the provisions of that section, it was doubtful whether the Munsif was competent to confirm such sale; but inasmuch as the Subordinate Judge only intended to set it aside as regards the decree made by him, and his order was illegal, and the Munsif's order had done substantial justice, there was no reason to interfere. CHUNNI LAL *v.* DEBI PRASAD

[I. L. R., 3 All., 356

214. ——————— *Civil Procedure Code, 1882, s. 285.—Immoveable property.—Attachment by superior Court.—Sale by inferior Court.—Title of purchaser.*—The provisions of section 285 of the Code of Civil Procedure, 1882, apply to immoveable property. Where a house, while under an attachment issued by a Subordinate Judge's Court in execution of a decree, was sold in execution of another decree against the same judgment-debtor by the District Munsif's Court, and was then sold by the Subordinate Judge's Court,—*Held* that the sale by the District Munsif's Court was invalid by reason of the provisions of section 285 of the Code of Civil Procedure, 1882. MUTTUKARUPPAN CHETTI *v.* MUTTURAMALINGA CHETTI

[I. L. R., 7 Mad., 47

215. ——————— *Jurisdiction of Munsif.—Beng. Civil Courts Act (VI of 1871), s. 18.—Attachment.—Civil Procedure Code (Act X of 1877), s. 285.*—*A.*, who had obtained a decree in the Court of the Second Munsif of B., in September 1877 attached certain property within the jurisdiction which had been assigned to the Munsif by the District Judge under section 18 of Act VI of 1871. In the previous month, *C.*, who had obtained a decree in the Court of the Additional Munsif of B. (to whom jurisdiction had similarly been assigned), had attached the same property. The sale in execution of *A.'s* decree took place first, and *A.* became the purchaser. *A.* then objected in the Court of the Additional Munsif that the property could not again be sold; but his objection was overruled, and two days subsequently the property was again put up for sale in execution of *C.'s* decree, and he became the purchaser. *A.* brought various suits against the tenants for arrears of rent in which *C.* intervened. *Held* that the jurisdictions of the Munsifs were confined to the particular limits assigned to them, and that, as the property was situate within the limits assigned to the Second Munsif, the Additional Munsif had no jurisdiction to attach or sell it, and that the attachment by *C.* was made improperly and without jurisdiction. *Quære,*—Whether section 285 of the Civil Procedure Code applies to immoveable property. OBHOY CHURN COONDOO *v.* GOLAM ALI *alias* NOCOURY MEAH

[I. L. R., 7 Calc., 410: 9 C. L. R., 361

216. ——————— *Civil Procedure Code, 1882, ss. 285, 295.—Jurisdiction.—Sale by inferior Court pending an unknown attachment by a superior Court.*—At an execution sale held by an inferior Court, at the instance of the decree-holder (the Court itself, the decree-holder, and the auction-purchaser being unaware of any objection to the exercise of a jurisdiction which the Court would ordinarily be competent to exercise), *A.* purchased certain property, and this sale was confirmed. It appeared subsequently that this same property had two years previously to the sale been attached by a superior Court. On a sale of this property being advertised by the superior Court, *A.* objected on the ground that he had already purchased it; this objection was overruled, and a sale was held by the superior Court, at which *A.* again became the purchaser. *A.* then brought a suit against the decree-holder and the judgment-debtor in the inferior Court to recover as damages the sum paid by him at the sale. The suit was dismissed. *Held* that, although the superior Court had been wrong in insisting on the second sale and in not requiring the amount received by the inferior Court to be deposited in the superior Court, and then rateably distributed amongst the creditors of the judgment-debtors, yet the sale by the inferior Court was a good and valid sale; and *A.'s* suit was therefore rightly dismissed. *Obhoy Churn Coondoo* v. *Golam Ali, I. L. R., 7 Calc., 410,* adopted. BYKANT NATH SHAHA *v.* RAJENDRO NARAIN RAI

[I. L. R., 12 Calc., 333

SALE IN EXECUTION OF DECREE—*continued.*

14. INVALID SALES—*continued.*

(i) WANT OF JURISDICTION—*continued.*

Effect on validity of sale—*continued.*

217. ——————— *Sale under two different decrees of different Courts of different grades.—Civil Procedure Code, 1882, s. 285.*—The first mortgagee of certain immoveable property obtained a decree for the sale of the property, caused the property to be attached, and then ceased to prosecute the execution proceedings. The second mortgagee then obtained a decree for the sale of the property, caused it to be attached and put up for sale, and purchased it himself. The first mortgagee then applied for the sale of the property, and the property was put up for sale and was purchased by him. After the order for this sale was made, and before it took place, the judgment-debtor died, and the sale took place without his legal representatives being made parties to the execution proceedings. The Courts which executed these decrees were of two different grades, the Court which executed the first mortgagee's decree being of the lower grade. In a suit by the first mortgagee against the second mortgagee for possession of the property,—*Held* that the sale to the first mortgagee was not invalid, with reference to the provisions of section 285 of the Civil Procedure Code, because it had not been ordered and held by the Court of the higher grade, inasmuch as when such sale was ordered by the Court of the lower grade the property was not under attachment in execution of the decree of the Court of the higher grade, that decree having been executed by the sale of the property, and therefore the provisions of that section were not applicable. *Badri Prasad v. Saran Lal, I. L. R., 4 All., 359,* distinguished. *Per* OLDFIELD, *J.*, that there was nothing in the provisions of section 285 or 295 of the Civil Procedure Code to support the contention that the first mortgagee, after allowing the property to be sold, was debarred from enforcing execution of his decree against it, and was only entitled to look to the assets realised at the sale for the satisfaction of his decree. STOWELL *v.* AJUDHIA NATH [I. L. R., 6 All., 255

218. ——————— *Decree set aside as made without jurisdiction.*—When, on a re-hearing, a Deputy Collector set aside his former judgment as passed without jurisdiction, it was held that his proceedings under that judgment were of themselves null and void, and that it did not require any order in words to set aside the sale which they involved. ONUNGO MOONJUREE DOSSIA *v.* PUNCHANUN BOSE . . . . . 12 W. R., 72

219. ——————— *Decree afterwards set aside as having been passed without jurisdiction.—Invalidity of sale.*—Under a decree passed by a Court which had no jurisdiction to try the suit, the right, title, and interest of the judgment-debtor, *A.*, in a certain property was sold, and purchased by *B.* The decree was, after the sale, set aside as having been passed without jurisdiction. In a suit by *A.* against *B.* for confirmation of possession, on the ground that *B.* was about to take possession of the property under the purchase,—*Held* that the sale in execution was a nullity, as the decree had been passed without jurisdiction. *Jan Ali* v. *Jan Ali Chowdry, 1 B. L. R., A. C., 56: 10 W. R., 154;* and *Pearsemonee Dossee* v. *The Collector of Beerbhoom, 8 W. R., 300,* distinguished. JADU NATH KUNDU CHOWDRY *v.* BRAJA NATH KUNDU [6 B. L. R., Ap., 90

220. ——————— *Sale by Sheriff ultra vires.—Right of purchaser.*—Where the Sheriff sells under a *fi. fa.* property which could not legally be sold,—*e.g.*, an equity of redemption,—*Held*, the sale was null and void, and the purchaser took nothing by his purchase. When, therefore, the purchaser was also a mortgagee who was in right of his purchase put into possession,—*Held* that, notwithstanding his possession, the right of redemption still existed, and he must be taken to have been in possession as mortgagee only. HURRO PERSHAD GHOSAL *v.* HURRO MONEE DEBEE . . 8 W. R., 210

221. ——————— *Sale of ancestral land by order of the Court.—Act X of 1877 (Civil Procedure Code), ss. 311, 320.—Rules prescribed by Local Government under s. 320.—Invalidity of sale.*—A Subordinate Judge made an order for the sale in execution of a decree of certain immoveable property, which was "ancestral" within the meaning of the notification by the Local Government, No. 671, dated the 30th August 1880, under which execution of such decree should have been transferred to the Collector; and such property was sold accordingly. *Held* that the order for the sale of such property having been made without jurisdiction, the sale was void and should be set aside. SUKHDEO RAI *v.* SHEO GHULAM [I. L. R., 4 All., 382

222. ——————— *Fieri facias, Writ of.—Sheriff, Jurisdiction of.*—Inasmuch as since the establishment of the High Court, or at all events since 1865, a writ of *fieri facias* could not run beyond the High Court's original jurisdiction, a sale in execution of a decree by the mofussil Court of property in the mofussil will pass a good title to the purchaser, notwithstanding that, at the time of such sale, the Sheriff was in possession of the property under a writ of *fieri facias* issued subsequently to 1865. *Monomothonath Dey* v. *Greender Chunder Ghose, 24 W. R., 366,* cited. GRISH CHUNDER DAS *v.* BROJO JIBUN BOSE . . . . 8 C. L. R., 4

223. ——————— *Sale set aside as being without jurisdiction.—Title of purchaser.—Certificate of sale.*—In 1862 a suit was filed on the Equity Side of the Supreme Court for partition of the property of a Hindu family, and an injunction was issued prohibiting *V.*, a party to the suit, from inter-

SALE IN EXECUTION OF DECREE—*continued.*

14. INVALID SALES—*continued.*

(*i*) WANT OF JURISDICTION—*continued.*

Effect on validity of sale—*continued.*

fering with the property. In 1863 a decree was passed for the administration of the property under the direction of the High Court, and the injunction against *V.* was continued, and on July 7th, 1866, part of the property, a house at Chingleput, was sold by the master and bought by the plaintiff's predecessor in title. In 1865 *V.* and his son (the second defendant), who was no party to the suit, mortgaged the house at Chingleput to the first defendant, who remained in possession from that date. *Held*, in a suit brought on July 6th, 1878, to recover the property, that, as the High Court had no jurisdiction before the Letters Patent of 1865 in suits for immoveable property partly within and partly without the town of Madras, the sale of the house at Chingleput in 1866 by the Court was *ultra vires*, and the plaintiff acquired no title thereby. SADAGOPA EDINTARA MAHA DESIKA SWAMIAR *v.* JAMUNA BHAI AMMAL

[I. L. R., 5 Mad., 54

This decision was afterwards reversed on review so far as it decided that the High Court prior to 1865 had no power to execute a decree in a partition suit between Hindu inhabitants of Madras by selling immoveable property situated in Chingleput district. JAMUNA BHAI AMMAL *v.* SADAGOPA EDINTARA MAHA DESIKA SWAMIAR . . I. L. R., 7 Mad., 56

224. ——— ——— *Suit to recover property sold in execution by Court not having jurisdiction.—Civil Procedure Code, 1859, s. 257.*—A suit to recover property alleged to have been sold in execution by a Court which had no jurisdiction was not barred by Act VIII of 1859, section 257. KANHAYE SINGH *v.* OOMADHUR BHUTT

[21 W. R., 291

(*j*) DECREES BARRED BY LIMITATION.

225. ——— Suit to recover purchased property.—*Right of suit.*—A suit to recover possession of, and to establish the right to, property purchased in execution of a decree declared after the sale to be null and void as being barred by limitation at the time of execution, will not lie. PARADUTT LALL *v.* RUTTUN SINGH . . . 5 N. W., 242

See ZUMEER SIRDAR *v.* ASSEEMOODDEEN SIRDAR [23 W. R., 257

226. ——— Objection to validity of sale.—*Civil Procedure Code, s. 230.—Decree, Execution of, after twelve years.*—After a sale of land in execution of a decree and before its confirmation, the judgment-debtor cannot object to the validity of the sale on the ground that the execution of the decree is barred by the provisions of section 230 of the Code of Civil Procedure, 1877. GANGATHARA PANDITHAR *v.* RATHABAI AMMAL . I. L. R., 6 Mad., 237

227. ——— "Subsisting decree," Meaning of.—*Sale certificate, Effect of.—Act XIV of 1882, ss. 244, 316.—Costs.*—The words "subsisting decree," in the proviso to section 316 of the Code of Civil Procedure, refer to a decree which is unreversed and in full force, and not merely to a decree the execution of which is not barred by limitation. Where a decree under which a sale takes place remains unreversed, and the sale under it has been confirmed, a sale certificate will operate as a valid transfer of the property sold, notwithstanding that the sale has actually taken place at a time when execution of the decree is barred by limitation. SARODA CHURN CHUCKERBUTTY *v.* MAHOMED ISUF MEAH

[I. L. R., 11 Calc., 376

228. ——— Effect on validity of sale.—*Execution of decree barred at time of sale.—Purchase by decree-holder.*—*G. A.* obtained a decree against *M.* Afterwards *L. N.*, who had obtained a decree against *G. A.*, attached the decree which he (*G. A.*) had obtained against *M.*, and, upon sale in execution, became himself the purchaser of that decree. It afterwards appeared that the decree held by *L. N.* against *G. A.* was barred by limitation. *Held* that, the execution of *L. N.'s* decree against *G. A.*, being barred by lapse of time at the time of sale, the sale was invalid. GOLAM ASGAR *v.* LAKHIMANI DEBI

[5 B. L. R., 68: 13 W. R., 273

229. ——— Separate suit for declaration that decree was barred by limitation at time of sale.—*Right of suit.*—*A.* sued for possession of certain lands to which he alleged he was entitled as wussee (executor) under a wusseeutnamah (will), and which *B.* had fraudulently, during the minority of himself and his brother, caused to be put up for sale under a decree the execution of which was barred by lapse of time. *B.* had become the purchaser at such sale. *Held* that a suit would not lie for the purpose of having it determined that the execution of *B.'s* decree was barred. NOJABUT ALI CHOWDRY *v.* MOHA BUSSEEROOLAH CHOWDRY

[11 B. L. R., 42: 20 W. R., 5

230. ——— Suit to recover property sold.—*Sale set aside, execution of decree being found to be barred by limitation.—Suit to recover the property from purchaser.*—A creditor obtained a decree against his debtor, and applied for and obtained an order for execution. This application was unsuccessfully opposed by the judgment-debtor on the ground that execution was barred by limitation. Certain properties of the judgment-debtor were attached and sold in execution of this decree, the judgment-creditor himself becoming the purchaser. In due course the sale was confirmed, and a certificate granted to the purchaser. Subsequently to this, the order granting execution came up before the High Court on appeal, and that Court decided that execution was barred. The person who had been the judgment-debtor then brought a regular suit against the

SALE IN EXECUTION OF DECREE—*continued.*

14. INVALID SALES—*continued.*

(*j*) DECREES BARRED BY LIMITATION—*continued.*

Suit to recover property sold—*continued.*

purchaser to recover the properties sold in execution. *Held* that he was entitled to have the sale set aside by regular suit. *Jan Ali* v. *Jan Ali Chowdhry, 1 B. L. R., A. C., 56 : 10 W. R., 154,* distinguished. MINA KUMARI BIBEE *v.* JAGAT SATTANI BIBEE [I. L. R., 10 Calc., 220

231. ——— Right to deposit by judgment-debtor in execution proceedings after execution of decree is barred.—*Limitation.—Money or moveable property deposited in Court to stay sale.—Order for sale confirmed.—No execution taken out within three years after deposit.*—When money or moveable property has been deposited in Court on behalf of a judgment-debtor in lieu of security, for the purpose of staying a sale in execution of a decree pending an appeal against an order directing the sale, which is afterwards confirmed on appeal, neither the depositor nor the judgment-debtor can afterwards claim to have such deposit refunded or restored to him, notwithstanding that the decree-holder has omitted to draw it out of Court for more than three years, and that more than three years have elapsed since any proceedings have been taken in execution of the decree, and that the decree for that reason is incapable of execution. *Semble,*—When money or moveable property is deposited in Court in such a case as the above, the Court, upon confirmation of the order for a sale, holds the deposit in trust for the decree-holder, and is at liberty to realise it and pay the proceeds over to him to the extent of his decree. SHEO GHOLAM SAHOO *v.* RAHUT HOSSEIN [I. L. R., 4 Calc., 6

S. C. SHEO GHOLAM SAHU *v.* KHUB LALL [2 C. L. R., 206

232. ——— Order setting aside sale after confirmation.—*Certificate and confirmation of sale.—Execution barred at time of sale.—Position of auction-purchaser.—Civil Procedure Code (Act X of 1877), s. 316.—Act XII of 1879.—Limitation Act (XV of 1877), sch. ii., art. 165.*—A person purchased certain property at a sale in execution of a decree in November 1878; his purchase was confirmed, and he obtained a certificate of sale on the 23rd May 1879, from which date he remained in possession. The judgment-debtor applied to have the sale set aside for irregularity, but his application was dismissed both at the hearing and on appeal. He had applied, before the sale took place, to stay the sale, on the ground that the right to apply for execution was barred. This application was dismissed, but was allowed on appeal. It did not appear that the auction-purchaser was a party to the proceeding, or that he was cognisant of the application. Two years from the date of the sale, and one and a half years from its confirmation, the judgment-debtor, on a summary application, obtained an order setting aside the sale and putting the auction-purchaser out of possession. *Held* that the order was erroneous, the Subordinate Judge having no power, after the sale had been confirmed, to set aside the sale by a summary order. The words "subsisting decree," in section 316 of Act X of 1877, as amended by Act XII of 1879, mean a decree *unreversed and in full force,* and not merely one upon which execution cannot be issued. IN THE MATTER OF THE PETITION OF MAHOMED HOSSEIN *v.* KOKIL SINGH [I. L. R., 7 Calc., 91: 9 C. L. R., 53

(*k*) SALE PENDING APPEAL.

233. ——— Sale of property released from attachment pending appeal from decree declaring property liable.—*Civil Procedure Code, 1877, ss. 280, 283, and 545.*—Section 283 of the Code of Civil Procedure, 1877, does not constitute an exception to the procedure laid down by section 545. Where property has been released from attachment under section 280 and subsequently declared liable to attachment by a decree against which an appeal is pending, a sale of such property before the final result of the appeal is not illegal by virtue of the provisions of section 283. FATHULA *v.* MUNIYAPPA . . . . I. L. R., 6 Mad., 98

15. SETTING ASIDE SALE.

(*a*) IRREGULARITY—GENERAL CASES.

234. ——— Objections to sale for irregularity.—*Duty of Court.—Procedure.*—Where a judgment-debtor objects to the sale of attached property, it is the duty of the Court executing the decree to try the validity of the objections. GUNESH LALL TEWAREE *v.* BINDOO BASHINEE [24 W. R., 85

235. ——— Application to set aside sale.—*Civil Procedure Code, 1859, s. 256.—Procedure.*—The issue which arises when a petition is preferred under Act VIII of 1859, section 256, is a judicial proceeding and ought to be carried out with regularity, the Court fixing a day for the hearing of the matter of the petition and giving reasonable notice to all parties,—*i.e.,* such as would afford to each party fair and reasonable opportunity of bringing the necessary evidence on or before that day. IN THE MATTER OF THE PETITION OF BROJO MOHUN THAKOOR. BROJO MOHUN THAKOOR *v.* AMEENOODDEEN [20 W. R., 424

236. ——— *Discretion of Judge.—Presentation of application.*—A Judge has discretion to receive an application to set aside a sale in execution of a decree when made to him after the lapse of thirty days, but before the confirmation of the sale. POULSON *v.* DUNN 18 W. R., 11

SALE IN EXECUTION OF DECREE—*continued.*

15. SETTING ASIDE SALE—*continued.*

(*a*) IRREGULARITY—GENERAL CASES—*continued.*

Application to set aside sale—*continued.*

IN THE MATTER OF UMIRTO LALL BOSE . [18 W. R., 11, note

Contra, RAJ COOMAR SINGH *alias* NANHOO LALL *v.* LALLJEE SAHOO . . 18 W. R., 333

where the Court, however, held that the applicant was bound to show some valid excuse for not making the application in proper time.

As to what the term "applicant" included, there were under Act VIII of 1859 diverse rulings, some holding that it was not confined to the parties to the suit, but included any person who had sustained substantial injury by reason of any material irregularity in publishing or conducting the sale. KRISHNARAV VENKATESH *v.* VASUDEV ANANT . 11 Bom., 15 and others that judgment-debtors and not third parties were meant. LUCHMEEPUT SINGH DOOGUR *v.* MOOKTAKASHEE DEBIA . . 9 W. R., 388

S. C. upheld on review. MOOKTAKESHEE DEBIA *v.* LUCHMEEPUT SINGH DOOGUR . 10 W. R., 137

JOGE NARAIN SINGH *v.* BHUGBANO [2 W. R., Mis., 13

PURSHOTTAM VITHAL *v.* PURSHOTTAM ISWAR [I. L. R., 8 Bom., 532

LUCHMEEPUT SINGH *v.* ADOYTO CHURN MULLICK . . . . 24 W. R., 452

HARADHONE SHAMUNTO *v.* GOLUCK CHUNDER SHAMUNTO . . . 25 W. R., 79

MAINA KOER *v.* LUCHMUN BHUGGUT [1 C. L. R., 250

MAN KUAR *v.* TARA SINGH [I. L. R., 7 All., 583

237. ——— **By whom application may be made.**—*Objection to sale by third person.—Civil Procedure Code, 1882, s. 311.—Held* that persons other than the decree-holders or the persons whose property was sold in execution of decree were not competent to apply to the Court under section 311 of the Civil Procedure Code to set aside the sale. MAN KUAR *v.* TARA SINGH [I. L. R., 7 All., 583

238. ——— *Code of Civil Procedure (Act X of 1877), s. 311.*—The words "any person whose immoveable property has been sold" in section 311 of the Code of Civil Procedure, do not include a person who has purchased the same property at a prior execution sale, such prior sale not having been confirmed. IN THE MATTER OF THE PETITION OF BHAGABUTI CHURN BHUTTACHARJEE CHOWDHRY. BHAGABUTI CHURN BHUTTACHARJEE CHOWDHRY *v.* BISHESHWAR SEN [I. L. R., 8 Calc., 367

S. C. BHAGABATI CHARAN BHUTTACHARJEE *v.* KALI KUMAR CHUTTAR 10 C. L. R., 441

SALE IN EXECUTION OF DECREE—*continued.*

15. SETTING ASIDE SALE—*continued.*

(*a*) IRREGULARITY—GENERAL CASES—*continued.*

By whom application may be made—*continued.*

239. ——— *Civil Procedure Code, s. 311.—Person whose property has been sold.—Mortgagee.—Transfer of Property Act, IV of 1882, ss. 86, 87.*—The mortgagees of a certain tenure obtained, on 11th September 1884, under section 86 of the Transfer of Property Act, a decree for foreclosure, which declared that, on failure to pay the amount found due, the mortgagor's right of redemption should be barred on 11th March 1885; this time was subsequently extended on the application of the mortgagor to 30th April 1885. On the 6th April 1885, in execution of a decree for arrears of rent obtained by the superior holder of the tenure against the mortgagor, the tenure was sold free from incumbrances. The mortgagees applied under section 311 of the Civil Procedure Code to have the sale set aside for material irregularity. *Held* that, under section 86 of the Transfer of Property Act, the mortgagees had such an interest in the property as brought them within the words of section 311, "person whose property has been sold," and entitled them to make the application. RAKHAL CHUNDER BOSE *v.* DWARKA NATH MISSER [I. L. R., 13 Calc., 346

240. ——— **Right to have sale set aside as against bona fide purchaser.**—*Question of right how to be determined.*—It cannot be laid down as a general proposition of law that under no circumstances can a sale in execution of a decree be set aside as against a *bonâ fide* purchaser for valuable consideration and without notice. In a suit brought to set aside such a sale, it is for the Court to determine whether it will be in accordance with the principles of justice, equity, and good conscience that the sale ought to be set aside, or not. ABDUL HYE *v.* NAWAB RAJ [B. L. R., Sup. Vol., 911

S. C. ABDOOL HYE *v.* NAWAB RAJ [9 W. R., 196

241. ——— **Evidence of irregularity**—*Objections to sale proceedings.*—Where objections to sale proceedings are presented by judgment-debtors, the Court ought to make a careful investigation into the circumstances attending such sale, and not rely on the mere report of a nazir. SOOKH RAJ SINGH *v.* TUFFAZZOOL HOSSEIN [2 N. W., 142

242. ——— **Finding as to irregularity.**—*Civil Procedure Code, 1859, s. 256.—Material injury.*—On an application to set aside a sale of immoveable property in execution of a decree under section 256, Act VIII of 1859, before ascertaining whether any substantial injury has accrued to the debtor, it was held that the Court must come to a distinct finding that there has been an irregularity in publishing or conducting the sale. PARBUTTY *v.* GIRDAREE LALL 6 W. R., Mis., 125

SALE IN EXECUTION OF DECREE—*continued.*

15. SETTING ASIDE SALE—*continued.*

(*a*) IRREGULARITY—GENERAL CASES—*continued.*

243. ——— Objections to sale being made absolute.—*Civil Procedure Code, 1859, ss. 256, 257.*—Objections by the judgment-debtor to a sale in execution of decree being made absolute could be raised and disposed of only under sections 256 and 257 of the Code of Civil Procedure, under which a sale could be set aside on the ground of material irregularity in publishing or conducting it. NIL KOMUL CHUCKERBUTTY *v.* SHAMA SOONDUREE [6 W. R., Mis., 46

VIRSINGAPPA BIN BASLINGAPPA *v.* SADASHIVAPPA APPA GOLKHANDI . 7 Bom., A. C., 74

244. ——— Ground for setting aside sale.—*Allegation of having no interest to sell.—Sale by representative of debtor.*—An allegation by a representative that he took nothing from the judgment-debtor, and that therefore the sale conveyed nothing, is an objection which must be raised before the sale in execution, and is not a ground for setting aside the sale for irregularity. CHOWDHRY WAHED ALI *v.* JUMAYE . . 6 W. R., Mis., 116

245. ——— *Omission to make attachment.*—It was doubted at one time whether a sale could be set aside by reason of an omission to attach the property. JOWHUROOZ ZUMMA KHAN *v.* BANEE MADHUB NUNDUN [11 W. R., 226

246. ——— *Civil Procedure Code, 1859, s. 201.—Sale without attachment.—Irregularity.*—No sale in execution of a decree can take place, either of moveable or immoveable property, under the provisions of Act VIII of 1859, without previous attachment, and a sale without prior attachment is illegal. The words "attachment and sale" in section 201 must be taken together, and not distributively. LUCHMEEPUT *v.* LEKRAJ ROY . . . . . 8 W. R., 415

247. ——— *Sale of property without attachment.—Decree for money.—Invalidity of sale.—Civil Procedure Code, ch. XIX, and s. 254.*—A regularly perfected attachment is an essential preliminary to sales in execution of simple decrees for money; and where there has been no such attachment, any sale that may have taken place is not simply voidable but *de facto* void. MAHADEO DUBEY *v.* BHOLA NATH DICHIT [I. L. R., 5 All., 86

248. ——— *Irregular attachment.—Civil Procedure Code, 1859, s. 285.*—The attachment of immoveable property by a Court other than that which passed the decree, before the decree had been sent to it for execution, vitiates the sale subsequently made of that property as not being made in strict observance of the procedure prescribed by section 285, Act VIII of 1859. SHURUTOOLLAH MERDHA *v.* GOOROO CHURN DASS . 8 W. R., 310

SALE IN EXECUTION OF DECREE—*continued.*

15. SETTING ASIDE SALE—*continued.*

(*a*) IRREGULARITY—GENERAL CASES—*continued.*

Ground for setting aside sale—*continued.*

MOOKTA KESHEE DEBEE *v.* KUNUCK MONEE DEBEE . . . . 7 W. R., 267

See MOOKTAKESHEE DEBIA *v.* LUCHMEEPUT SINGH DOOGUR . . . 10 W. R., 137

Upholding on review LUCHMEEPUT SINGH *v.* MOOKTAKASHEE DEBIA . . 9 W. R., 388

249. ——— *Process issued simultaneously and not successively.*—In the case of moveable property, process of attachment and sale may be issued successively or simultaneously; but in regard to immoveable property, process of attachment and sale should be issued successively; but if issued simultaneously, and the attachment has been made *bonâ fide*, and the sale proclamation issued as required by law, with an interval of thirty days between it and the sale, such irregularity is not a sufficient ground for setting aside the sale, as no material injury could accrue to the debtor thereby. HURO SOONDUREE DEBIA *v.* BROJO GOBIND SHAHA [4 W. R., Mis., 12

250. ——— *Irregularity in attachment.—Civil Procedure Code, 1859, ss. 235, 259, 256.*—On an application made to a Principal Sudder Ameen for execution of a decree against a judgment-debtor's estate situate in a different district, that functionary caused a prohibitory order, under section 235, Act VIII of 1859, to be issued through the Judge of the other district, after which, without further procedure, under section 285 and the sections following, or further attachment, the property was put for sale and purchased, no certificate under section 259 being given to purchaser. *Held* that the sale was illegal, and that there had been no valid transfer of right, title, and interest in the property. LUCHMEEPUT SINGH DOOGUR *v.* MOOKTAKASHEE DEBIA . . . 9 W. R., 388

S. C. upheld on review MOOKTAKESHEE DEBIA *v.* LUCHMEEPUT SINGH DOOGUR . 10 W. R., 137

251. ——— *Irregularity in attachment.—Attachment of debt.—Civil Procedure Code, 1877, ss. 268, 278, and 287.—Proclamation of sale.*—A decree-holder, by a prohibitory order issued under section 268 of the Civil Procedure Code, attached a debt due to his judgment-debtor. The person served with the order applied, under section 278, to have the attachment removed. *Held* that the application could not be entertained under section 278, that section having no application to the case; but that before issuing a proclamation of sale, in execution of a decree, of the debt so attached, it is the duty of the Court, under section 287 of the Code, to ascertain all that the Court considers it material for the intending purchaser to know in order to judge of the nature and value of the property proclaimed for sale. If the property of which sale is sought is a debt, and the Court receives notice from the alleged

SALE IN EXECUTION OF DECREE—*continued.*

15. SETTING ASIDE SALE—*continued.*

(*a*) IRREGULARITY—GENERAL CASES—*continued.*

Ground for setting aside sale—*continued.*

debtor that no debt exists, the Court should satisfy itself as to the existence, or otherwise, of the debt, and, if it comes to the conclusion that no debt exists, should abstain from proceeding to sale. HARILAL *v.* ABHESING MERU . . I. L. R., 4 Bom., 323

252. ——————— *Irregularity in issue of notification of sale and attachment.—Misconduct of decree-holder.*—Before a sale is confirmed, a party objecting to the irregularity of the sale proceedings, on the ground that the notification of sale and attachment has not been properly issued, should be allowed proof of non-service or of insufficient service. The misconduct of a decree-holder may be a good cause of action, but cannot be a ground for setting aside a sale. This can only be done summarily if irregularity in the sale proceedings resulting in material injury to the debtor be proved. RETHBUNJUN SINGH *v.* MITTURJEET SINGH [4 W. R., Mis., 9

253. ——————— *Irregularity in service of prohibitory order.—Act VIII of 1859, ss. 236 and 243.—Purchase of property by decree-holder.—Practice of English Courts.*—In execution of a decree the defendant caused a decree of the plaintiff awarding him R925 to be attached, and, under section 236, Act VIII of 1859, caused the prohibitory order to be fixed in a conspicuous part of the Court-house, and copies thereof to be delivered to the judgment-debtors. The decree was subsequently sold by auction, and the defendant purchased it for R20. On special appeal by the plaintiff, upon the ground that the sale was irregular, as the prohibitory order had not been served upon him,—*Held* that the prohibitory order having been served in accordance with the provisions of section 236, Act VIII of 1859, was legal and regular. *Held* also, that the Court executing the defendant's decree ought not to have sold the plaintiff's decree, but should have, under section 243, appointed a manager to enforce plaintiff's decree. That a decree-holder ought not to be allowed to bid and purchase at a sale in execution of his decree, without an order of Court previously obtained upon notice to the judgment-debtor. Practice of English Courts regarding sale in execution of decrees discussed. BANDHU ROY *v.* HANUMAN SINGH [3 B. L. R., A. C., 320: 14 W. R., 406, note

254. ——————— *Irregularity in applying for execution of decree.—Act VIII of 1859, s. 257.*—*G.* and *M.* obtained a money decree against *K.* in the Court of the Principal Sudder Ameen on the 12th December 1864 This decree was reversed by the District Judge, but on the 5th March 1866 the Sudder Court set aside the Judge's decree and ordered a new trial. On the 5th May 1866, the District Judge affirmed the decree of the Court of first instance. On the 3rd December 1866 the High Court again set aside the Judge's decree and ordered a new trial. On the 14th January 1867 the District Judge again affirmed the decree of the Court of first instance, and no appeal being preferred, the decree became final. The decree-holders had in the meantime taken proceedings to execute the decree, dated the 5th May 1866, and from time to time and finally on the 7th November 1870 they renewed these proceedings, in each instance referring to the decree dated the 5th May 1866, even after it was set aside, and the decree dated the 14th January 1867 passed. On the last application a sale of certain immoveable property belonging to *K.* was ordered and took place on the 15th February 1871. *K.* objected to the confirmation of the sale on the ground of the irregularity in the application, but his objections were disallowed and the sale was confirmed. He brought a suit to recover possession of the property from the auction-purchaser on the ground that the sale was a nullity. *Held, per* STUART, *C. J.*, and PEARSON, TURNER, and SPANKIE, *JJ.*, that the sale ought not to be set aside, as the irregularity in applying for execution of the decree, dated the 5th May 1866, was an irregularity which did not prejudice the judgment-debtor. *Per* OLDFIELD, *J.*—That with reference to section 257, Act VIII of 1859, the suit was not maintainable. GHAZI *v.* KADIR BAKSH . I. L. R., 1 All., 212

255. ——————— *Irregularity in attachment.—Confirmation of sale.—Objection that property is not liable to attachment.—Civil Procedure Code, 1882, ss. 278, 311, 312.*—*Held* that an objection made by one whose property was attached and sold in execution of a decree for the payment of money for the performance of which he had become a surety, that he was no party to the decree, and his property was not liable to be attached and sold, and therefore the sale was invalid, was not an objection entertainable under section 311 of the Civil Procedure Code, and was consequently no ground for setting aside the sale under that section, especially as it was preferred for the first time on appeal, and, moreover, might have been taken under section 278 at the time of attachment, when the objector would have had his remedy as therein provided. HUB LAL *v.* KANHIA LAL . . I. L. R., 7 All., 365

256. ——————— *Sale of property other than that hypothecated.*—A decree-holder is not precluded from taking any of his judgment-debtor's property in execution of his decree merely because he had a lien on particular properties. A sale therefore is not liable to be set aside because the property sold was other than that hypothecated in the bond. LALJEE *v.* SADIT HOSSEIN [4 N. W., 99

257. ——————— *Sale of property of third person.—Right of suit.—Civil Procedure Code, 1859, s. 252.*—A sale in execution of decree transfers to the purchaser nothing more than the rights and interests of the judgment-debtor at the

SALE IN EXECUTION OF DECREE—*continued.*

15. SETTING ASIDE SALE—*continued.*

(*a*) IRREGULARITY—GENERAL CASES—*continued.*

Ground for setting aside sale—*continued.*

time of attachment and sale; and section 252 of Act VIII of 1859 did not prohibit an enquiry into the extent of those rights, or declare the owner of the property attached in execution of a decree passed against a third party, incompetent to assert his claim by suit. The sale of moveable property, belonging to a third party, in execution of a decree, was not a mere irregularity within the meaning of section 252, and the owner of the property so sold was entitled to sue for its restoration, or for damages. SHAM SUNDER DASS *v.* RAHEEM BUKSH . **6 N. W., 252**

MOHANUND HOLDAR *v.* AKIAL MEHALDAR **[9 W. R., 118**

258. ——————— *Sale of portion of tenure under decree for rent.—Sale of other portion under mortgage-decree.*—Where decrees for arrears of rent had been obtained by fractional shareholders in a tenure, and in execution thereof a moiety of the tenure had been sold it appeared that the other moiety had been sold at the same time in execution of a mortgage-decree against some of the judgment-debtors in the rent-suits, on an objection being taken to the confirmation of such sale on the ground that the whole tenure should have been sold in execution of the rent-decrees,—*Held* that all that the decree-holders were entitled to have sold, was the right, title, and interest of their judgment-debtors, and that they were in the position of ordinary creditors having no lien on the tenure; and that, consequently, the mortgagee being entitled to enforce his lien against the moiety covered by his mortgage, the sale of the remaining moiety in satisfaction of the rent-decrees was a good sale, and could not be set aside. MOHENDRO COOMAR DUTT *v.* HEERA MOHUN COONDOO. ISHANESWARY DASEE *v.* GOPAL DAS DUTT **[I. L. R., 7 Calc., 723**

259. ——————— *Sale of whole estate where a portion would suffice.*—A Subordinate Judge, on the application of a judgment-creditor, ordered the attachment and sale of an indigo concern consisting of several factories, and fixed the 9th March for the sale. Shortly before the date so fixed, he issued a direction to the District Judge's nazir that the sale should be effected in portions to be sold in succession. Upon this, the District Judge removed the execution proceedings to his own Court, and issued a roobokari declaring the Subordinate Judge's order null and void, and ordering the property to be sold on the day fixed in one lot. This was accordingly done. *Held* that it was entirely within the Subordinate Judge's discretion to direct that the property should be sold in portions even though it had been attached or proclaimed as an entirety. *Held* that as it is damage to a person to have his whole property sold against his will to satisfy the claims of a creditor when the sale of a portion would suffice, the irregularity committed by the District Judge caused material injury to the judgment-debtors. ABDOOL HYE *v.* MACRAE **[23 W. R., 1**

SALE IN EXECUTION OF DECREE—*continued.*

15. SETTING ASIDE SALE—*continued.*

(*a*) IRREGULARITY—GENERAL CASES—*continued.*

Ground for setting aside sale—*continued.*

Confirmed on review, MORGAN *v.* ABDOOL HYE **[23 W. R., 393**

260. ——————— *Material irregularity in publishing or conducting sale in execution.—Objection that property sold was not legally saleable.—Civil Procedure Code, 1882, ss. 244, 311, 312.*—An objection by a judgment-debtor to a sale in execution of a decree on the ground that the property which was the subject of sale was not legally saleable, is not a matter which can be entertained by the Court under section 311 of the Civil Procedure Code, so as to afford a ground for setting aside the sale on account of material irregularity in publishing or conducting it. *Ram Gopal* v. *Khiali Ram, I. L. R., 6 All., 448,* and *Janki Singh* v. *Ablakh Singh, I. L. R., 6 All., 393,* distinguished. *Per* MAHMOOD, *J.*—The expression "conducting the sale" as used in section 311 of the Civil Procedure Code, does not include any proceedings unconnected with the actual carrying out of the sale, but refers to the action of the officer who makes the sale, and not to anything done antecedent to the order of sale. *Olpherts* v. *Mahabir Pershad, L. R., 10 I. A., 25,* referred to. RAMCHHAIDAR MISR *v.* BECHU BHAGAT . **I. L. R., 7 All., 641**

261. ——————— *Decree for sale of mortgaged property and for costs.—Attachment and sale of other property for whole amount of decree.—Suit to set aside execution sale.—Civil Procedure Code, 1882, ss. 311, 312.—Finality of order in execution proceedings.*—In execution of a decree on a mortgage-bond, for the sale of the mortgaged property, and for the costs of the suit, amounting to R1,000, certain houses were attached on the 30th September 1881, which were not part of the mortgaged property. On an objection raised by the judgment-debtors that the decree was by its terms executable only against the mortgaged property, the High Court on appeal decided, on the 6th September 1882, that the houses were not liable to attachment and sale under the decree. In the meantime, on the 15th June 1882, the houses had been put up for sale and purchased for R500, and the sale had been confirmed on the 16th August 1882. The judgment-debtors brought a suit against the purchaser to set aside the sale, on the ground that the houses were not saleable under the decree. *Held* that the decree, in regard to costs, was a decree made personal against the judgment-debtor, and conferred a right upon the decree-holder to take out execution for the recovery of those costs, not only against the property mortgaged in the bond, but also against the person and other property of the judgment-debtor. *Per* OLDFIELD, *J.* (MAHMOOD, *J.*, doubting) that the attachment and sale in execution of the decree were valid, inasmuch as they were made in respect of the costs as well of the principal and interest decreed. *Per* MAHMOOD, *J.*, that the suit was maintainable, and was not barred by any plea *in limine*. *Abdul Hye* v. *Nawab*

SALE IN EXECUTION OF DECREE—*continued.*

15. SETTING ASIDE SALE—*continued.*

(*a*) IRREGULARITY—GENERAL CASES—*continued.*

Ground for setting aside sale—*continued.*

Raj, B. L. R., Sup. Vol., 911, referred to. Also *Per* MAHMOOD, *J.*, that inasmuch as the adjudication of the 6th September 1882 was one between the judgment-debtors on the one hand and the decree-holder on the other, and subsequent not only to the sale, but to the confirmation of the sale, and inasmuch as the Court was not then called upon to decide anything in relation to the nature of the decree as to costs, the order then passed could not be used against the purchaser. Also *Per* MAHMOOD, *J.*, that it was doubtful whether, the attachment having been made for the whole amount of the decree and not for costs, and no separate proceedings having taken place in respect of the personal decree against the judgment-debtor, the attachment, the notification of sale, and the sale itself, were valid; but that everything that was said against these proceedings constituted matters falling under section 312 of the Civil Procedure Code, which enables parties to object to confirmation of sale; and that therefore, even assuming that the sale and confirmation of sale were subject to the objection of "material irregularity in publishing or conducting" the sale, within the meaning of section 311, a suit like the present, upon that ground alone, was prohibited by the last part of section 312. RAGHUBAR DYAL *v.* ILAHI BUKSH . **I. L. R., 7 All., 450**

262. ——————— *Omission to give due notice of sale.—Material injury.*—Where, in an execution sale, there had been some irregularity which left it doubtful whether the judgment-debtor had been duly apprised of the sale of his dwelling-house,—*Held* that the irregularity had caused material injury to the judgment-debtor, and that the sale must be set aside. JOYNARAIN GIRI *v.* GOLUCK CHUNDER MYTEE . . . **25 W. R., 183**

263. ——————— *Omission to give notice of execution.—Civil Procedure Code, 1877, s. 248.*—An omission to give notice to the party against whom execution is proceeding, as provided by section 248 of the Civil Procedure Code, invalidates a sale in execution of the decree. IN THE MATTER OF THE PETITION OF RAMESSURI DASSEE. RAMESSURI DASSEE *v.* DOORGADAS CHATTERJEE **[I. L. R., 6 Calc., 103: 7 C. L. R., 85**

Contra, MUFASA *v.* MAHOMED AKBAR GAZEE **[2 W. R., 74**

264. ——————— *Omission to give notice of application for execution.*—The omission to give the notice required by section 248 of Act X of 1877 to the judgment-debtor, on application for execution of the decree, affects the regularity of the sale which subsequently takes place in execution of the decree, and the validity of the entire execution proceedings. *Ramessuri Dassee* v. *Doorgadass Chatterjee, I. L. R., 6 Calc., 103,* followed. *Held,* therefore, where execution of a decree was applied for against the legal representative of a deceased judgment-debtor, and the notice required by section 248 of Act X of 1877 was not given to such legal representative, and certain immoveable property belonging to the deceased judgment-debtor was sold, that such sale had been properly set aside by the Court executing the decree by reason of such omission. *Quære,*—Whether such omission was an irregularity in "publishing or conducting" the sale, within the meaning of section 311 of that Act. IMAM-UN-NISSA BIBI *v.* LIAKAT HUSAIN . . **I. L. R., 3 All., 424**

265. ——————— *Omission to re-issue process after proceedings have been struck off.*—After the striking off of an execution case, the omission to re-issue the processes required by law on the admisson of a third party as decree-holder is not a material irregularity in the case. BISHEN DYAL SINGH *v.* KHUDEEMUN . **W. R., 1864, 359**

266. ——————— *Irregularity in notice of sale.—Death of decree-holder.*—The issue of a notice of sale after the death of the original decree-holder, and before any person had applied to be registered as the substituted decree-holder, is not an irregularity which would warrant the setting aside of a sale under Act VIII of 1859, section 256. GOBIND CHUNDER AOOCH *v.* BAMUN DOSS MOOKERJEE **[22 W. R., 481**

267. ——————— *Irregularity in notice of sale.—Proclamation of notice of liens.*—The inam village of Chundunpuri was sold by auction under a decree. The notice of sale stated that the sale would begin either at Maligam or Chundunpuri, and be completed at Maligam. *Held* that the notice of sale was sufficiently certain. The practice of karkuns reading aloud notices of liens on property about to be sold by auction is objectionable, but, in the absence of proof that the value of the property has been thereby deteriorated, it is not such an irregularity as will vitiate the sale. GOVIND HARI VALEKAR *v.* BANK OF INDIA. BANK OF INDIA *v.* RAGHO NARAYAN . . . . **4 Bom., A. C., 164**

268. ——————— *Irregularity in giving particulars of sale.—Omission to mention numbers, &c., of notes.—Sale and production of notes.—Civil Procedure Code, 1859, ss. 201, 238, 248, 249.*—The omission in a sale proclamation to mention particulars as to the numbers, value, &c., of Government promissory notes under attachment for sale, is not such an irregularity as will vitiate the sale, though the lower Court would have exercised a sound discretion, under section 249 of the Code, if it had called for such particulars. The sale of such notes through a broker is permissive under section 248, and not obligatory. The production of the notes in Court was not essential, as they were in the custody of the Collector; section 238 applying to cases in which property is in the possession or power of the judgment-debtor. LUCHMEEPUT *v.* LEKRAJ ROY . . . . . **8 W. R., 415**

SALE IN EXECUTION OF DECREE—*continued.*

15. SETTING ASIDE SALE—*continued.*

(*a*) IRREGULARITY—GENERAL CASES—*continued.*

Ground for setting aside sale—*continued.*

269. ——————— *Sale of property otherwise than as advertised.—Proof of damage.—Advertisement of sale.*—When property is advertised to be sold in separate lots, and is afterwards sold in a lump, this is an irregularity, but the person who wishes to set aside the sale on the ground of such irregularity must show affirmatively, to the satisfaction of the Court, that substantial damage has, in fact, been sustained by him on account of such irregularity. Where, therefore, such damage had not been distinctly proved,—*Held* that the sale could not be set aside on the ground of the irregularity complained of. ROY NANDIPAT MAHATA *v.* URQUHART [4 B. L. R., A. C., 181: 13 W. R., 209

reversing URQUHART *v.* NUNDEEPUT MAHAPUTTUR . . . . . 12 W. R., 492

270. ——————— *Omission to make proclamation of sale.—Civil Procedure Code (Act X of 1877), s. 311.—Irregularity in publication of intended sale.*—An objection to the validity of a sale of revenue-paying land, on the ground that the revenue assessed upon it had not been stated in the proclamation of the intended sale, in accordance with section 287 of Act X of 1877, was taken, for the first time, in the Court of Appeal; an application to set aside the sale, on the ground that it had taken place without proclamation made, having been rejected by the Court of first instance, which found that proclamation had been made,—*Held* that the objection was taken too late, although, if properly taken in the Court of first instance, it would have been good to the extent that not stating the amount of the revenue was an irregularity; substantial damage, resulting from it, remaining to be proved, as required by section 311 of Act X of 1877. *Held,* also, that inadequacy of price having been alleged as substantial damage, without having been proved to be the effect of the non-statement of the revenue, the applicant had not (as required by section 311) proved, to the satisfaction of the Court, that he had sustained substantial damage by reason of such irregularity. MACNAGHTEN *v.* MAHABIR PERSHAD SINGH [I. L. R., 9 Calc., 656

S. C. OLPHERTS *v.* MAHABIR PERSHAD SINGH [11 C. L. R., 494 L. R., 10 I. A., 25

reversing decision of High Court in MOHABIR PERSHAD SINGH *v.* OLPHERTS .9 C. L. R., 134

271. ——————— *Error in proclamation of sale as to incumbrance to which property was liable.—Civil Procedure Code, 1882, ss. 311, 312.*—In a sale of immoveable property in execution of a decree, the proclamation of sale notified that the decree-holder held two charges on the property, aggregating about ₹1,000. There was in fact one charge only, amounting to about ₹800. *Held* that the error in the proclamation of sale amounted to such an irregularity in publishing the sale and putting up the property to the biddings of the public as must have materially marred the fairness of the auction and affected the price, and that the sale must therefore be set aside, on the ground of material irregularity in publishing and conducting it. KANJI MAL *v.* SAILO [I. L. R., 8 All., 116

272. ——————— *Error in overstatement of balance due on decree.*—A sale in execution of a decree is not invalidated by the fact that the balance really due is overstated, there being no other irregularity in the publication and conduct of the sale. CHUTTUR SINGH *v.* DHURRUM KOONWUR [1 N. W., Part 2, p. 1: Ed. 1873, 61

273. ——————— *Omission to give notice of amount of decree.—Civil Procedure Code, 1859, s. 252.*—A Judge is not required by law to give notice at the time of the sale of the amount of the decree to be sold, and his omission to do so did not constitute an irregularity in the sale entitling the plaintiff to claim damages under section 252, Act VIII of 1859. KASSEE NATH ROY CHOWDHRY *v.* HULLODHUR ROY . . . 2 W. R., 60

274. ——————— *Omission to state amount of decree.—Civil Procedure Code, 1882, s. 311.*—The mere fact that the amount of rent payable in respect of a tenure brought to sale in execution of a decree is not stated in the sale-proclamation, is not a material irregularity within the meaning of section 311 of the Civil Procedure Code (Act X of 1877), though if the amount of rent payable were stated to be more than it actually was, that might constitute such an irregularity as tending to lessen the price at which purchasers might be willing to buy. MOHENDRO COOMAR DUTT *v.* HEERA MOHUN COONDOO. ISHANESWARY DASEE *v.* GOPAL DAS DUTT . . . I. L. R., 7 Calc., 723

275. ——————— *Omission of material part of notification of sale.*—The sale notification, referred to in circular order of the 18th August 1873, should contain a special notice that the property will be sold on the day named, or so soon thereafter as its turn may come in the list of properties advertised to be sold. Without this special notification, buyers would be summoned for one day, whereas the property might not be sold on that day or for several days after, and that would be an irregularity which would vitiate the sale, if the property were sold at an under-value for want of bidders. BYKUNT NATH SANDYAL *v.* JUGGUT MOHUN SHAHA [24 W. R., 240

276. ——————— *Irregularity in affixing notification of sale.*—The affixing, in the Principal Sudder Ameen's Court, of a notification of sale in execution of a decree of the Small Cause Court,

SALE IN EXECUTION OF DECREE—*continued.*

15. SETTING ASIDE SALE—*continued.*

(*a*) IRREGULARITY—GENERAL CASES—*continued.*

Ground for setting aside sale—*continued.*

was held to be no irregularity in the sale by reason of which damages could be recovered under section 252, Code of Civil Procedure, 1859; the law making no provision for the service of the notification of sale on the judgment-debtor in person, or in the village in which he lives. ROMESH CHUNDER BANERJEE *v.* JADUB CHUNDER CHATTERJEE

[6 W. R., Civ. Ref., 14

277. ——————— *Irregularity in publication of sale.*—Where the sudder cutchery of the zemindar was beyond the jurisdiction of the District Court, the publication of the notice of sale at one of the inferior cutcheries was held to be legal and sufficient. HUBEEBOOL HOSSEIN *v.* ALLENDER. HUBEEBOOL HOSSEIN *v.* LAND MORTGAGE BANK

[14 W. R., 44

278. ——————— *Irregularity in publication of sale.*—The affixing of a notice of sale in a not very conspicuous part of the land, when the judgment-debtor resides in a different district, is not sufficient to satisfy the requirements of justice. GOBIND CHUNDER MOOKERJEE *v.* RAM KOMUL CHATTERJEE . . . . . 25 W. R., 364

279. ——————— *Irregularity in publication of sale.—Beng. Reg. XLV of 1793, s. 12.—Delay.*—A suit was brought in 1852 to set aside an execution sale made in 1841 on the ground of irregularity in not complying with the provisions of Bengal Regulation XLV, section 12, of 1793, for the due publication of the sale. A summary suit under Bengal Regulation VII of 1825, section 5, had been brought shortly after the date of the sale by the judgment-debtor, to set it aside on the ground of inadequacy of the purchase-money which suit was dismissed. There was no allegation in that suit of any irregularity in the publication of sale. It appeared from the evidence in the suit of 1852 that the notice of sale was affixed at the dwelling-house of the judgment-debtor, the place where his rents were paid, but which was not part of the estate sold. It was not pleaded in the suit of 1852 that there was a town or village where the notification could be fixed as required by section 12, Bengal Regulation XLV of 1793. The Sudder Court held that there had been an irregularity in the publication of the notice of sale, as it was not made within the ambit of the estate sold, and set the sale aside on that ground. On appeal,—*Held* by the Judicial Committee reversing such decree, *first*, that as it did not appear that there was any town or village within the pergunnah at which the notification required by the provisions of Bengal Regulation XLV of 1793, section 12, could be affixed there had been no irregularity in posting the notice at the house of the judgment-debtor, so as to vitiate the sale; and *secondly*, that even if there had been an informality in that respect it ought to have been objected to in the summary suit brought in 1841, and could not be opened eleven years afterwards. LAMB *v.* BEJOY KISHEN DASS 8 Moore's I. A., 427

SALE IN EXECUTION OF DECREE—*continued.*

15. SETTING ASIDE SALE—*continued.*

(*a*) IRREGULARITY—GENERAL CASES—*continued.*

Ground for setting aside sale—*continued.*

280. ——————— *Irregularity in publication of sale.—Execution sale of groups of property under one decree.—Irregularity and damage, their necessary relation.—Code of Civil Procedure (Act XIV of 1882), ss. 289 and 311.*—The words "on the spot where the property is attached" in section 289 of the Civil Procedure Code refer to each property attached, and not to a group of separate properties attached under one proceeding or order in one execution case, and therefore when distinct properties are proclaimed for sale in one execution the omission to affix a copy of the proclamation in each of such properties amounts to an irregularity in the publication of the sale. *Held*, also, that where there is no evidence to connect the two elements of irregularity and injury under section 311, it must appear, before a Court can set aside an execution sale, that the injury complained of is the reasonable and natural consequence of the irregularity, and attributable to it alone. TRIPURA SUNDARI *v.* DURGA CHURN PAL

[I. L. R., 11 Calc., 74

281. ——————— *Irregularity in publication of sale.—Material irregularity.—Civil Procedure Code (Act X of 1877), ss. 274, 289, 311.*—Under sections 289 and 274 of the Civil Procedure Code, it is necessary that a copy of the sale-proclamation should be affixed to some conspicuous place on the property attached; and the omission to do so is a material irregularity within the meaning of section 311 of the Code of Civil Procedure. KALITARA CHOWDHRAIN *v.* RAM COOMAR GOOPTA

[I. L. R., 7 Calc., 466: 9 C. L. R., 114

282. ——————— *Irregularity in publication of sale.—Material irregularities.—Civil Procedure Code (Act X of 1877), ss. 287, 289.*—Upon an application to set aside a sale in execution of a decree, on the ground of material irregularities in publishing and conducting it, it appeared that the sale-notification had not been fixed up in the Collector's office as required by section 289 of Act X of 1877; that no affidavit as to search having been made in the Registry office with regard to incumbrances as required by section 287 of the Act had been filed; and that the sale took place on, and not after, the thirtieth day from the publication of the notice; but it also appeared that the applicant had himself been present at the sale and had purchased the property, and it was not shown that any substantial injury had resulted from the irregularities. *Held* that there was no ground for setting aside the sale. BANDY ALI *v.* MADHUB CHUNDER NAG

[I. L. R., 8 Calc., 932

283. ——————— *Irregularities in publication of sale.—Evidence of such irregularities.—Affixing proclamation of sale.—Nazir's report.—Civil Procedure Code (Act X of 1877), ss. 274, 290, 291, and 295.—Sale to satisfy judgment-creditor who has not attached.*—The proclamation of

SALE IN EXECUTION OF DECREE—*continued.*

15. SETTING ASIDE SALE—*continued.*

(*a*) IRREGULARITY—GENERAL CASES—*continued.*

Ground for setting aside sale—*continued.*

sale required by section 274 of the Civil Procedure Code, to be made at some place adjacent to the property to be sold, and the fixing up of a copy of the order in a conspicuous part of the property, are acts which must precede the posting of the notices in the Court-house as required by section 290. Three mouzahs were attached in execution of decrees obtained by *A.* and *B.* Prior to the sale, *C.*, who had also obtained a decree against the owner of the land, applied for leave to execute his decree, in order that he might participate in the sale-proceeds under section 295 of the Civil Procedure Code. Upon the day fixed for the sale, the Deputy Commissioner was unable, through illness, to attend; and he postponed the sale for three days. Two of the mouzahs were sold, and realised more than enough to satisfy the decrees of *A.* and *B.* The third was then sold in satisfaction of *C.*'s decree. Upon an application by the judgment-debtor to set aside the sale on the ground of irregularity, it appeared that notice of the sale had been posted in the Court-house more than thirty days before the date fixed for the sale, but had only been published on the properties to be sold five days before that date; that notice of the existence of a mortgage on the properties, but no further particulars, was given, and the mortgagee was allowed to purchase; and that the Deputy Commissioner had accepted the reports of the Nazir and Court-peon as to the proclamation of sale, and had refused to allow the judgment-debtor to give evidence of its insufficiency. *Held* that the proclamation of sale on the property having taken place only five days prior to the date of sale, and the particulars of the mortgage not having been given, there had been such material irregularities in the publication as to entitle the judgment-debtor to give evidence of them and the other allegations made by him, in order to show that he had suffered material injury by reason of such irregularities. *Held*, also, that the Deputy Commissioner was not entitled to proceed upon the reports of the Nazir and Court-peon, but was bound to hear the evidence tendered by the judgment-debtor, though he was justified, under section 291, in postponing the sale as he had done. *Held*, further, that the third judgment-creditor, who had not attached the property, was still entitled to have the sale proceeded with and his decree satisfied under the provisions of section 295. MEGH LALL POOREE *v.* SHIB PERSHAD MADI **[I. L. R., 7 Calc., 34**

S. C. MEGH LAL POOREE *v.* MOHAMMED DUTT JHA . . . . . **8 C. L. R., 369**

284. ——————— *Irregularity in publication of sale.—Civil Procedure Code, ss. 274 and 289.—Omission to beat drum.—Material irregularity.*—Omission to have a drum beaten as required by sections 289 and 274 of the Civil Procedure Code (Act XIV of 1882),—*Held* to be a material irregularity so as to render a sale held in execution of a decree liable to be set aside. TRIMBAK RAVJI *v.* NANA . . . **I. L. R., 10 Bom., 504**

285. ——————— *Irregularity in publishing and conducting a sale.—Waiver of irregularity by the judgment-debtor.*—Previous to the date fixed for the sale of certain property in execution of a decree, the judgment-debtors presented a petition, praying for a month's further time to be allowed them in order that they might complete the arrangements they were making for the purpose of paying off the debt, and stating that the decree-holders had attached and advertised the property for sale. That petition being refused, the sale took place; and subsequently the judgment-debtors came in and objected to the sale, and asked to have it set aside, on the ground that there had been material irregularity in the publication of the attachment and sale-proclamation, and that, consequently, they had suffered substantial injury. The Subordinate Judge refused to hear evidence on this point, holding that the petition was an admission that the proceedings were in order. *Held* that the petition presented prior to the sale did not amount to an admission by the judgment-debtors that the publication and proclamation of the sale had been duly made; and that, consequently, the Court was bound to hear the evidence tendered by the judgment-debtors on that point, and to find whether there had been such irregularities in publishing and conducting the sale as to occasion substantial injury to the judgment-debtors. *Giridhari Singh* v. *Hurdeo Narain Singh, L. R., 3 I. A., 230,* distinguished. THAKOOR MAHATAB DEO *v.* LEELANUND SINGH. **[I. L. R., 7 Calc., 613: 9 C. L. R., 398**

286. ——————— *Irregular publication of proclamation of sale.—Sale held too soon after proclamation.*—It is a material irregularity for the proclamation to be published less than thirty days prior to a sale in execution of a decree, and where damage has resulted the sale may be set aside. *Megh Lal Pooree* v. *Mohammed Dutt Jha, 8 C. L. R., 369: I. L. R., 7 Calc., 34,* followed. ABDUL NOSSIA *v.* DOOLAL DOSS . . **11 C. L. R., 303**

Contra, RAMCHANDAR BAHADUR *v.* KAMTA PRASAD **[I. L. R., 4 All., 300**

287. ——————— *Sale held too soon after proclamation.—Sale of immoveable property in execution before thirty days from date of fixing up proclamation.—Material irregularity in publishing or conducting sale.—Civil Procedure Code, 1882, ss. 290, 311.*—An infringement of the rule contained in section 290 of the Civil Procedure Code is an irregularity vitiating a sale in execution of decree, and is something more than a material irregularity in publishing a sale to which section 311 refers. BAKHSHI NAND KISHORE *v.* MALAK CHAND **[I. L. R., 7 All., 289**

SALE IN EXECUTION OF DECREE—*continued.*

15. SETTING ASIDE SALE—*continued.*

(*a*) IRREGULARITY—GENERAL CASES—*continued.*

Ground for setting aside sale—*continued.*

288. ——————— *Property sold before advertised time.—Sale invalid.*—A sale by public auction in execution of a decree, which is conducted at a time and place other than those properly notified, is not a sale at all within the meaning of the Civil Procedure Code. The time to be notified for a sale by public auction in execution of a decree must be the time of the commencement of the sale, in order that all intending purchasers may be enabled to be present during the whole of the proceedings, and that all who are interested in the property sold may see that there is a fair competition and a good sale. Where property which was advertised for sale by public auction in execution of a decree at 11 A.M., was sold at 7 A.M.,—*Held* that the mistake was more than a mere irregularity in conducting the sale, and that the whole of the proceedings were invalid. CHEDAMI LAL *v.* AMIR BEG . I. L. R., 7 All., 676

289. ——————— *Property sold before advertised time.*—Where the fact of an execution sale having taken place about two hours earlier than the hour announced was alleged to be a material irregularity seriously prejudicial to the interests of the judgment-debtor, it was held to be the bounden duty of the Court to take evidence and determine whether bidders had been prevented from attending, and whether an irregularity of a material kind had occurred. KHODEJA BEBEE *v.* RAM NARAIN DAN [12 W. R., 511

290. ——————— *Property not sold at advertised time.—Alteration in sale order.*—Where property is advertised to be sold in execution, a change in the specified order of sale or other sudden alteration of programme, without notice to intending bidders, or the express consent of the judgment-debtor, was an irregularity under section 256, Code of Civil Procedure, 1859, vitiating the sale. POKHRAJ SINGH *v.* GOSSAIN MUNRAJ POOREE [12 W. R., 281

291. ——————— *Property not sold at advertised time.—Purchase by decree-holder at inadequate price.*—Where a judgment-debtor's property has been sold without further notice on a date subsequent to that originally fixed, and especially when the execution-creditor is the purchaser for a very inadequate value, there is an irregularity which may cause material injury to the debtor. KISHEN PROSSUNNO MOJOMDAR *v.* NURDUMA DOSSEE [17 W. R., 339

292. ——————— *Alteration in particulars of property after advertising for sale.—Material irregularity.*—The property of a judgment-debtor was proclaimed and advertised for sale in execution of a decree on a certain day. The proclamation set out particulars of the property, but subsequent to such proclamation a portion of the property was released to a third party. Notwithstanding this fact, no fresh proclamation was made, and the sale took place on the day originally fixed. *Held* that the omission to issue a fresh proclamation was a material irregularity, inasmuch as the judgment-debtor was entitled to have a proclamation issued accurately describing the property to be sold, and that such proclamation should be published thirty days before the sale. SHIB PROKASH SINGH *v.* SARDAR DOYAL SINGH . I. L. R., 3 Calc., 544: 2 C. L. R., 260

293. ——————— *Adjournment of sale.—Notice.—Discretion of person selling.*—An auctioneer who sells under a decree has power to adjourn the sale from time to time (upon giving proper notice), but whether he does so or not is a matter in his own discretion. GOVIND HARI VALEKHAR *v.* BANK OF INDIA. BANK OF INDIA *v.* RAGHO NARAYAN . . . . 4 Bom., A. C., 164

294. ——————— *Adjournment of sale.—Notice.*—An execution sale properly notified may be adjourned with the consent of the parties. GOBIND CHUNDER AOOCH *v.* BAMUN DOSS MOOKERJEE . . . . . 22 W. R., 481

295. ——————— *Postponement of sale.—Postponement without valid reason.—Held* that the judgment-debtor could not complain of the order of the Subordinate Judge postponing a sale in execution of decree from the 25th to the 26th, unless he could show that he had suffered substantially by the postponement. But the attention of the Court was called to the importance of abiding by the date fixed in the proclamations of sale as far as possible, and not postponing sales without good reason. ASMUTOONNISSA BIBEE *v.* KHUDEMOONNISSA BIBEE [17 W. R., 278

296. ——————— *Postponement of sale.—Civil Procedure Code, 1859, s. 243.*—When property has been put up for sale at auction in execution of a decree, and bids have been *bonâ fide* made for it, the Court is not competent to postpone the sale, or to decline to conclude it, and order another auction, merely on the representation of the judgment-debtor that he can obtain a higher price by private transfer, there being shown no ground to believe that the amount of the judgment-debt would have been thus realised. LUCHMEE NARAIN *v.* BHYROO PERSHAD 1 Agra, Mis., 11

297. ——————— *Sale, Postponement of, for benefit of debtor.*—Certain properties were to be sold in execution of decree. As to some, the sale took place as far as possible on the day fixed, but was publicly put off to the next day, when, no higher price being obtainable, it was concluded at the price bid on the first day. *Held* that there was no irregularity in the conduct of the sale which could prejudice the judgment-debtor. NUDDEA KISHORE DOSS *v.* BUNGSHEE MOHUN DOSS [17 W. R., 210

SALE IN EXECUTION OF DECREE—*continued.*

15. SETTING ASIDE SALE—*continued.*

(*a*) IRREGULARITY—GENERAL CASES—*continued.*

Ground for setting aside sale—*continued.*

298. ——————— *Postponement of sale.—Civil Procedure Code, 1859, s. 249.—Ground for postponing sale.*—A Judge cannot order a Subordinate Judge to postpone a sale in a case pending before the Court of the latter officer. An application by a Collector under section 249 of the Civil Procedure Code for the postponement of a sale in the execution of a decree of land paying revenue to Government should not be granted where it is not alleged that satisfaction of the decree might be made within a reasonable period by a temporary alienation of the land. JAISHEE RAM *v.* BIJAI KOOER [5 N. W., 177

299. ——————— *Equitable grounds for setting aside sale.—Sale contrary to order for postponement.—Mistake.*—Where a sale in execution took place under an order obtained notwithstanding a consent on the part of the decree-holder's pleader to a petition by the judgment-debtor for a postponement, the petition so consented to having been by mistake afterwards presented to and filed by the judgment-debtor in the wrong Court, —*Held* that the judgment-debtor was entitled to a decree in a suit brought to have the sale set aside, no title having passed thereby. GANGA PERSHAD SAHU *v.* GOPAL SINGH [I. L. R., 11 Calc., 136 : L. R., 11 I. A., 234

300. ——————— *Postponement of sale.—Sale after order postponing sale where order arrives too late to stay sale.*—When a Court executing a decree passes an order postponing a sale, and the sale takes place notwithstanding, in consequence of the order arriving too late, the Court is justified in setting aside the sale on the ground of irregularity, and its order doing so is not appealable. MANHA SINGH *v.* JHOW LAL 6 N. W., 354

301. ——————— *Order for postponement made before but arriving at Collector's office after sale.*—The High Court passed an order postponing a sale in execution of a decree, which order arrived at the Collector's office the day after the sale. *Held* that the publication of the sale was irregular, as the order of postponement invalidated the notification of sale. NONIDH SINGH *v.* SOHUN KOOER [4 N. W., 135

302. ——————— *Order for postponement arriving after sale had been held.—Civil Procedure Code, 1877, ss. 311, 312.*—On the day fixed for the sale of certain immoveable property in the execution of a decree, the Court made an order postponing the sale, but the sale had been effected before such order reached the officer conducting it. The Court, on application having been made to set aside the sale, passed an order confirming it. Subsequently, an application by the decree-holder for a review of this order having been granted, the Court passed an order setting the sale aside as illegal. *Held* that the sanction to the sale originally given having been withdrawn, the sale could not legally be held, and that the sale which was effected, the order of postponement notwithstanding, was unlawful and invalid; and in reviewing its first order and in setting aside the sale as illegal, the Court executing the decree had not acted *ultra vires* and its action was not otherwise illegal. MIAN JAN *v.* MAN SINGH [I. L. R., 2 All., 686

303. ——————— *Postponement of sale.—Proclamation of adjourned sale.*—A proclamation of thirty days is necessary when the property is first advertised for sale, not when the sale is postponed for the convenience of the debtor. Section 225 of the Civil Procedure Code, 1859, related to a re-sale, and not to a postponed sale. BUDREE NATH SHUTT *v.* CHUNDER SHEKUR MAN SINGH [1 W. R., Mis., 3

NOORUL HOSSEIN *v.* OMATOOL FATIMA [25 W. R., 34

304. ——————— *Postponement of sale.—Necessity for fresh proclamation.*—Where a sale is postponed a fresh notice and proclamation ought to issue. SHOSHEE MOOKHEE BURMONYA *v.* DWARKANATH BISWAS . . 6 W. R., Mis., 84

305. ——————— *Postponement of sale.—Notice.—Necessity for fresh proclamation. —Act VIII of 1859, s. 249.*—Where a sale in execution of a decree is postponed, whether indefinitely or to a fixed date, it is necessary, in the absence of an express arrangement between all the parties, that a fresh proclamation should be made giving notice of the day to which the sale has been postponed. It may be presumed, when the notice is wanting, that there has been an absence of bidders, from which alone substantial injury must probably have arisen to the judgment-debtor. GOOPEENATH DOBEY *v.* ROY LUCHMEEPUT SINGH [I. L. R., 3 Calc., 542 : 1 C. L. R., 349

OKHOY CHUNDER DUTT *v.* ERSKINE [3 W. R., Mis., 11

306. ——————— *Postponement of sale.—Sufficient notice of sale.—Necessity for fresh notification.*—Where a sale was notified to take place on the 8th, and on that day the order for the postponement of the sale to the 9th was made in open Court,—*Held* that that was a sufficient notification of the sale being held on the 9th, and that a fresh notice was not necessary. GOWREE NATH SAHOY *v.* FUKEER CHAND . . . . 18 W. R., 347

307. ——————— *Postponement of sale.—Necessity for fresh proclamation.*—Where a sale was fixed for the 21st November, but delayed until the 22nd, without any order of postponement, or any fresh proclamation of the day of sale, there is

SALE IN EXECUTION OF DECREE—*continued.*

15. SETTING ASIDE SALE—*continued.*

(*a*) IRREGULARITY—GENERAL CASES—*continued.*

Ground for setting aside sale—*continued.*

a *primâ facie* case of injury to the party whose property was sold. Such a postponement was in contravention of the provisions of section 249 of Act VIII of 1859, as, when a sale is postponed, there must be fresh proclamation of the sale and date when it is to take place. SANWUL SINGH *v.* MAKHUN PANDEY [2 N. W., 143

308. ——————— *Omission to issue fresh proclamation.—Material injury.*—A decree having been obtained against *A.* and *B.* upon a mortgage, the latter appealed to the High Court, and subsequently, on the mortgaged properties being attached and advertised for sale, while the appeal was pending, applied for and obtained an order for stay of the sale as far as she was concerned. The sale, however, took place on the day originally fixed, but no fresh proclamation was issued, although it was announced previous to the sale that only *A.'s* rights and interests would be sold. *Held* that the sale was irregular, as a fresh proclamation ought to have been issued, and an inquiry instituted as to *A's* share in the property; and it having appeared that *A.* was materially injured by such irregularity, the sale was set aside. MOHINY MOHUN DASS CHOWDHRY *v.* BHOOBUN JOY SHAHA . . 6 C. L. R., 237

309. ——————— *Indefinite postponement.—Fresh notice, Omission of.—Material injury.*—Where a sale in execution does not take place on the date fixed in the original notice, an indefinite postponement cannot be regarded as an adjournment from day to day, and a fresh notice should fix another date for the sale; and where, in consequence of an indefinite postponement, an estate has been purchased for an inadequate price, and especially by the judgment-creditor, the irregularity is one that has occasioned substantial injury and justifies a setting aside of the sale. JHOOMUCK CHOWDHRY *v.* RADHA PERSHAD SINGH . . . 25 W. R., 328

310. ——————— *Civil Procedure Code, 1877, s. 290.—"Consent."—Lapse of time between proclamation and actual sale.—Postponement of sale.*—An application made on the day of sale by the judgment-debtor that a part only of his property may be sold instead of the entirety, cannot be considered such a "consent" as, by virtue of section 290 of Act X of 1877, would do away with the necessity of a proclamation for sale being issued thirty days before the day fixed for sale. Where successive postponements of the day of sale have been made, but the last of these is made by the Court on its own motion without any application for postponement of sale being made on the part of the judgment-debtor (although such postponement might be for his benefit), a strict compliance with the rule that thirty days must elapse between the proclamation and the actual day of sale is requisite. HARBUNS SAHAI *v.* BHAIRO PERSHAD SINGH . . . . I. L. R., 5 Calc., 259

SALE IN EXECUTION OF DECREE—*continued.*

15. SETTING ASIDE SALE—*continued.*

(*a*) IRREGULARITY—GENERAL CASES—*continued.*

Ground for setting aside sale—*continued.*

S. C. HURBUNS SAHAI *v.* BHAIRO PERSHAD [4 C. L. R., 23

See also BHEKRAJ KOOERI *v.* GENDH LALL TEWARI . . . I. L. R., 5 Calc., 878

311. ——————— *Agreement as to proclamation on postponement of sale.—Civil Procedure Code, 1859, s. 249.*—An execution sale, which had been fixed for a certain date, was put off to the corresponding date in the following month on the application of the judgment-debtor, who consented that he would not object to any irregularities affecting the sale if it took place on any date in the following month. An istahar was also issued, and it was proclaimed only in a public place. After the sale took place as agreed upon, the judgment-debtor contended that he was entitled, under Act VIII of 1859, section 249, to have a fresh proclamation issued on the spot where the properties were situated. *Held* that, as at the time of his application for postponement he did not contemplate any such proclamation, he could not now object to it not having been issued. HET NARAIN SINGH *v.* GOSSAIN LUCHMEE NARAIN POOREE . . . . . 23 W. R., 256

312. ——————— *Sale on a holiday when Court is closed.*—A sale in execution of a decree is illegal if made on a holiday, whether it is a fixed holiday or only a day on which the Courts are closed by order of the High Court. HARO JEMADAR *v.* JADUB CHUNDER HOLDAR . 3 W. R., Mis., 24

313. ——————— *Sale on close holiday.—Irregularity in publication or conduct of sale.*—The sale of immoveable property by an Ameen on a close holiday is not illegal, nor is it an irregularity in publishing or conducting the sale. BISRAM MAHTON *v.* SAHIB-UN-NISSA [I. L. R., 3 All., 333

314. ——————— *Sale under two separate decrees.—Separate sales.*—Where the Court executing two decrees made separate orders directing the sale on the same date of certain immoveable property in execution of such decrees, the officer conducting the sales was not bound to sell such property once for all in execution of both decrees, and his selling such property separately was therefore not an irregularity in the conduct of the sales. COURT OF WARDS *v.* GAYA PRASAD [I. L. R., 2 All., 107

315. ——————— *Purchase by decree-holder without permission of Court.*—A sale at which the decree-holder himself, or some other person for him, without the permission of the Court first obtained, becomes the purchaser, is not *ipso facto* void; it is a good sale, unless and until set aside by the Court under the provisions of section 294 of the Civil Procedure Code, 1877. JAVHERBAI *v.* HARIBHAI . . . I. L. R., 5 Bom., 575

SALE IN EXECUTION OF DECREE—*continued.*

15. SETTING ASIDE SALE—*continued.*

(*a*) IRREGULARITY—GENERAL CASES—*continued.*

Ground for setting aside sale—*continued.*

IN THE MATTER OF VEERAPAH CHETTY [6 B. L. R., Ap., 37 : 14 W. R., 405

316. ——————— *Purchase by decree-holder without permission of Court.—Civil Procedure Code (Act XIV of 1882), ss. 294, 311.—Substantial injury.*—Under the terms of section 294 of the Civil Procedure Code, it is discretionary with the High Court to set aside an execution sale at which the decree-holder has bid and purchased without first obtaining permission from the Court so to do; and in dealing with such a case, the Court, although considering the matter as an irregularity in the conduct of the sale, will not interfere with the sale, unless it can be shown that the judgment-debtor has suffered some substantial injury arising from such irregularity. MATHURA DAS *v.* NATHUNI LALL MAHTA [I. L. R., 11 Calc., 731

317. ——————— *Purchase by decree-holder.—Refusal of application by judgment-creditor to be permitted to bid at sale.—Invalidity of sale.—Civil Procedure Code, Act XIV of 1882, s. 294.*—A mortgagee having obtained a decree declaring his lien on certain property, put up for sale in execution of this decree the mortgaged property. The decree-holder asked for, but was refused, leave to bid at the sale, but, notwithstanding such refusal, purchased the property in the name of a third person. Possession under the sale was opposed, and the decree-holder as purchaser brought a suit for possession of the property. The defendants contended that, inasmuch as the plaintiff (decree-holder) had been refused leave to bid at the sale, his purchase could not be enforced. *Held* that the plaintiff had been guilty of an abuse of the process of the Court in bidding at the sale and buying the property benami, and that the sale, therefore, ought not to be enforced. MAHOMED GAZEE CHOWDHRY *v.* RAM LOLL SEN [I. L. R., 10 Calc., 757

318. ——————— *Purchase by decree-holder.—Material irregularity.—Dissuading purchaser from bidding.—Civil Procedure Code (Act X of 1877), s. 311.—Leave to bid.—Decree-holder related to manager of defendant.*—When liberty is given to a decree-holder to bid at the sale of the judgment-debtor's property, he is bound to exercise the most scrupulous fairness in purchasing that property, and if he or his agent dissuades others from purchasing at the sale, that of itself is a sufficient ground why the purchase should be set aside. Where a decree-holder was joint in family with the manager of an infant defendant, and the defendant's property was to be sold in execution of the decree,—*Held* that the decree-holder ought not to be granted leave to purchase at the sale, because any purchase made by him would be for the benefit of the family of which the manager of the infant defendant was one of the members; and it would in fact be a purchase by an agent of the property of his principal. WOOPENDRO NATH SIRCAR *v.* BROJENDRONATH MUNDUL [I. L. R., 7 Calc., 346; 9 C. L. R., 263

319. ——————— *Purchase by decree-holder.—"Material irregularity."—Liberty to bid.—Conduct calculated to deter bidders.—Civil Procedure Code (Act X of 1877), ss. 294, 311.*—The holder of a decree, in execution of which property is sold, is absolutely bound, under section 294 of Act X of 1877, to have express permission from the Court before he can purchase the property; and whether this objection is taken and pressed or otherwise, a sale to him is invalid unless he has got explicit permission. The use, at a sale, of language by an intending bidder in disparagement of the property for the purpose of influencing bystanders, and deterring them from bidding for the property, is a "material irregularity" sufficient to render the sale invalid under section 311 of the same Act. RUKHINEE BULLUBH *v.* BROJONATH SIRCAR [I. L. R., 5 Calc., 308

320. ——————— *Purchase by son of decree-holder.—Code of Civil Procedure (Act X of 1877), s. 294.*—A purchase by the son of a decree-holder, undivided in interest from his father, is a purchase by the decree-holder within the meaning of section 294 of Act X of 1877 as it stood previously to its amendment by Act XII of 1879, and is absolutely void if the purchase were made with funds which were joint property of the father and son. NARAYAN DESHPANDE *v.* ANAJI DESHPANDE [I. L. R., 5 Bom., 130

Since the amendment of the Civil Procedure Code by Act XII of 1879 the sale would not be treated as absolutely void, but as liable to be set aside by the Court on application by the judgment-debtor or other party interested in the sale.

321. ——————— *Rejection of highest bid.—Abortive sale caused by act of judgment-debtor.—Highest bidder declared not the purchaser.—Validity of sale.*—Three attempts to sell land taken in execution under a decree had been rendered abortive by the acts of the judgment-debtor, and a delay of seven years occasioned, during which by his conduct he defeated the execution of the decree. When the property was put up for sale for the fourth time, the Collector rejected the two highest bids, on the ground that neither of the bidders could produce a mooktearnamah from the persons for whom respectively they professed to act as agents, nor produce the required deposit, and he declared the third highest bidder the purchaser of the land. *Held* that under the circumstances the conduct of the Collector *was justifiable* and the sale valid. MOHESH NARAIN SINGH *v.* KISHNANUND MISSER. Marsh., 592 [2 Ind. Jur., O. S., 1: 5 W. R., P. C., 7 9 Moore's I. A., 324

SALE IN EXECUTION OF DECREE—*continued.*

15. SETTING ASIDE SALE—*continued.*

(*a*) IRREGULARITY—GENERAL CASES—*continued.*

Ground for setting aside sale—*continued.*

322. ——————— *Deposit by purchaser.—Purchase by decree-holder.*—At a sale in execution of a decree, when the sale of any lot is completed, the purchaser should then and there be required to make the deposit prescribed by the Civil Procedure Code, failing which the lot should at once be put up to sale at the risk of the first purchaser. The decree-holder, if the lot is knocked down to him, is as much bound to make the prescribed deposit as any other auction-purchaser. CHULKOO DUTT JHA *v.* LEELANUND SINGH **[W. R., 1864, Mis., 30**

323. ——————— *Purchase by decree-holder.—Payment not in cash, but by giving receipts for amount due to him.*—Where the decree-holder is himself the purchaser at a sale in execution, there is no reason why he should not, instead of paying the price in cash, give receipts for the amount due to him under his decrees, supposing their value is sufficient to cover the amount for which the property is sold. The fact that he does so is not a valid objection to the sale. KHELLAT CHUNDER GHOSE *v.* KESHUB CHUNDER PAUL CHOWDRY **[16 W. R., 46**

324. ——————— *Payment of purchase-money.—Civil Procedure Code, 1859, ss. 254, 256, 257.—Default in making deposit.*—Directions as to the payment of the purchase-money at sales in execution of decree, arising under section 254, Act VIII of 1859, were to be dealt with as provided by that section, and did not fall under sections 256 and 257. A default under section 254 was not an "irregularity in conducting the sale" under section 256. BRINDA DEBEE DOSSEE *v.* GOPEE SOONDUREE DOSSIA . . . . . **6 W. R., Mis., 82**

325. ——————— *Payment of purchase-money.—Civil Procedure Code, 1877, s. 294, and ss. 306, 313.—Set-off of purchase-money.—Omission to make deposit.*—The requirements of section 306 of the Civil Procedure Code applying to all cases of sale of immoveable property, under Chapter XIX, a decree-holder buying with permission given under section 294, and desiring to set off his purchase-money against the amount of the decree, is not exempt from the necessity of making, at the time of sale, a deposit of 25 per cent. on the amount of such purchase-money; and such deposit must be made in cash. The option so to set off the purchase-money cannot be exercised by the purchaser until the confirmation and payment of expenses of the sale. Where, however, all parties interested in the amount to be deposited have waived their right to have that amount deposited in cash, the sale ought not to be set aside on the ground that a cash deposit has not been made. GOPAL SINGH *v.* ROY BUNWAREE LALL SAHOO . **5 C. L. R., 181**

326. ——————— *Payment of purchase-money.—Civil Procedure Code, 1877, s. 306.—Failure to pay deposit of purchase-money required by that section.*—The person declared to be the purchaser of property put up for sale in execution of a decree did not, as required by section 306 of the Civil Procedure Code, pay a deposit of 25 per centum on the amount of his purchase immediately after such declaration, but on a date subsequent to the date on which the property was put up for sale. *Held* that there was no sale at all of the property. INTIZAM ALI KHAN *v.* NARAIN SINGH **[I. L. R., 5 All., 316**

327. ——————— *Inability of purchaser to make deposit.—Re-sale.—Substantial injury.—Civil Procedure Code (Act X of 1877), s. 293.*—At a sale in execution of a decree the property was knocked down to a bidder at R260. The bidder was unable to make a deposit, and the property was immediately put up for sale and re-sold for R50. *Held*, that the judgment-debtor had sustained such substantial injury as would justify the Court in setting aside the sale, notwithstanding that the judgment-debtor might, under section 293 of the Civil Procedure Code, have recovered the difference between the original bid and the price at which the property was sold. BEEPIN CHUNDER SHICKDAR *v.* PURRESHNATH BISWAS . **I. L. R., 9 Calc., 98**

S. C. BEPIN CHUNDER SHICKDAR *v.* MODHOO SUDUN CHOWDHURI . . **12 C. L. R., 316**

328. ——————— *Omission to make deposit.—Default of purchaser after sale of portion of property sufficient to satisfy decree.*—Where portion of the property of a judgment-debtor has been sold in execution for a sum sufficient to satisfy the decree, the Court is not justified, on default being made by the purchaser, in directing the sale of any further portion of the debtor's property, it being open either to the judgment-creditor or the judgment-debtor to apply that the balance due upon the decree, after re-sale of the portion already sold, should be realised from the defaulter. JOY CHUNDER BISWAS *v.* KALI KISHORE DEY SIRCAR . . . . . **8 C. L. R., 41**

329. ——————— *Failure to make deposit.—Re-sale without notice.—Irregular procedure.*—At a Court sale in execution of a decree, *T.* bid R3,550 for the judgment-debtor's land on the 24th March 1882, but the Ameen re-sold the property the next day for R2,500 on the ground that the deposit was not duly made. *T.* objected on the 28th March and a fresh sale was ordered by the Court without giving notice to the judgment-debtor and the land was sold for R2,700 on the 13th June. On the 13th July the judgment-debtor applied to have this sale set aside and the sale to *T.* confirmed.—*Held* that the judgment-debtor was entitled to have the sale of the 13th June and the order which led to it set aside, and that the Court was

SALE IN EXECUTION OF DECREE—*continued.*

15. SETTING ASIDE SALE—*continued.*

(*a*) IRREGULARITY—GENERAL CASES—*continued.*

Ground for setting aside sale—*continued.*

bound to decide whether the deposit had been duly made by *T.*, or, if not, whether *T.* was liable for any deficiency in the price which might be realised on a resale. KUPPAYYAN *v.* RAMASAMI AYYAN [I. L. R., 6 Mad., 197

330. ——————— *Failure to pay purchase-money.—Re-sale.*—At a sale in execution of decree, certain property was knocked down to a bidder, who made default in payment of the purchase-money. Subsequently the Judge again put the property up for sale, and re-sold it at a lower price. The decree not being satisfied, the Judge put up other property which had been advertised for sale with the property above mentioned, without getting from the defaulter the difference between the price obtained at the second sale and that obtained at the first. On an application by the judgment-debtor to have the sale of the second property set aside,—*Held* that no sufficient cause was shown for setting aside the sale. *Joy Chunder Biswas* v. *Kali Kishore Dey Sircar, 8 C. L. R., 41,* distinguished. *Khiroda Mayi Dassi* v. *Golam Abardari, 13 B. L. R., 114,* followed. GOUR CHUNDER BISWAS *v.* CHUNDER COOMAR ROY . I. L. R., 8 Calc., 291: 10 C. L. R., 236

331. ——————— *Failure to pay deposit.—Re-sale on default in deposit.—Civil Procedure Code, 1859, s. 253.*—In a re-sale for default under section 253, Act VIII of 1859, the officer conducting the sale was not bound to commence from the next highest bid below that made by the defaulter, instead of commencing the sale *de novo.* GOUR MOOKH SINGH *v.* LALLA GOUR SUNKUR [1 W. R., Mis., 11

332. ——————— *Inadequacy of price.*—Smallness of price is not a sufficient ground for setting aside a sale, unless it be the effect of an irregularity in the sale proceedings. REET BHUNJUN SINGH *v.* MITTURJEET SINGH [6 W. R., Mis., 31

NUDDEA KISHORE DOSS *v.* BUNGSHEE MOHUN DOSS . . . . . 17 W. R., 210

HUBEEBOOL DOSS *v.* ALLENDER. HUBEEBOOL HOSSEIN *v.* LAND MORTGAGE BANK [14 W. R., 44

ALIMOODDY CHOWDHRY *v.* CHUNDER NATH SEN [24 W. R., 227

333. ——————— *Inadequacy of price.—Inadequate price produced by mistake.—Misstatement in notification.*—Where an irregularity in an execution sale (*e.g.*, a misstatement in the notification), produces a mistake, and the property is consequently sold at an inadequate price, the judgment-debtor is entitled to have the sale reversed. KHODEJA BIBEE *v.* JOHAD ROHEEN [14 W. R., 320

SALE IN EXECUTION OF DECREE—*continued.*

15. SETTING ASIDE SALE—*continued.*

(*a*) IRREGULARITY—GENERAL CASES—*continued.*

Ground for setting aside sale—*continued.*

334. ——————— *Inadequacy of price.—Material irregularity.—Confirmation of sale.—Code of Civil Procedure (XIV of 1882), ss. 305, 311, and 314.*—The sale of immoveable property to the highest bidder for a price which subsequently appears to be too low, is not a material irregularity in publishing or conducting the sale. A decree-holder or a judgment-debtor cannot apply to set aside a sale on the ground of the price realised being too low. Under section 314 of the Code of Civil Procedure, 1882, the Civil Court cannot, upon or without application, refuse to confirm a sale on the ground that the price bid is too low. LAKSHMI *v.* KRISHNABHAT [I. L. R., 8 Bom., 424

335. ——————— *Inadequacy of price.*—The circumstance that property was sold in execution of a decree below its proper value, and that few persons attended the sale, is not sufficient to vitiate the sale. RUGHOO NATH SINGH *v.* TOODEY SINGH [5 N. W., 19

336. ——————— *Inadequacy of price.—Error in notification.—Civil Procedure Code, 1859, ss. 256, 257.*—At a sale held on the 9th September 1872, in execution of a decree, the respondent purchased an estate for R55,000. The notification of sale had stated the Government revenue to be R3,146 instead of R8,146, the sale being fixed for the 5th August 1872. The sale was postponed without the issue of a second notification on an application by the judgment-debtor praying for such postponement, "the attachment and the notification of sale being maintained." On the 1st October 1872, the judgment-debtor objected under section 256 of Act VIII of 1859 to the sale on the ground of material error in the abovementioned notification in regard to the amount of Government revenue. The Subordinate Judge overruled such objection, but omitted to pass an order under section 257, confirming the sale. Thereupon the judgment-debtor paid into Court the amount of the decree, and then obtained from the Judge an order purporting to have been made on review under section 376, but without notice to the respondent, setting aside the sale on the ground of inadequacy of price and the abovementioned material error. Subsequently the Judge refused to confirm the sale, and to issue a certificate to the respondent. The High Court, on application by the respondent under 24 and 25 Victoria, Cap. 104, section 15, held that the objections made were insufficient, and directed the Judge to confirm the sale. *Held* by the Privy Council that, although the alleged inadequacy of price was no ground for refusing to confirm the sale, yet that the above error in specifying the amount of Government revenue was an irregularity (see section 249) for which, on proof of substantial injury to the judgment-debtor therefrom, the sale might have been set aside; but that the above petition for postponement amounted to an admission by the judgment-debtor that the notification

SALE IN EXECUTION OF DECREE— *continued.*

15 SETTING ASIDE SALE—*continued.*

(*a*) IRREGULARITY—GENERAL CASES—*continued.*

Ground for setting aside sale—*continued.*

was correct, or that there was no such irregularity as would be likely to mislead. GIRDHARI SINGH *v.* HURDEO NARAIN SINGH . [L. R., 3 I. A., 230 : 26 W. R., 44

Affirming the decision of the High Court in HURDEO NARAIN SAHOO *v.* GIRDHAREE SINGH [19 W. R., 227

337. ——————— *Inadequacy of price.—Error in notice of sale.*—Mere inadequacy of price is not a sufficient ground for setting aside a sale in execution if no substantial injury has been caused to judgment-debtor by any material irregularity in publishing and conducting the sale; and the mention of the name of a wrong pergunnah in the notice of sale is not such an irregularity, when the notice has been served in the right mouzah and the estate has been identified. NOORAL HOSSEIN *v.* RAM COOMAR SAHEE . . . 25 W. R., 326

338. ——————— *Inadequacy of price.—Irregularity in publishing or conducting sale.*—If it is proved that the price obtained for property sold at an execution-sale is greatly inadequate, and if it be also proved that there has been a material irregularity in publishing or conducting the sale, the Court will presume that the irregularity was the cause of the inadequacy of price, until proof is given to the contrary. *Gopeenath Dobey* v. *Roy Luchmeeput Singh, I. L. R., 3 Calc., 542,* approved. KALYTARA CHOWDHARIN *v.* RAMCOOMAR GOOPTA . [I. L. R., 7 Calc., 466 : 9 C. L. R., 114

339. ——————— *Sale at an inadequate price, through irregularity in sale proceedings.*—Where six tenures with separate recorded jummas were lumped together and sold in execution of decree as one lot, whereby the plaintiff and his co-sharers were precluded from buying up any one or more of the six tenures, and no description of the properties to be sold was given either in the sale proclamation or lutbundi, in consequence of which the defendant was apparently the only bidder, and he purchased six tenures at an inadequate price, the sale was reversed as fraudulent and illegal. SREEKUNT DOSS *v.* RAMJEEBUN ROY . 18 W. R., 342

340. ——————— *Inadequacy of price.—Irregularities indicating suspicions of fraud.*—Where immoveable property of considerable value had been sold for R11 in a sale in execution of a decree for R17-11-0, and purchased benami by the execution-creditor in the name of a relative, and it was found that the judgment-debtor had not been informed of the sale,—*Held* that all these circumstances taken together justified a suspicion of fraudulent dealing, and that the judgment-debtor was entitled to recover his property on payment of the original due. GOBIND CHUNDER MOOKERJEE *v.* RAM KOMUL CHATTERJEE 25 W. R., 364

SALE IN EXECUTION OF DECREE— *continued.*

15. SETTING ASIDE SALE—*continued.*

(*a*) IRREGULARITY—GENERAL CASES—*continued.*

Ground for setting aside sale—*continued.*

341. ——————— *Inadequacy of price of property.*—The market value of a property is not the value which ought to be taken as the standard at an auction sale in execution of a decree where the purchaser ordinarily gets neither a title nor the title-deeds as in a private sale, but only the right, title, and interest of the judgment-debtor at the time of sale. MEAH KHAN *v.* NARAIN CHUNDER CHOWDHRY . . . . 18 W. R., 197

342. ——————— *Civil Procedure Code, 1859, ss. 256, 257.—Suit to cancel order setting aside sale.—Act XXIII of 1861, s. 11.*—A Munsif having cancelled an auction sale of landed property on the sole objection of the judgment-debtor that the property realised a low price, and the Judge having dismissed the auction-purchaser's appeal from the said order on the ground that the Munsif had no authority to cancel the sale under the terms of section 257 of Act VIII of 1859 without some irregularity in conducting or publishing the sale being proved, and that the said order must therefore be taken to have been passed under section 11, Act XXIII of 1861, which admits of no appeal by the auction-purchaser, who was no party to the execution proceedings,—*Held* that such order passed by the Munsif was not a proceeding under section 11 of Act XXIII of 1861, but an order passed *ultra vires* under section 257 of Act VIII of 1869, and that a suit would lie for its cancelment,—the finality of an order under sections 256 and 257 of Act VIII of 1859 depending on its compliance with the terms of those sections. SUKHAI *v.* DARYAI . . I. L. R., 1 All., 374

343. ——————— *Civil Procedure Code, 1882, ss. 311, 312, 313, 644.—Act XII of 1879, sch. IV, form 149.—Suit to set aside sale.*—Under Act XII of 1879, form 149 of schedule IV of the Code of Civil Procedure provided that sixty days should elapse between a sale in execution of a decree and its confirmation. A sale having been confirmed before the expiry of sixty days,—*Held* that the sale was not rendered inoperative and that its effect was not postponed by reason of the provision in form No 149. HAJI *v.* ATHARAMAN. MUSSA *v.* ATHARAMAN . . . I. L. R., 7 Mad., 512

344. ——————— *Order confirming sale after order setting it aside.*—A sale in execution of a decree was set aside by a subsequent decree of 9th March 1861, but was afterwards allowed to stand by an order of 7th May 1862. As no suit was brought to set aside the latter order, it was held to be a final judicial proceeding, and the sale declared to be good and valid. MUNNOO LALL *v.* CHOONEE SHAHOO . . . 7 W. R., 116

345. ——————— *Objection for irregularity disallowed.—Sale set aside on other grounds.*—On application by the judgment-debtor to the Principal Sudder Ameen to set aside the sale by

SALE IN EXECUTION OF DECREE—*continued.*

15. SETTING ASIDE SALE—*continued.*

(*a*) IRREGULARITY—GENERAL CASES—*continued.*

Ground for setting aside sale—*continued.*

auction of a house in execution of a decree, on the grounds of material irregularities in publishing and conducting the sale, from which the applicant sustained substantial injury, the objections were disallowed as untenable, and the sale confirmed. But the District Judge on appeal set aside the sale on a ground on which he had no authority to interfere. On petition to the High Court by the purchaser of the house,—*Held* that the order of the Judge must be set aside as illegal, and the original order, confirming the sale, allowed to stand. KOSHTI *v.* NARAYAN DHULAPPA . . **3 Bom., A. C., 110**

346. ——————— *Security by manager of lunatic.—Second attachment and sale before security given.—Attachment without sale, validity of.*—The plaintiff, as manager of the estate of her husband, a lunatic, obtained a decree and attached and became the purchaser of the lands of the defendant in execution of the decree. The Judge required her to give security for the proceeds of the sale before he would allow actual possession to be given to her. The sale was confirmed, but several months elapsed before she found security, and meanwhile the same lands were attached and purchased by other creditors under another decree against the said debtor, and possession was given to them. *Held* (reversing the decision of the High Court), the title of the plaintiff must prevail. The security was ordered for the protection of the lunatic against misappropriation by his manager; it was not a proceeding affecting the judgment-debtor. The second sale ought not to have been ordered or confirmed. Under the Code of Civil Procedure, property may be attached without view to immediate sale. SARODA PROSAUD MULLICK *v.* LUTCHMEEPUT SING DOOGUR . . **10 B. L. R., 214**
[17 W. R., 289 : 14 Moore's I. A., 529

347. ——————— *Second sale before confirmation of suit.—Separate suit.—Effect of sale before confirmation.*—The plaintiff and the defendants *C.* and *D.* were the co-owners of a portion of a shikmi talook in the 10 annas share of a zemindari belonging to the defendant *A.* *A.* having succeeded in enhancing the rent of the tenure obtained a decree for arrears of rent at the enhanced rate, which she proceeded to execute in 1880. In 1881 she obtained another decree for arrears of rent of a subsequent period, in execution of which the tenure was put up to auction and sold for R15,000 on 20th July 1881, *A.* herself being the purchaser. Before this sale was confirmed the tenure was, on 20th September 1881, again put up for sale in execution of the first decree, and was purchased by *A.* for R10. The plaintiff and *C.* and *D.* applied to have both sales set aside on the ground of irregularity. The application as regarded the sale of 20th September 1881 was rejected on 30th December 1881, and this order was confirmed by the High Court on 14th August 1882, and (on review) 21st March 1883. Meanwhile

SALE IN EXECUTION OF DECREE—*continued.*

15. SETTING ASIDE SALE—*continued.*

(*a*) IRREGULARITY—GENERAL CASES—*continued.*

Ground for setting aside sale—*continued.*

the sale of the 20th July 1881 was set aside by the order of the Subordinate Judge on 19th June 1882. In a suit against *A.* *B* (the agent of *A.*), *C.*, and *D.*, brought on the 20th March 1884, in which the plaintiff prayed that the sale of 20th September 1881 "be declared ineffectual, and be set aside, and that the plaintiff do recover possession of the property,"—*Held* that the suit being not one to set aside the sale on the ground of fraud or anything connected with the sale itself, but on account of the setting aside of the first sale, which took place long after the second sale had been confirmed, and when no execution proceedings were pending in which it was possible for the plaintiff to raise the question, the suit would lie. *Saroda Churn Chuckerbutty* v. *Mahomed Isuf Meah, I. L. R., 11 Calc., 376*, distinguished. *Held*, also, that the first sale, not having been set aside at the time of the sale, was at that time, although it had not been confirmed, a good and effectual sale to pass the property as against the plaintiff and *C.* and *D.*, so that there was nothing left to pass under the second sale. In the interval between the sale and the confirmation of sale, there is not merely a contract for sale, but an inchoate transfer of title which only requires confirmation to perfect it; a sale actually takes place which, if not made absolute, must be set aside. *Sharoda Prosad Mullick* v. *Luchmeeput Singh Doogur, 14 Moore's I. A., 529 : 10 B. L. R., 214*, cited. PRANGOUR MAZOOMDAR *v.* HIMANTA KUMARI DEBYA
[I. L. R., 12 Calc., 597

(*b*) SUBSTANTIAL INJURY.

348. ——————— *Proof of substantial injury.—Civil Procedure Code, 1859, s. 256.*—Even where material irregularity had occurred, as from non-issue of proclamation of sale, the party applying to set aside the sale on that ground was bound under section 256, Act VIII of 1859, to prove that he had sustained substantial injury thereby. JOY TARA DOSSEE *v.* MAHOMED HOSSEIN
[2 W. R., Mis., 2

NILMONEE SHAHA *v.* RAM CHURN DEB
[6 W. R., Mis., 45

ABOOL MAHOMED *v.* SHIB DOOLAREE TEWAREE
[11 W. R., 114

LAEK RAM *v.* MOHESH DOSS . **12 W. R., 488**

NUJMOODDEEN AHMED *v.* ABDOOL AZEEZ
[15 W. R., 95

CHUNDER SEKHUR DEB *v.* JADUB CHUNDER SETT . . . . . **19 W. R., 78**

SANWUL SINGH *v.* MAKHUN PANDEY
[2 N. W., 143

SHEO PROKASH MISSER *v.* HURDAI NARAIN
[22 W. R., 550

This now forms an express enactment in the Code.

SALE IN EXECUTION OF DECREE—*continued.*

15. SETTING ASIDE SALE—*continued.*

(*b*) SUBSTANTIAL INJURY—*continued.*

Ground for setting aside sale—*continued.*

349. ——————— *Presumption as to irregularity and injury.—Civil Procedure Code, Act XIV of 1882, s. 311.*—Where an application is made to set aside a sale in execution of a decree on the ground of irregularity, it is not to be presumed from the proved existence of irregularity and injury that the latter occurred by reason of the former, in the absence of evidence to show that the injury is the result of the irregularity. *Macnaghten* v. *Mahabir Pershad Singh, I. L. R., 9 Calc., 656;* and *Lala Mobaruk Lal* v. *Secretary of State for India in Council, I. L. R., 11 Calc., 200,* discussed. SATISH CHUNDER RAI CHOWDHURI *v.* THOMAS [I. L. R., 11 Calc., 658

350. ——————— *Presumption as to irregularity and injury.—Civil Procedure Code (Act X of 1877), s. 311.—Witnesses, Laches in summoning.*—On an application under section 311 of the Civil Procedure Code (Act X of 1877) to set aside a sale, it appeared that there had been a material irregularity in publishing the sale; but no witnesses were called to prove that substantial injury had been caused thereby. It also appeared that, seventeen days after the applicant had applied for proclamation to be issued to his witnesses, he deposited the requisite fees; and that, subsequently, there was a delay of seven days in the office in issuing such proclamations, which were ultimately issued only three days prior to the day fixed for the hearing. On the applicant alleging that, in consequence of such delay, he had not been allowed a fair opportunity to produce his witnesses,—*Held* that the Court cannot presume that substantial injury has been caused from the mere fact of there having been a material irregularity in publishing a sale; but when both a material irregularity and substantial injury have been proved, the Court may reasonably presume that the substantial injury is due to such irregularity. *Held,* also, that the applicant, having been guilty of laches himself, could not be allowed to set up the delay in the office as a ground for the non-production of his witnesses. *Gopee Nath Dobay* v. *Roy Luchmeeput Singh, I. L. R., 3 Calc., 542,* considered. BONOMALI MOZUMDAR *v.* WOOMESH CHUNDER BUNDOPADHYA [I. L. R., 7 Calc., 730: 9 C. L. R., 341

(*c*) EXPENSES OF SALE.

351. ——————— Liability for expenses of sale.—*Sale set aside for irregularity.*—Where an execution sale was set aside, on the ground of irregularity on the part of the Ameen and other officials,—*Held* that the judgment-debtor was not chargeable with the expenses of such sale. HULSE *v.* LUCHMUN DASS . . . . . 1 Agra, Mis., 1

SALE IN EXECUTION OF DECREE—*continued.*

16. SETTING ASIDE SALE—RIGHTS OF PURCHASERS.

(*a*) COMPENSATION.

352. ——————— Right to compensation for improvements on ejectment.—*Act XI of 1855, s. 2.*—A purchaser at a Sheriff's sale was not entitled to compensation under Act XI of 1855, section 2, for improvements to the land during his occupation if he had relied solely on the bill of sale. BHOYRUBNATH KHETTRY *v.* DOYALCHUNDER LAHA [Bourke, O. C., 159

353. ——————— *Bonâ fide purchaser.—Inquiry as to title.—Act XI of 1855.*—A person did not become a *bonâ fide* purchaser within the meaning of Act XI of 1855 unless he had made all reasonable enquiries as to the title. Enquiries from neighbours were not sufficient. When therefore a purchaser who had bought property on no further information than he could obtain from neighbours was ejected by one who showed a better title,—*Held* that he was not entitled to compensation under Act XI of 1855. GOUR GOPAUL DUTT *v.* BISSONATH GHOSE . . . . . Cor., 41

(*b*) RECOVERY OF PURCHASE-MONEY.

354. ——————— Right to refund of purchase-money.—*Mode of recovery.—Civil Procedure Code, 1859, s. 258.*—Under section 258, Act VIII of 1859, when a sale of immoveable property is set aside the purchaser is entitled to recover back his purchase-money. If the Court, reversing the sale, omit to make such order, the purchaser can sue to recover the money from the person who has received it. GREESH CHUNDER POTTAR *v.* LOOKHOODA MOYEE DABEE . . . . . 1 W. R., 55

DOOLHIN HUR NATH KOONWEREE *v.* BAIJOO OOJHA . . . . . 2 Agra, 50

355. ——————— *Civil Procedure Code, 1859, s. 258.*—When a sale of immoveable property in execution of a decree was set aside by a competent Court, the right of the purchaser to recover back his purchase-money, under section 258, Act VIII of 1859, was absolute, even though he himself caused the property to be put up for sale, provided he was not guilty of any fraud or misrepresentation, or did not guarantee the validity of the sale under the decree. BROJENDUR ROY CHOWDHRY *v.* JUGURNATH ROY . . . . . 6 W. R., 147

356 ——————— *Subsequent reversal of decree on appeal.*—The plaintiff purchased certain property at a sale under an execution upon a decree and paid the purchase-money. The purchase-money was applied partly in satisfying the decree-holder, and partly in satisfying other persons admitted by the decree to participate. The decree was afterwards reversed upon appeal, and the execution-debtor reinstated in his rights. *Held* that the plaintiff was not entitled to recover the purchase-money from the

SALE IN EXECUTION OF DECREE—*continued.*

16. SETTING ASIDE SALE—RIGHTS OF PURCHASERS—*continued.*

(*b*) RECOVERY OF PURCHASE-MONEY—*continued.*

Right to refund of purchase-money—*continued.*

execution-debtor. CHOOLUN SINGH *v.* ROY MOHUNLALL MITTER . . . . . **Marsh., 183**

S. C. ROY MOHUN LALL MITTER *v.* CHOOLUN SINGH . . . . . **1 Hay, 438**

357. ——————— *Sale set aside for want of interest of debtor in the property.*—When a sale is set aside by reason of the execution-debtor having no interest in the property sold, the purchaser of such property is entitled to receive back his purchase-money as on a consideration that has failed. BANK OF HINDUSTAN, CHINA, AND JAPAN *v.* PREMCHAND RAICHAND. AHMEDBHAI HABIBHAI *v.* PREMCHAND RAICHAND . **5 Bom., O. C., 83**

Contra, KRISHNAPA VALAD SANTU *v.* PANCHAPA VALAD GURUPADAPA . **6 Bom., A. C., 258**

KALU BIN VISAJI *v.* DAMODHAR GOVIND **[9 Bom., 92**

MAHOMED BASIRULLA *v.* ABDULLA **[4 B. L. R., Ap., 35: 15 W. R., 196, note**

358. ——————— *Proportionate share of purchase-money on portion of sale being set aside.*—Where the plaintiff purchased at an auction-sale under a decree the rights and interests of a person and his minor brother in certain property, and the decree was subsequently set aside as far as it concerned the minor brother's share,—*Held* that the purchaser was entitled to a refund of a proportionate share of the purchase-money, and that a decree for the same against the wrong-doers, the decree-holder and the judgment-debtor jointly, was a proper decree. NEEL KUNTH SAHEE *v.* ASMUN MATHO **[3 N. W., 67**

DOOLHIN HUR NATH KOONWEREE *v.* BAIJOO OOJHA . . . . . **2 Agra, 50**

359. ——————— *Want of interest of debtor.—Right, title, and interest.*—Section 258, Act VIII of 1859, only applied to cases where a sale of immoveable property had been set aside under circumstances which would, under Act VIII of 1859, authorise such a proceeding. The fact that the party whose right, title, and interest were sold had no interest at all, or less than was supposed, was no ground for setting aside the sale or refunding the purchase-money. RAJIB LOCHUN *v.* BIMALAMONI DASI **[2 B. L. R., A. C., 82**

S. C. RAJEEB LOCHUN SAWUNT *v.* MOHESSUREE DOSSEE . . . . . **10 W. R., 365**

360. ——————— *Suit to recover purchase-money.—Want of interest of debtor.—Warranty of title.—Liability of sheriff and execution-creditor.—Civil Procedure Code, 1859, s. 258.—Irregularity in sale-proceedings.*—A purchaser of property, whether immoveable or moveable, at a sale

SALE IN EXECUTION OF DECREE—*continued.*

16. SETTING ASIDE SALE—RIGHTS OF PURCHASERS—*continued.*

(*b*) RECOVERY OF PURCHASE-MONEY—*continued.*

Right to refund of purchase-money—*continued.*

in execution of a decree under the Code of Civil Procedure, 1859, held in accordance with the provisions of that Code, had no right to recover his purchase-money, though it might turn out that the right, title, and interest of the execution-debtor was nothing at all, unless the sale itself be set aside, and the sale would not be set aside by reason merely of the defect or absence of title in the thing sold on the part of the execution-debtor; but if there was an express assertion that the goods sold were the property of the execution-debtor, the sheriff and the execution-debtor were bound by such warranty, to the extent, at least, that that one of them, in whose hands the purchase-money was, was bound to restore it to the purchaser, if the purchaser had not got that for which he paid. Section 258 of Act VIII of 1859 applied wherever a sale was set aside, whether for irregularity in publishing or conducting a sale or for other grounds; and though the right of the purchaser to recover back his purchase-money, in case of the sale being set aside, was, by that Act, given expressly only where the sale was of immoveable property, yet the same consequence would follow where a sale of moveable property in execution had been set aside. Where, therefore, certain shares were attached by the execution-creditor as the property of the execution-debtor, and were afterwards sold in execution by the sheriff, and the execution orders and warrants and the sheriff's proclamation of sale contained assertions of interest of the execution-debtor in these shares, whereas he had no such interest,—*Held* that the purchaser at the execution sale was entitled to have the sale set aside, and his purchase-money returned to him; but the sheriff's liability to the purchaser in such a case ceased so soon as he had paid over the proceeds of the sale to the execution-creditor, and the purchaser's remedy thereafter was against the execution-creditor only. *Bank of Hindustan* v. *Premchand Raichand, 5 Bom., O. C., 83,* commented upon. FRAMJI BESANJI DASTUR *v.* HORMASJI PESTANJI . . . **I. L. R., 2 Bom., 258**

361. ——————— *Suit to recover purchase-money when judgment-debtor had no interest.—Act VIII of 1859, ss. 257, 258.*—Where an auction-purchaser at a sale in execution of a decree bought the right, title, and interest of the judgment-debtor in the property sold in execution, and it was subsequently found that the judgment-debtor had no right, title, or interest whatever in the property, it was held that no suit would lie against the decree-holder or the judgment-debtor to recover back the money which the auction-purchaser had paid. Although a purchaser might, under section 258 of Act VIII of 1859, recover his purchase-money, it was only when the sale was set aside for irregularity under section 257. SOWDAMINI CHOWDHRAIN *v.* KRISHNA KISHOR PODDAR **[4 B. L. R., F. B., 11: 12 W. R., F. B., 8**

SALE IN EXECUTION OF DECREE—*continued.*

16. SETTING ASIDE SALE—RIGHTS OF PURCHASERS—*continued.*

(*b*) RECOVERY OF PURCHASE-MONEY—*continued.*

Right to refund of purchase-money—*continued.*

See also RAJIBLOCHUN *v.* BIMALAMONI DASI [2 B. L. R., A. C., 82

362. ——————— *Suit for refund of purchase-money for property bought at auction-sale in execution of decree.—Uncancelled sale.*—The plaintiff purchased at an auction-sale, in execution of a decree, the right, title, and interest of a judgment-debtor in certain property. The sale was confirmed on November 30, 1866. On proceeding to take possession he was opposed by the defendant, who asserted that he was in possessoin of the property, and that it was his. In a suit under section 258, Act VIII of 1859, for a refund of the purchase-money, the sale still remaining uncancelled,—*Held* that the suit must be dismissed; that section 258 of Act VIII of 1859 only applied to cases where the auction-sale had been cancelled; that the proper course for the plaintiff to have pursued was to have brought a suit under section 269 of Act VIII of 1859 for a declaration of the judgment-debtor's right, title, and interest in the property. BISSESWAR PANDAY *v.* BHAGWAN DAS [3 B. L. R., A. C., 301: 12 W. R., 176

363. ——————— *Want of interest in debtor.—Civil Procedure Code, 1882, ss. 313, 315.—Purchase of property where debtor has no saleable interest.*—Under section 313 of the Code of Civil Procedure a purchaser at a sale in execution of a decree may resist the confirmation of the sale and prevent its conclusion, while under section 315 he may apply, after the confirmation of the sale, for refund of the purchase-money on the ground that nothing passed by the sale. To entitle a purchaser, under paragraph 2 of section 315 of the Code of Civil Procedure, to a refund of purchase-money, it is not necessary that a Court should have decided in other proceedings that the judgment-debtor had no saleable interest in the property which purported to be sold, or that the purchaser should have obtained actual possession and have been deprived thereof. SIVARAMA *v.* RAMA . . . I. L. R., 8 Mad., 99

364. ——————— *Suit by purchaser for purchase-money.—Civil Procedure Code, 1882, ss. 313, 315.—Debtor without saleable interest. Per* STRAIGHT, OLDFIELD, and TYRRELL, *JJ.*—That the words in section 315 of the Civil Procedure Code, "no saleable interest," mean "nothing to sell," and are not intended to confine the cases in which a purchaser at an execution sale shall be entitled to receive back his purchase-money, or to those in which the judgment-debtor, though having an interest, such interest is, by prohibition of law or for some other reason, unsaleable. *Held* by the Full Bench that a purchaser at a sale in execution of a decree can maintain a suit against the decree-holder for recovery of his purchase-money, when it is found that the judgment-debtor had no saleable interest in the property sold, and he is not limited to the special procedure in the execution department mentioned in section 315. MUNNA SINGH *v.* GAJADHAR SINGH . . I. L. R., 5 All., 577

365. ——————— *Purchaser deprived of property, judgment-debtor having no interest in it.—Application for refund of purchase-money.—Civil Procedure Code, 1877, s. 315.*—Where immoveable property was sold in the execution of a decree under the provisions of Act VIII of 1859, and the auction-purchaser, having been subsequently deprived of such property on the ground that the judgment-debtor had no saleable interest in it, applied under section 315 of Act X of 1877 to the Court executing such decree for the return of the purchase-money,—*Held* that the Court could entertain the application. IN THE MATTER OF THE PETITION OF MULO . . . . I. L. R., 2 All., 299

Contra, HIRA LAL *v.* KARIMUNNISSA [I. L. R., 2 All., 780

366. ——————— *Collusion with judgment-debtor.—Civil Procedure Code, 1882, s. 315.*—Upon an application for refund of purchase-money under section 315 of the Code of Civil Procedure, the Munsif, being of opinion that the purchaser had in collusion with the judgment-debtor run up the price of the land at auction far beyond its value, with a view to prevent other property attached from being sold to satisfy the decree, rejected the application, except as to a sum of R50, which represented the alleged value of the judgment-debtor's interest in the land brought to sale by the decree-holder. *Held* that, as the judgment-debtor was found to have no interest in the land, the purchaser was entitled to a refund of the money paid to the decree-holder. KUNHI MOIDIN *v.* TARAYIL MOIDIN . I. L. R., 8 Mad., 101

367. ——————— *Civil Procedure Code, 1877, s. 315.—Suit to recover purchase-money where debtor is found to have no interest.*—A purchaser at an auction sale of property found subsequently in a suit to which the decree-holder was a party to belong to a third party, is entitled to recover back his purchase-money under section 315 of the Civil Procedure Code, on the ground that the judgment-debtor had no saleable interest in the property sold. BENODE BEHARI NUNDI *v.* MOHESH CHUNDER GHOSE . . . 12 C. L. R., 331

368. ——————— *Sale set aside.—Suit by auction-purchaser to recover purchase-money.—Civil Procedure Code (Act VIII of 1859), ss. 256, 257, 258 (X of 1877), ss. 312, 315.—Warranty.—Caveat emptor.*—Certain immoveable property was attached and proclaimed for sale in the execution of a decree on the application of the decree-holder, *H.*, as the property of his judgment-debtor. *W.* objected to the attachment and sale of

SALE IN EXECUTION OF DECREE—*continued.*

16. SETTING ASIDE SALE—RIGHTS OF PURCHASERS—*continued.*

(*b*) RECOVERY OF PURCHASE-MONEY—*continued.*

Right to refund of purchase-money—*continued.*

such property on the ground that it did not belong to the judgment-debtor, but was endowed property. His objections were disallowed, and the property was put up for sale on the 20th July 1875 under the provisions of Act VIII of 1859, and was purchased by *K.* *W.* subsequently sued *K.* to establish his claim to the property and to have the sale set aside, and on the 18th August 1876 obtained a decree setting it aside. Thereupon *K.* sued *H.* to recover the purchase-money, alleging a failure of consideration. *Held* that the sale not having been set aside in favour of the judgment-debtor on the ground of want of jurisdiction or other illegality or irregularity affecting the sale, but having been set aside in favour of a third party who had established his title to the property, and there being no question of fraud or misrepresentation on the part of the decree-holder, the suit was not maintainable. *Rajib Lochun* v. *Bimalamoni Dasi, 2 B. L. R., A. C., 52*; and *Sowdamini Chowdhrain* v. *Krishna Kishor Poddar, 4 B. L. R., F. B., 11,* followed. *Makundi Lal* v. *Kaunsila, 1. L. R., 1 All., 568; Neelkunth Sahee* v. *Asmun Matho, 3 N. W., 67;* and *Doolhin Hur Nath Koonweree* v. *Baijoo Oojha, 2 Agra, 50,* distinguished. *Held,* also, that the auction-purchaser could not have applied under section 315 of Act X of 1877 for the return of the purchase-money, as the provisions of that section could not have retrospective effect, and would not apply to a sale which had taken place before that Act came into operation. *In the matter of the petition of Mulo, I. L. R., 2 All., 299,* dissented from. *Per* STRAIGHT, *J.*—That, had the provisions of that section been applicable, instead of instituting a suit, the auction-purchaser should have applied for the return of her purchase-money in the execution of the decree. HIRA LAL *v.* KARIM-UN-NISA

[I. L. R., 2 All., 780

369. ——————— *Sale by Sheriff under writ of fieri facias—Sale subsequently declared invalid.—Suit to recover purchase-money.—Liability of execution-creditor.—Civil Procedure Code, 1859, ss. 201, 242.*—The plaint in a suit by *A.* against *B.* stated that, in a suit in which *B.* had recovered judgment against *C.*, a writ of *fi. fa.* was, on 18th June 1866, issued on the application of *B.*, directing the Sheriff of Calcutta to levy the judgment-debt by seizure, and, if necessary, by sale, of the property of *C.* in Bengal, Behar, and Orissa, or in any other districts which were then annexed or made subject to the Presidency of Fort William in Bengal; that the writ did not authorise the execution thereof against immoveable property in Oudh; that under the writ the Sheriff, acting under instructions from *B.*, seized and put up for sale the right, title, and interest of *C.* in a talook in Oudh, which was purchased by *D.*, to whom the Sheriff executed a bill of sale, and on receipt of the purchase-money paid a portion thereof to *B.* and the balance to *C.*, and put *D.* into possession of the property, and he remained for some time in possession and in receipt of the rents and profits; that, eventually, in proceedings in Oudh, instituted by *D.* for partition of the property purchased by him, the sale was pronounced to be null and void and was set aside, and *D.* was removed from possession; and that the plaintiff sued as the executor of *D.* to recover the whole of the purchase-money from *B.* *Held,* on appeal, affirming the decision of PHEAR, *J.*, that the plaint disclosed no cause of action; first, because a purchaser who, after the execution of the conveyance, is evicted by a title to which the covenants in the conveyance do not extend, cannot recover the purchase-money from his vendors; second, because the Sheriff was not the agent of *B.* for the sale of the property, and therefore no privity of contract existed between *B.* and *D.*; third, because *D.* having been for some time in possession of the property and in receipt of the profits thereof, there had not been a total failure of consideration, and the plaintiff accordingly could not maintain the action in its present shape,—*viz.*, for money had and received. The judgment of the High Court in *Bissessur Lall Sahoo* v. *Ramtuhul Singh, 11 B. L. R., 121,* explained by PHEAR, *J.*, and sections 201 and 242 of Act VIII of 1859 observed upon. DORAB ALLY KHAN *v.* MOHEEOODDEEN

[I. L. R., 1 Calc., 55: 24 W. R., 372

In the same case on appeal to the Privy Council it was held as follows: A writ of *fieri facias* issued to the Sheriff authorises him to seize the property of the execution-debtor which lies within his territorial jurisdiction, and to pass the debtor's title to it without warranting that title to be good. But if the Sheriff acts *ultra vires,—e.g.*, if he seizes and sells property not within his jurisdiction,—he cannot invoke the protection which the law gives him when acting within his jurisdiction, and he stands in the same position as an ordinary person who has sold that which he had no title to sell. Since there is not in India the difference between real and personal estate which obtains in England, and moveable and immoveable property there are alike capable of being seized and sold under a writ of *fieri facias*, the responsibility of the Sheriff in respect of sale in that country is governed by the law relating to chattels, rather than by that relating to the sale of real estate. A Sheriff, who in his official capacity seizes and sells property, undertakes by his conduct that he has legal authority to do so. When, from his having acted beyond the territorial jurisdiction of the Court whose officer he is, the sale becomes inoperative and ineffectual, the purchaser may have a case for relief as against the judgment-creditor who has received the purchase-money, if it should appear that the Sheriff has acted under his authority and by his express directions. DORAB ALLY KHAN *v.* EXECUTORS OF MOHEEOODDEEN . . **I. L. R., 3 Calc., 806**

SALE IN EXECUTION OF DECREE—*continued.*

16. SETTING ASIDE SALE—RIGHTS OF PURCHASERS—*continued.*

(*b*) RECOVERY OF PURCHASE-MONEY—*continued.*

Right to refund of purchase-money—*continued.*

S. C. DORAB ALLY KHAN *v.* ABDOOL AZEEZ [L. R., 5 I. A., 116: 2 C. L. R., 529

370. ——————— *Payments of purchase-money on an agreement as to possession between purchaser and execution-creditor.—Sale subsequently set aside.—Suit for purchase-money.—Accord and satisfaction.*—On the 9th of October 1866. the Sheriff of Calcutta executed a bill of sale to *A.* of a certain talook situated in Oudh, of which *A.* afterwards obtained possession. In consequence of an impression that the sale was illegal, *A.* directed the Sheriff not to pay the money to *B.*, the execution-creditor, and the money remained in the hands of the Sheriff until the 24th of October 1867, when *A.* directed the payment of the money to *B.* in consequence of an arrangement then come to between *A.* and *B.* to the effect that, if *A.* should be ousted from the possession of the property within a year, *B.* should take measures to reinstate him at his (*B.'s*) expense. *A.* died without heirs in July 1868, and the Government of Oudh, not being aware that *A.* had left a will, took possession of the talook partly as on an escheat, and partly because there were arrears of revenue due on the property. On the 2nd of October 1868 an order was passed by the Collector of the district in which the talook was situate, declaring the sale by the Sheriff illegal, and directing the return of the talook to its former owners, which was done in April 1869. In a suit brought by *A.'s* executors against *B.* in September 1872 to recover the purchase-money, as money had and received, as upon a total failure of consideration,—*Held* that the agreement of the 24th of October 1867 operated as an accord and satisfaction of all rights which *A.* might have had to a return of the purchase-money or to damages, and that the only remedy which *A.* had was an action on the agreement. *Held*, also, that no breach of the agreement of 24th of October 1867 had in fact occurred, and that, even if the agreement had been broken, the suit was barred by limitation. DORAB ALLY KHAN *v.* ABDOOL AZEEZ. ABDOOL AZEEZ *v.* DORAB ALLY KHAN [I. L. R., 6 Calc., 356

371. ——————— *Purchase of surplus proceeds of revenue sale afterwards set aside.—Suit to recover purchase-money.—Voluntary payment.*—An estate of which *R.* was one of the registered shareholders was sold for arrears of revenue, and the amount realised, after deducting the arrears and the expenses of the sale, remained in deposit with the Collector. *S.*, the holder of a decree against *R.*, notwithstanding objections made by *R.*, caused the interest of *R.* in the surplus proceeds in the hands of the Collector to be attached and sold in execution of his decree. At the execution sale *R.'s* interest was bought by *B.*, and from the money paid by him the judgment-debt of *S.*, and the debts of other judgment creditors of *R.*, were satisfied. In the meanwhile *R.* brought a suit to set aside the revenue sale of the estate, and obtained a decree in his favour in the High Court. *B.* then applied to the Collector for *R.'s* share of the surplus proceeds, but his application was refused. In a suit by *B.* against *R.* to recover the price he had paid at the execution sale,—*Held*, reversing the judgment of the High Court, that such a suit could not be maintained. RAM TUHUL SINGH *v.* BISESWAR LALL SAHOO . 15 B. L. R., 208: 23 W. R., 305 [L. R., 2 I. A., 131

Reversing the judgment of the High Court in BISSESSUR LALL SAHOO *v.* RAM TUHUL SINGH [11 B. L. R., 121: 19 W. R., 351

372. ——————— *Suit to recover purchase-money when sale is set aside.—Minor.—Costs.—Fraud.*—A decree-holder fraudulently caused the sale in execution of his decree of certain immoveable property belonging to a minor. The minor brought a suit for a declaration that such sale was invalid and obtained possession of the property from the auction-purchaser. The auction-purchaser sued the decree-holder to recover his purchase-money and the costs incurred by him in defending the suit brought by the minor. *Held per* PEARSON, TURNER, SPANKIE, and OLDFIELD, *JJ.*, it being found that the auction-purchaser was not a party to or cognisant of the fraud on the part of the decree-holder, that neither the mere fact that the auction-purchaser knew that he was purchasing the property of a minor, nor the mere fact that he did not ascertain whether or not the sale was justified by the terms of the decree, disentitled him to recover the purchase-money from the decree-holder. *Held* also that, being innocent of fraud and having purchased in the *bonâ fide* belief that the property of the minor was saleable, he was entitled to recover the purchase-money. *Kelly* v. *Gobind Das, 6 N. W., 168*, distinguished. *Held*, also, that he could not recover the costs incurred by him in defending the suit brought by the minor, being a suit he ought not to have defended. *Per* STUART, *C. J.*—That the auction-purchaser, being guilty of fraud, was not entitled to recover the purchase-money, and, assuming that he was innocent of fraud, that, having purchased with the knowledge that the property was the property of a minor and without ascertaining that the sale was justified by the terms of the decree, he could not recover the purchase-money. MAKUNDI LALL *v.* KAUNSILA . . I. L. R., 1 All., 568

373. ——————— *Decree passed without jurisdiction—Suit to recover possession of lands sold in execution.*—The plaintiff sued to establish his right to, and to recover certain lands in the possession of which he had been obstructed by

SALE IN EXECUTION OF DECREE—*continued.*

16. SETTING ASIDE SALE—RIGHTS OF PURCHASERS—*continued.*

(*b*) RECOVERY OF PURCHASE-MONEY—*continued.*

Right to refund of purchase-money—*continued.*

the defendant. The plaintiff purchased the lands at a sale held in execution of a decree obtained against the first and second defendants in the Court of the District Munsif of Tripassore. The sale was directed by the District Munsif of Tripassore. Between the date of the decree and the sale, the village in which the lands were situated was transferred from the jurisdiction of the District Munsif of Tripassore to the District Munsif of Conjeveram. *Held* that the sale was a nullity and conferred no title upon the plaintiff, but that the plaintiff was entitled to recover from the first and second defendants the amount of the purchase-money paid by him. NARAYANA SAWMY NAICK *v.* SARAVANA MUDALY [6 Mad., 58

374. ——————— *Civil Procedure Code, 1859, ss. 256, 258.—Right on sale being set aside for irregularity.—Right to recover money expended for benefit of indigo factory.*—When a sale is set aside under Act VIII of 1859, section 256, where the purchaser had, before the sale was confirmed, taken possession, laid out money, and received rents or profits, and he is turned out some time after by reason of such reversal of sale, he should get back the money laid out by him for the benefit of the estate in addition to his purchase-money and interest thereon, and should account to the judgment-debtor for the profits received by him. At the same time it would depend upon the circumstances under which the purchaser took possession, and the nature of his outlay, whether he ought in equity to be allowed to claim reimbursement of the money expended by him. Where a purchaser *bonâ fide* took possession of the property, and from time to time laid out money thereon, because he thought that otherwise from its peculiar nature it would become even worse than valueless (*e.g.*, making advances in an indigo concern lest the opportunity of the season should pass away), it was held that he was entitled to have it made a condition of setting aside the sale that he be repaid so much of the outlay as he could show was beneficial to the estate; he accounting for the rents and profits realised by him. MORGAN *v.* ABDOOL HYE . . . . . 23 W. R., 393

Confirming order setting aside sale. ABDOOL HYE *v.* MACRAE . . . . 23 W. R., 1

375. ——————— *Suit by purchaser for interest on purchase-money.—Act VIII of 1859.—Act X of 1877, s. 315.*—A judgment-debtor, whose property had been sold in execution of a decree under Act VIII of 1859, appealed from the order disallowing his application to set aside the sale, after Act X of 1877 (Civil Procedure Code) came into force. The Appellate Court set aside the sale. The purchaser sued the decree-holder for interest on the purchase-money and the expenses of the sale, the purchase-money having been returned to him, under the order of the Court executing the decree, without interest and less such expenses. *Held* by the Full Bench that the provisions of Act X of 1877, and not of Act VIII of 1859, were applicable to the determination of the matter in dispute in the suit. *Held* by the Divisional Bench (STRAIGHT and TYRRELL, *JJ.*) that, with reference to the ruling of the Full Bench, the suit was maintainable. *Held*, also, by the Divisional Bench that, under the circumstances of the case, the plaintiff ought not to be granted the relief sought. RAGHUBAR DAYAL *v.* BANK OF UPPER INDIA . I. L. R., 5 All., 364

SALE OF GOODS.

See CASES UNDER CONTRACT.

See CONTRACT ACT, s. 73. [15 B. L. R., 276

See CONTRACT ACT, s. 78. [I. L. R., 4 Calc., 801

See SHIPMENTS . . 5 B. L. R., 619

SALT, ACTS AND REGULATIONS RELATING TO—

	Col.
1. BENGAL	5494
2. MADRAS	5496
3. BOMBAY	5497

1. BENGAL.

1. ——— Beng. Reg. X of 1819, s. 36. —*Possession of salt.—Arrangement by Government.*—The absence of a protective document makes salt contraband. But where the Government has made such an arrangement with a particular party as places him in possession of a large quantity of salt, the element and condition which give a Salt officer the jurisdiction to seize salt in the absence of a protective document are wanting. KOOMARNARAIN ROY *v.* SUPERINTENDENT OF SALT CHOWKEY, JULLESSUR [1 Hay, 247

2. ——— Beng. Act VII of 1864, ss. 12 and 16.—*Confiscation of salt found without rowana or pass.—Intention to sell.*—If salt exceeding five seers is found within the limits prescribed by section 12 of Bengal Act VII of 1864, unprotected by a rowana or pass, the salt is contraband and liable to seizure, and the parties transporting it are punishable under section 16. It matters not whether any attempt or intention to sell is proved or not. QUEEN *v.* OFATULLA . 6 B. L. R., 381

S. C. GOVERNMENT OF BENGAL *v.* AKATOOLLAH [15 W. R., Cr., 21

SALT, ACTS AND REGULATIONS RELATING TO—*continued.*

1. BENGAL—*continued.*

Beng. Act VII of 1864—*continued.*

3. ——— s. 16.—*Rowana, Endorsement of, by police or customs officers.*—A rowana, as defined by Bengal Act VII of 1864, is complete on the face of it without any certificate by way of endorsement signed by the Superintendent showing that the endorsement made by the preventive officers of customs has been examined by him. Section 16 of Act VII only gives power to fine when the salt is not specified in a rowana. IN THE MATTER OF THE PETITION OF KISHORY MOHUN PRAMANICK . . . . 23 W. R., Cr., 6

4. ——— *Salt carried partly by land and partly by water.*—Where a person who had taken a quantity of salt under a rowana for transit from Calcutta to his golah, part of the journey to be performed by water and part by land, conveyed a portion of it to his golah where the rowana was, and was conveying the rest in two separate batches by land, it was held that he could not be convicted under Bengal Act VII of 1864, section 16. QUEEN *v.* CHUNDRE CHURN DASS [22 W. R., Cr., 71

5. ——— ss. 16 and 18.—*Possession of contraband salt.*—In a case of a conviction under section 16, Bengal Act VII of 1864, for having in possession contraband salt, the Sessions Judge recommended that it should be set aside on the ground that the salt had already reached its destination, and was not *en route;* section 18 consequently not applying. The High Court set aside the conviction accordingly. QUEEN *v.* CHUNDRO MOHUN BHOOYA [22 W. R., Cr., 82

6. ——— ss. 16 & 21.—*Possession and sale of salt.*—*A.* was convicted under section 16, Bengal Act VII of 1864, and *B.* under section 21 of the same Act, the former with having had in his possession salt not covered by a rowana, and the latter with having sold to *A.* the said salt. *Held* that the conviction of *A.* under section 16 was illegal, the salt in his possession having been a portion of salt for which *B.* had taken out a rowana, but that the conviction of *B.* under section 21 was proper, as he had failed to certify the salt sold by him to *A.* on the back of the rowana. IN THE MATTER OF THE PETITION OF BHAGBUT DEY . . 18 W. R., Cr., 64

7. ——— s. 17.—*Infliction of penalty on owner and servant.*—In a case of conviction, under Act VII of 1864, of having in possession contraband salt, the penalty cannot be inflicted on the owner of the salt and also on the servant or gomashta of the owner who has the salt in his possession, as the possession of the latter is the possession of the former. IN THE MATTER OF THE PETITION OF GUNGADHUR SAHOO . 22 W. R., Cr., 9

8. ——— s. 18.—*Confiscation of salt.—Power of releasing from confiscation.*—By section 18, Bengal Act VII of 1864, salt, not being conveyed by the route and to the place prescribed in the rowana, becomes absolutely confiscated. The power of releasing any such salt is vested in the Board of Revenue under section 39, and not in the Magistrate. QUEEN *v.* BOIDONATH [7 W. R., Cr., 48

9. ——— *Conviction of both principal and agent.*—The High Court in this case upheld the conviction by the Magistrate, under Bengal Act VII of 1864, section 18, both of the owner of contraband salt and of his agent who was transporting the salt, and declined to direct the Magistrate to pass sentence on the manjees of the boat in which the salt was being transported when seized, their boat having been already confiscated by the Magistrate. QUEEN *v.* MODUN MOHUN PAL CHOWDHRY [23 W. R., Cr., 7

2. MADRAS.

10. ——— Act XVII of 1840.—*Possession of salt-earth.*—Being in possession of salt-earth, from which salt may be manufactured, with the object of making salt, is an offence under the salt laws. ANONYMOUS . . . 4 Mad., Ap., 53

11. ——— Mad. Reg. I of 1805, s. 18.—*"Spontaneous salt," Possession of.—Salt Excise Act, 1871.*—"Spontaneous salt" is salt which, produced naturally, requires no process of manufacture to render it suitable for human consumption. To collect spontaneous salt for domestic consumption, or to be found in possession of it for that purpose, or to be found in the act of conveying it home from the place in which it is collected, are not, *per se,* acts prohibited by Regulation I of 1805, section 18. *Semble,*—In districts to which the Salt Excise Act, 1871, is extended, to obtain or to be found in possession of spontaneous salt under circumstances which show an intention to evade payment of the excise is an offence. ANONYMOUS CASE [I. L. R., 3 Mad., 17

12. ——— *Salt-earth, Collection of or possession of.*—The collecting of salt-earth from salt-swamps, or the being in possession of salt-earth for the purpose of making salt, is not an offence within the meaning of section 18 of Madras Regulation I of 1805. REG. *v.* PYLA ATCHI [I. L. R., 1 Mad., 278

13. ——— Mad. Act I of 1882, s. 26.—*Possession of salt-earth.*—The possession of earth impregnated with salt, not being a natural saline efflorescence or deposit, is no offence under section 26 of the Salt Laws Amendment Act, 1882 (Madras). QUEEN *v.* THUNJI . [I. L. R., 7 Mad., 163

14. ——— cl. 3; s. 27 (e).—*Salt imported from foreign State, Contraband.*—Section 26 of the Salt Laws Amendment Act (Madras Act I of 1882) makes it penal to import salt by any route

SALT, ACTS AND REGULATIONS RELATING TO—*continued.*

2. MADRAS—*continued.*

Mad. Act I of 1882, cl. 3; s. 27 (e)—*continued.*

not legally sanctioned for that purpose, and also to possess salt known to have been imported in contravention of the Salt laws; and section 27 of the said Act authorises, *inter alia*, the Governor in Council to make rules for regulating the import of salt by land. No such rules having been passed in 1884, *P.* was convicted of being in possession of salt known to have been manufactured in, and imported from, the Native State of Pudukottai. *Held* that the conviction was right. QUEEN-EMPRESS *v.* PODIATHAL . . . **I. L. R., 8 Mad., 342**

3. BOMBAY.

15. ——— Acts XXVII of 1837 and XXXI of 1850.—*Maxim "Omnia præsumuntur contra spoliatorem."—Salt thrown overboard to avoid measurement.—Salt removed in excess of permit.*—Applying the maxim "Omnia præsumuntur contra spoliatorem," the High Court held that, where a vessel was seized on suspicion of having a greater quantity of salt on board than was allowed by its permit, and immediately afterwards a number of men boarded the boat, and, with the assistance of the agent of the owner, threw a considerable quantity of salt overboard, a presumption arose that there was an excess of salt on board at the time of the seizure beyond the amount allowed by the permit. Where under a permit to pass a certain number of maunds of salt on which duty has been paid, an amount in excess of such number is removed, the whole of such salt must be considered as removed contrary to the provisions of the Salt Acts (Act XXVII of 1837 and Act XXXI of 1850); and the whole of such salt, and not merely the excess, is, under these Acts, liable to confiscation. FRAMJI HORMASJI *v.* COMMISSIONER OF CUSTOMS . . . **7 Bom., A. C., 89**

16. ——— *Removal of salt.—Property in salt naturally formed.—Theft.*—Dishonest removal of salt naturally formed in a creek, which was under the supervision of an officer belonging to the Customs Department, constitutes theft, the salt having been legally appropriated by such officer. (*Per* BAYLEY and WEST, *JJ.*) But removal for one's own use from a creek, of such salt not legally appropriated, constitutes no offence either under the Penal Code or Acts XXXI of 1850 or XXVII of 1837, though under section 7 of the latter Act, made applicable by section 8 of the former, the salt removed becomes liable to detention. (*Per* LLOYD and KEMBALL, *JJ.*) REG. *v.* MANSANG BHAVSANG **[10 Bom., 74**

17. ——— Bom. Act VII of 1873.—*Act XVIII of 1877.—Duty paid under former Act.—Effect of new Act by which duty increased coming into operation before removal of salt.—Increased duty paid under protest.—Suit to recover excess.—Set-off.—Excise duty.—Customs.*—Prior to the 28th December 1877 the excise duty on salt manufactured in Bombay was R1-13-0 per maund, and the Act which regulated the importation and transport of salt in the Presidency of Bombay was the Bombay Salt Act, VII of 1873. The plaintiffs, who were salt merchants, were desirous of exporting salt from the salt-works at Uran and Panvel, and accordingly, under the provisions of Act VII of 1873, made four several applications in writing to the Assistant Collector of Salt Revenue for the necessary permits on the following dates, *viz.*, 27th November 1877; 17th December 1877; 17th December 1877; and 24th December 1877. Each application stated the amount of salt which it was proposed to export, and at the time of sending in such applications the duty payable in respect of the amount of salt therein mentioned was paid. Receipts for the duty so paid were given to the plaintiffs, and all four applications were duly registered before the 28th December 1877. The salt comprised in the first three applications amounted in all to maunds 20,972, and the whole of this quantity, with the exception of maunds 2,748, had been removed by the plaintiffs before the 28th December 1877; but at that date no part of the salt which was the subject-matter of the last application (24th December 1877), and which consisted of maunds 10,483, had yet been removed. On the 28th December 1877, Act XVIII of 1877 came into force, by which Act the excise duty on salt manufactured in Bombay was raised from R1-13-0 to R2-8-0 per maund, and on that day the sarkarkun refused to allow the plaintiffs to remove the balance of the first three lots (*viz.*, 2,748 maunds) or the last lot of maunds 10,483, unless an additional duty, at the rate of eleven annas per maund, was paid in respect thereof, alleging that the same was leviable under Act XVIII of 1877. The plaintiffs paid under protest the additional duty demanded, amounting to R9,096-5-0, and exported the salt to British Malabar, having previously obtained certificates from the Collector that excise duty, at the full rate of R2-8-0 per maund, had been paid upon the said salt. On production of these certificates at the ports of British Malabar, the salt was admitted free of customs duty. The plaintiffs subsequently brought this suit to recover the said sum of R9,096-5-0, together with a sum of R1,000 damages alleged to have been sustained by reason of the delay in removing the salt caused by the conduct of the sarkarkun. The plaintiffs contended that having paid the duty in respect of the salt comprised in the four applications, and the said duty having been received by the Collector before Act XVIII came into force, they were not liable to pay any further duty, and that Act XVIII of 1877 did not apply to the said salt. The defendant contended that the additional duty was rightly levied on the salt, and further claimed to set-off against the plaintiffs' claims the sum of R9,056-5-0 which the plaintiffs would have been obliged to pay in importing the salt into British Malabar if they had not already paid it to the authorities in Bombay, but from payment of which

SALT, ACTS AND REGULATIONS RELATING TO—*continued.*

3. BOMBAY—*continued.*

Bom. Act VII of 1873—*continued.*

they had been exempted on production of the certificates above mentioned. *Held* that on the 28th December 1877 the plaintiffs had acquired the right to remove the salt, whenever they might think proper, by simply complying with the usual forms required by Act VII of 1873, and that Act XVIII of 1877 did not operate retrospectively so as to destroy that right and to impose on the plaintiffs a heavier burden as a condition of their removing the salt. *Held* also, however, that as the salt was allowed to pass free into British Malabar on the strength of its having already paid the duty of R2-8-0 per maund at Bombay, the sum of R9,096-5-0 must be deemed to have been appropriated by the plaintiffs to the payment of the customs duty payable on the importation of the salt into the ports of British Malabar, and was, therefore, no longer recoverable from the defendant. The plaintiffs, by applying to the Collector of Customs at Bombay for certificates that the duty had been paid, by presenting them at the Malabar ports, and claiming, in virtue of such certificates, that the salt should be admitted free of customs duty, virtually appropriated the R9,096-5-0 excess of excise duty (which remained in the hands of the customs authorities as money had and received to the use of the plaintiff) to the payment of the enhanced customs duties at such ports. BRITO *v.* SECRETARY OF STATE FOR INDIA . . . **I. L. R., 6 Bom., 251**

SALT ACTS, BREACH OF—

See SENTENCE—IMPRISONMENT—IMPRISONMENT IN DEFAULT OF FINE.
[I. L. R., 4 Mad., 335; 335, note

SALVAGE.

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—SALVAGE . **9 W. R., 252**

1. ——— Principles of salvage lien.—*Right to salvage.*—A claim to salvage is founded on a principle of equity which the Courts of British India are bound to recognise. It accrues irrespectively of the circumstance that the rescue is from a danger incurred on inland waters, or of the circumstance that a portion of the services may be rendered from the shore. A boat laden with indigo seed left Permit Ghât, about three miles above the pontoon bridge over the Ganges at Cawnpore, on the morning of the 6th of August. While the boatmen were endeavouring to cross the stream, the boat struck the bridge at a point where the current was running with a velocity of 530 feet per minute. The boat came athwart two of the pontoons, and by the pressure of the stream canted over on its side. From this cause, and also from the strain and other injuries, it began to take in water. Had it been allowed to remain in this position, the bridge must have broken from its moorings, or, more probably still, the boat and cargo would have been submerged. The persons in charge of the bridge might have at once obviated all danger to the bridge by submerging the boat. They took measures to relieve the strain on the bridge and to remove the cargo. It was impossible to remove the boat until the whole of the cargo had been discharged. This was done, and the boat was towed to a place of safety, and the cargo was removed and stored in a warehouse. *Held* that a right to salvage accrued. Persons in these provinces, to whom a right of salvage has accrued, are entitled to retain the property saved until a reasonable sum has been paid or tendered to them in satisfaction of their claim. GILMORE *v.* ROSE . . . . . **6 N. W., 311**

SALVAGE.—Principles of salvage lien—*continued.*

2. ——— Services entitling vessel to salvage.—*Towage.*—Where a ship is in a condition of actual peril, and the services of a tug are sought for and directed to the purpose of releasing her from that condition, such services are salvage services. But where there is nothing in those services as regards risk or exertion or other conduct of the salvors to make them differ from ordinary towage services, their reward should be estimated as for towage with salvage liberality. IN THE MATTER OF THE "ALABAMA" . . . **2 Ind. Jur., N. S., 139**

3. ——— ——— *Towage.—Extraordinary towage.—Claim of master and crew.—Award.—Apportionment.*—The S. S. *C.*, while employed as a Government transport to convey troops and stores from Bombay to Egypt, broke her screw shaft and became disabled. While in that condition the S. S. *H. B.* met her and towed her back to Bombay, the voyage occupying eleven days. The owners of the S. S. *C.* settled the claim of the owners of the S. S. *H. B.* for R37,500, but refused to recognise any separate claim to remuneration in the plaintiffs, the master and crew of the S. S. *H. B.* *Held* that the services rendered were, under all the circumstances of the case, salvage and not merely towage services, and that R10,000 was a fair remuneration for the master and crew of the salving vessel, to be apportioned, R4,000 to the master, the rest to the crew according to their ratings. The plaintiffs held entitled also to one thirty-second part of the freight, if any, which might be recovered by the S. S. *C.* under her charter party with the Indian Government. If towage leads to the rescue of a vessel in actual danger, or in reasonable apprehension of danger, the services should be remunerated as salvage. When the steam power of the salving vessel is the efficient cause of the salvage, the owners are entitled to the larger share of the reward. This is especially the case where the master and crew of the salving vessel incur no risk to life. But the reward of the latter ought nevertheless, in the interests of commerce and humanity alike, to be on a liberal scale. The rule no longer obtains which made the salvage reward proportionate to the value of the salved ship. The Courts are only bound to give such amount as is fit and proper with reference to all the circumstances of the case, including value. RAFFIN *v.* S. S. "CHILKA" **I. L. R., 7 Bom., 196**

SALVAGE—*continued.*

4. ——— **Calculation of salvage award.**—*Steamers.*—The Court is bound to consider the time, labour, skill, enterprise, and risk of the salvors, as well as the value of the property engaged in the service; and also the degree of danger from which the property is rescued, and the value of the property so rescued. Steamboats are entitled to a higher rate of reward than other vessels by reason of the promptness with which they are enabled to render services in such cases. IN THE MATTER OF THE "LADY JOCELYN" . . . **. 2 Mad., 355**

5. ——— *Goods put on flat during squall.*—A dinghee laden with gilders valued at R20,000 was being propelled across the river when, a squall coming on and the dinghee being in some danger, the gilders were taken on board a flat for safety, and kept there till the squall subsided. *Held* that the owners of the flat had no claim for salvage, and that R150 was a fair remuneration for services rendered. URNA CHURN CHETTY *v.* GORDON **[1 Hyde, 212**

SALVAGE LIEN.

See LIEN . . **I. L. R., 2 Calc., 58**

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See SETTLEMENT—EXPIRATION OF SETTLEMENT . . **I. L. R., 4 Bom., 367**

——— **for collection of rents by gomashta.**

See STAMP ACT, 1862, SCH. A, CL. 43. **[1 B. L. R., F. B., 55**

——— **Title under—**

See OUDH ESTATES ACT. **[I. L. R., 3 Calc., 645**

1. ——— **Construction of sanad.**—*Mokurrari.*—*Semble,*—The word "mokurrari" in a sanad does not necessarily import perpetuity. GOVERNMENT OF BENGAL *v.* JAFUR HOSSEIN KHAN **[5 Moore's I. A., 467**

2. ——— *Istemrar sanad, Effect of.*—The effect of the istemrar sanad is to ascertain and limit the demand of the Government for revenue and to recognise and confirm, subject to this, the proprietary rights already in existence. *Katama Natchiar* v. *Rajah of Shivagunga, 9 Moore's I. A., 539,* distinguished. CANNAMMAL AIYAR *v.* VIJAYA RAGUNADA RUNGASAMY SINGAPULLIAR **[8 Mad., 114**

3. ——— *Right to cut timber.—Prescriptive title.—Construction of grant.*—In construing grants by former Governments, the rule of English law as to the construction of grants to the subject by the Crown is the correct rule to be applied by the Courts in India. Where a sanad contained only the words "The village of Manavali has been conferred on you as inam, to be enjoyed by you, your son, and grandson. The Government dues of the village,—*viz.,* the koolbale koolkunoo (*i.e.,*

SANAD.—Construction of sanad—*continued.*

all taxes and assessments), present taxes and future taxes, together with the house tax but exclusive of haks due to hakdars, shall continue to be debited from year to year, from the year next succeeding,"—it was held that the plaintiff's sanad did not operate as an alienation of the soil of the villages, or confer on him a proprietary title in it, and therefore gave the plaintiff no right to the timber growing upon the soil. The owner of such a sanad, having only a right in the revenues and none in the soil of a village, cannot by thirty years' user become the proprietor of the timber. VAMAN JANARDAN JOSHI *v.* COLLECTOR OF THANA . **. 6 Bom., A. C., 191**

4. ——— *Grant of village by Government, Existing rights how affected by.*—The grant of a village by Government, whether native or British, is subject to all existing rights against Government, whether or not the deed of grant contains an exception or reservation of such rights. Government cannot, by alienating its own rights in a village, albeit that the sanad purports to grant the village as a whole, extinguish or affect any substantive right therein appertaining to third persons, or convey to the grantee any larger or better estate or interest than was vested in Government. DESAI HIMATSINGJI JORAVARSINGJI *v.* BHAVABHAI KAYABHAI . . **. I. L. R., 4 Bom., 643**

5. ——— *Grant by Government.—Property in the soil.*—A sanad by the State purporting to grant a village in inam, "including the waters, the trees, the stones and quarries, the mines, and the hidden treasures, but excluding the hakdars and inamdars,"—*Held* to be a grant by the State of such proprietary right as it had in the soil of the village to the grantee. It is not open to the grantor to say that such words as the above mean nothing but land revenue. The saving of the rights of the hakdars and inamdars does not prevent the property in the soil, so far as it can be regarded as vested in Government, from passing to the grantee. RAVJI NARAYAN MANDLIK *v.* DADAJI BAPUJI (MAMLATDAR OF RATNAGIRI) . . **I. L. R., 1 Bom., 523**

6. ——— *Office of bhoonyee in Cuttack.—Jagirdari right.*—Plaintiff's ancestor held certain lands from Government under a settlement at a fixed rent of R10-13-0, but was subsequently appointed bhoonyee with a remuneration of R6-8, recoverable by deduction from the rent, leaving only 6 annas and 4 pies payable to Government by way of rent. *Held* that the sanad of appointment to the office of bhoonyee created no jagirdari right, but that, on the contrary, the reservation of the rent of 6 annas 4 pies seemed to indicate that the tenancy remained, giving no right of exclusive occupancy to plaintiff as against defendant. CHOITUN MOHANTEE *v.* BHIKAREE MOHANTEE . **. 17 W. R., 410**

7. ——— *Nature of estate assigned.—Prohibition of alienation.*—The zemindar in possession by a sanad conveyed to *A.,* as the head of a branch of the grantor's family, an estate, part of the zemindari, in lieu of maintenance to which *A.* was entitled out of the zemindari, "to hold

SANAD.—Construction of sanad—*continued.*

and enjoy possession from generation to generation," subject to an allowance for maintenance to a certain class of the family described as "lowahokans" and "motalokans" (dependants and relations). *A.'s* heir afterwards alienated a part of the estate for a valuable consideration. *Held*, first, in the absence of evidence of any class of persons answering the description of "lowahokans" and "motalokans" (which might have created a trust), that *A.* took an absolute estate in the lands assigned to him; and, secondly, that the limitation in the sanad "from generation to generation" did not create such an estate as to operate as a bar to alienation by sale. NURSINGH DEB *v.* ROY KOYLASHNATH . . . **9 Moore's I. A., 55**

8. ——————— *S. C.*, a Hindu, granted a talook to his sister, *K.*, by a sanad in the following terms: "You are my sister, I accordingly grant you as a talook for your support the three villages, H., F., and K., belonging to my zemindari, with all rights appertaining thereto, at a tahut jumma of R361. Being in possession of the lands and paying rent according to the tahut jumma, do you and the generations born of your womb successively (santan sreni kreme) enjoy the same. No other heir of yours shall have right or interest." At the date of the sanad *K.* had one child, a daughter, *C.* She had afterwards a son, who died in her lifetime without issue, but whose widow, by his permission, adopted, after his death, a son, *C. L.* *K.* held undisputed possession of the talook during her lifetime, and by her will devised it to *C.*, her daughter, and *C. L.*, her grandson by adoption, in equal moieties. On *K.'s* death, *H C.*, as heir of his father, *S. C.*, took possession of the talook, whereupon *C.* and *C. L.*, claiming under the will of *K.*, sued for possession. *Held* by the Court of first instance that *C.* took an absolute estate under the sanad on the death of her mother, *K.*, but that having elected to take under her mother's will, and to admit the co-plaintiff *C. L.* to a half share in the estate, both plaintiffs were entitled to maintain the action. *Held* by the High Court, on appeal, that *C.*, having been born before the date of the sanad, took under it a life-interest in the talook in succession to the life-interest of her mother; but that, as the plaintiffs had not sued in respect of the life-interest, but claimed under the will of *K.*, which she was incompetent to make, the suit must be dismissed. The term "sontan" bears the wider and more general meaning of issue, and is not confined to male progeny. The true meaning of the words "sreni kreme" in a sanad, as gathered from the context, was held to be in "succession" in the sense of succession first of the mother, and then of the children born of her womb. *Held* by the Judicial Committee of the Privy Council that the earlier words of the sanad, when read together, were to be taken as conferring an absolute estate on *K.*; and that the effect of the concluding words "no other heir of yours, &c.," was to make the absolute estate before given defeasible in the event of a failure of issue living at the time of *K.'s* death, in which event the estate was to return to the donor and his heirs; but as that event had not occurred, it followed that *K.* took an estate which she could dispose of by will, and

SANAD.—Construction of sanad—*continued.*

consequently that the plaintiffs were entitled to succeed in their suit. BHOOBUN MOHINI DEBIA *v.* HURRISH CHUNDER CHOWDHRY

[I. L. R., 4 Calc., 23: 3 C. L. R., 339
L. R., 5 I. A., 138

Reversing the decision of the High Court on the whole effect and construction of the sanad in HURISH CHUNDER CHOWDHRY *v.* CHUNDER MONEE DEBIA

[24 W. R., 268

9. ——————— *Grant of Oudh talook to Hindu widow and her heirs.—Oudh Estates Act (I of 1869), ss. 3, 4, 8, and s. 22, cl. 11.—Separate property of Hindu widow, Descent of.*—A sanad of a talook in Oudh which had been previously confiscated by Government was granted with full power of alienation to the widow of the last owner, a Hindu, and to her heirs for ever, her name being entered in the first and second lists under Act I of 1869, section 8, one condition of the grant being expressed to be that in the event of her dying intestate, or of any of her successors dying intestate, the estate should descend to the nearest male heir according to the rule of primogeniture. *Held*, in suits against the widow's daughter, that the sanad conferred upon the widow and her heirs male the full proprietary right and title to the estate, and not merely an estate for life with remainder to the male heirs of her husband in the event of her dying intestate without having alienated it in her lifetime. *Held*, also, as regards succession, that the limitation in the sanad was wholly superseded by Act I of 1869, and that the rights of the parties claiming by descent must be governed by section 22 of that Act, the provisions of which are not controlled in any way by sections 3 and 4 thereof. *Held*, further, that under clause 11 of section 22 the above talook, which was the separate property of the widow, descended, in the absence of a proved custom of her tribe to the contrary, to her daughter in preference to the son of the daughter of a rival widow and the remote male heirs of her husband. BEIJ INDAR BAHADUR SINGH *v.* JANKEE KOER. LAL SHUNKER BUX *v.* JANKEE KOER. LAL SEETLA BUX *v.* JANKEE KOER

[L. R., 5 I. A., 1: 1 C. L. R., 318

10. ——————— *Impartibility of zemindari.—Partition.—Succession by widow.*—The owner of an impartible zemindari, which, though forming part of the family property, had by ancient custom been held and enjoyed by the eldest male member in the direct line, died leaving four sons and an infant grandson, *A.*, by his eldest son, who had predeceased him. During the minority of that grandson, the four surviving sons executed a sanad which, after reciting certain arrangements made by their father, directed that "the zemindari should be held by *A.*, the son of the eldest son. *A.* and we four also shall take in equal shares the inam lands. Until *A.* attains his proper age, we all should jointly manage the affairs of the said zemindari. After *A.* attains his proper age the zemindari of the inam lands allotted to him should be delivered over to him, and each should confine himself to the share allotted to him." Certain jewellery was also divided in similar manner. *A.* died leaving a son, *C.*, who died in 1865 without issue

SANAD.—Construction of sanad—*continued.*

but leaving a widow. *Held* by the Privy Council (reversing the decision of the High Court of Madras) that the sanad amounted to an agreement by which the joint family was divided, and that on the death of *C.* his widow was entitled to the zemindari. *Periasami* v. *Periasami, L. R., 5 I. A., 61*, cited. VADREVU RANGANAYA KAMMA *v.* VADREVU BULLI RAMAIYA . . . . **5 C. L. R., 439**

11. ——————— *Impartibility.—"Heirs."*—In 1793 the ancient zemindari of Nuzvid, which descended to a single heir, having been before British rule a raj or principality held on the tenure of military service, was resumed by the Government for arrears of revenue. In 1802 the Government formed two zemindaris out of it, and granted one of them, since called Nuzvid, to the second son of the rajas, under a "sanad-i-milkiat istemrari," which described the zemindari lands comprised in it as "the six pergunnahs of Nuzvid in the Kondapalli Circar." The provisions of the sanad did not differ from those of an ordinary grant under the permanent settlement. On the question whether this zemindari was, or was not, subject to the same rule of impartibility as that to which the ancient and entire zemindari of Nuzvid had been subject before 1793,—*Held* that the six pergunnahs granted in 1802 were a new zemindari, subject only to the ordinary obligations imposed on zemindaris in general; and the word "heirs" used in the sanad construed to mean heirs of the grantee according to the ordinary rules of inheritance of the Hindu law. The Hansapur case, *Beer Pertab Sahee* v. *Rajender Pertab Sahee, 12 Moore's I. A., 1*, distinguished. VENKATA RAO *v.* COURT OF WARDS **[I. L. R., 2 Mad., 128**

S. C. VENKATA NARASIMHA APPA ROW *v.* NARAYYA APPA ROW . . **6 C. L. R., 153**

S. C. VENKATA NARASIMHA APPA ROW *v.* NARAYYA APPA ROW. VENKATA NARASIMHA APPA ROW *v.* COURT OF WARDS . **L. R., 7 I. A., 38**

12. ——————— *Impartibility.—Mad. Reg. XXV of 1802.*—A zemindari, originally impartible, having become the property of the Government, and having been granted by it to a zemindar, who, having been appointed by proclamation in 1801, and having been put into possession, received a sanad in 1803,—*Held* that the zemindari retained the quality of impartibility. Also that this quality had not been transmuted into partibility either by the passing of the Regulation XXV of 1802, or by that law coupled with the issue of the sanad containing certain of its terms. *Venkata Rao* v. *Court of Wards, I. L. R., 2 Mad., 128* (determining that the Nuzvid zemindari could not be identified with any estate existing before the sanad of 1802 put it on the same footing with ordinary zemindaris), distinguished. Reference made to *Beer Pertab Sahee* v. *Rajender Pertab Sahee, 12 Moore's I. A., 1*, as an authority for holding that a mode of acquisition which constitutes property as "self-acquired" in the hands of a member of an undivided family, and thereby subjects it to rules of devolution and of disposition different from those applicable to ancestral property, does not thereby destroy its character of impartibility. MUTTU VADUGANADHA TEVAR *v.* DORASINGHA TEVAR . . . . **I. L. R., 3 Mad., 290 [L. R., 8 I. A., 99**

13. ——————— *Impartibility.—Hindu law of succession.*—Where an ancient polliem was converted into a zemindari with a permanent assessment in 1803 by Government, and a "sanad-i-milkiat istemrari" (deed of permanent property) was granted to the zemindar with the usual stipulations, reservations, and directions, concluding with the words, "continuing to perform the above stipulations and to perform the duties of allegiance to the British Government, its laws and regulations, you are hereby authorised and empowered to hold in perpetuity to your heirs, successors, and assigns at the permanent assessment therein named, the zemindari of Sivagiri." *Held* that the Hindu law of succession was applicable, subject to such modifications as flowed from the impartible nature of the estate. MUTTYAN CHETTI *v.* SANGILI VIRA PANDIA CHINNA TAMBIAR **[I. L. R., 3 Mad., 370**

14. ——————— *Rent-free sanad.—Purchaser at Government-sale.—Confirmation issued by Government.*—In 1775 a rent-free sanad was granted to *M.* for having put down wild elephants, the consideration in future being to cultivate and keep up a body of men and take care of the ryots. *M.* died and a fresh sanad was, in 1786, granted to *K.* and *R.*, they being thought to be his heirs; but in 1807, *M.'s* true heirs having established their title, the Government gave them a fresh sanad in lieu of the one to *K.* and *R.*, reciting the circumstances. The zemindari in which these lands were situated was settled in 1802, and was in 1850 sold for arrears of Government revenue. The appellant claimed to set aside the sanad of 1807, on the ground that Government had no right to give such a sanad, but he contended that, if it had, it could be set aside by a purchaser at a Government sale. *Held* that the sanad was not a new grant, but a confirmation of the one made before the decennial settlement, and that Government was competent to give such confirmation. LOPEZ *v.* MADDAN THAKOOR . . . **5 B. L. R., 521**

S. C. LOPEZ *v.* MUDDUN MOHUN THAKOOR **[13 Moore's I. A., 467: 14 W. R., P. C., 11**

15. ——— **Proof of lost sanad.**—*Mirasidars.—Proof of title.—Evidence.—Long possession.*—Mirasidars who had sanads, but who have lost them, and those who never had them, may prove their title by other evidence, and long possession is a strong element in such proof. A sanad is not indispensable to the proof of mirasi tenure. A mirasi right or perpetuity of tenure, like other facts, may be proved by various means. BABAJI *v.* NARAYAN **[I. L. R., 3 Bom., 340**

16. ——————— *Evidence.—Beng. Reg. II of 1819, s. 28.—Beng. Reg. XIV of 1825, s. 3.—Title.*—Where an alleged original sanad was lost, the Judicial Committee, in view of the strict nature of the proof required in cases of claim under ancient sanads by Regulations II of 1819, section 28, and XIV of 1825, section 3, and taking all the circumstances

SANAD.—Proof of lost sanad—*continued.*

into consideration, refused to consider the title under it established. FORESTER *v.* SECRETARY OF STATE [12 B. L. R., 120 : 18 W. R., 349 L. R., I. A., Sup. Vol., 10

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See PARTITION—FORM OF PARTITION. [2 N. W., 26

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See COMPROMISE—CONSTRUCTION, ENFORCING, EFFECT OF, AND SETTING ASIDE DEEDS OF COMPROMISE. [I. L. R., 6 Calc., 687

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SANCTION TO PROSECUTION.

Col.

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See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, s. 622. [I. L. R., 3 All., 508

1. APPLICATION FOR, AND GRANT OF, SANCTION.

1. ——— **Court to which application should be made.**—*Criminal Procedure Code, 1869, s. 169.*—An application under section 169 of the Criminal Procedure Code, praying for sanction to institute a prosecution on a charge of perjury, should, as a general rule, be first made to the Court before which the perjury is alleged to have been committed. IN THE MATTER OF THE PETITION OF RAJAH OF VENKATAGERI . . . . . 6 Mad., 92

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2. ——— *Change of incumbents of office of Subordinate Magistrate.*—A Subordinate Magistrate refused to grant sanction for a prosecution under section 169 of the Criminal Procedure Code, 1861, on the sole ground that the perjury was alleged to have been committed before his predecessor in office. *Held* that the Subordinate Magistrate was wrong in his construction of the section. The Court before which the perjury is alleged to have been committed is to give the permission : the change of incumbent leaves it still the same Court. ANONYMOUS [7 Mad., Ap., 12

3. ——— **Initiation of case needing sanction.**—*Initiation by party and by Court.—Criminal Procedure Code, 1861, ss. 170, 171.*—In a case under section 170, Criminal Procedure Code, 1861, the initiative was taken by the party interested, and the Court took no part in the matter except in the way of giving or refusing its sanction. Section 170 contemplated cases in which the Court itself took the initiative, but it was not intended that the Court should proceed in the manner there described, except when the propriety or necessity of doing so is unmistakeable. IN THE MATTER OF KOONJ BEHAREE GHUR . . . . . 11 W. R., 171

4. ——— *Initiation by Court.—Criminal Procedure Code, 1872, s. 468.—False charge.—Penal Code, s. 211.*—There being nothing in the law requiring that sanction to prosecute under section 211 of the Penal Code should only be granted upon application by a private prosecutor, a District Magistrate was competent, under section 468 of the Code of Criminal Procedure, of his own motion to direct a prosecution where a complaint had been entertained and found to be false by a Magistrate subordinate to him. JUGUT MOHINI DASSEE *v.* MADHU SUDHAN DUTT . . 10 C. L. R., 4

5. ——— *Initiation by Court.—Criminal Procedure Code, 1872, ss. 470, 471.*—

SANCTION TO PROSECUTION—*continued.*

1. APPLICATION FOR, AND GRANT OF, SANCTION—*continued.*

Initiation of case needing sanction—*continued.*

There was a difference in the proceedings to be adopted when a sanction was given under section 470, and the institution by the Court of its own motion of proceedings under section 471. GYAN CHUNDER ROY *v.* PROTAP CHUNDER DOSS **[I. L. R., 7 Calc., 208 : 8 C. L. R., 267**

2. WHERE SANCTION IS NECESSARY.

6. ——— **Prosecution of Municipal Corporation.**—*Presidency Magistrates' Act (IV of 1877), s. 39.—Public servant.*—A Municipal Corporation was not a public servant within the meaning of section 39 of Act IV of 1877, and might, therefore, be prosecuted under the Penal Code without the preliminary sanction of the Government required by that section. EMPRESS *v.* MUNICIPAL CORPORATION OF THE TOWN OF CALCUTTA **[I. L. R., 3 Calc., 758 : 2 C. L. R., 520**

7. ——— **Prosecution of Judge.**—*Sanction of Government.—Criminal Procedure Code, 1861, s. 167.*—The sanction of Government is required for the prosecution of any Judge, if a complaint is made against him as Judge. Construction of section 167 of the Criminal Procedure Code, 1861. ANONYMOUS . . . **6 Mad., Ap., 22**

8. ——— *Criminal Procedure Code, 1882, s. 197.—Sanction to prosecute Judge for words uttered on the bench.*—Where a Judge was charged with using defamatory language to a witness during the trial of a suit,—*Held* that, under section 197 of the Code of Criminal Procedure, the complaint could not be entertained by a Magistrate without sanction. IN RE GULAM MUHAMMAD SHARIF-UD-DAULAH . . . **I. L. R., 9 Mad., 439**

9. ——— **Offence committed in judicial proceeding.**—*False evidence.*—No special sanction was needed for the prosecution of a person for giving false evidence in a judicial proceeding. QUEEN *v.* RAMAOTAR PANDE . . **25 W. R., Cr., 5**

10. ——— **Offence under s. 182, Penal Code.**—*Charge and conviction under different section of Penal Code than that for which sanction was given.*—In a case in which a false charge was brought, a Magistrate gave the accused (*A.*) permission under section 169, Code of Criminal Procedure, 1861, to prosecute the complainant (*B.*) of an offence under section 211, Penal Code. The Magistrate tried the complaint of *A.* as a complaint under section 211, but he subsequently framed a charge against *B.* under section 182, Penal Code, and punished him under that section. *Held*, with reference to section 168, Code of Criminal Procedure, that the offences under sections 182 and 211, Penal Code, being offences under Chapter XIV of the Code of Criminal Procedure, the Magistrate was wrong in framing the charge under section 182 without obtaining the previous sanction of the Criminal Court which heard the previous complaint of *B.* RAJ COOMAR *v.* KIRTHU OJHA . . . . . **13 W. R., Cr., 67**

SANCTION TO PROSECUTION—*continued.*

2. WHERE SANCTION IS NECESSARY—*continued.*

Offence under s. 182, Penal Code—*continued.*

11. ——— *Prosecution by private person.—Criminal Procedure Code, 1882, s. 195.*—A prosecution under section 182 of the Penal Code may be instituted by a private person, provided that he first obtains the sanction of the public officer to whom the false information was given, or of his official superior. *Queen-Empress* v. *Radha Kishan, I. L. R., 5 All., 36,* overruled. QUEEN-EMPRESS *v.* JUGAL KISHORE . . **I. L. R., 8 All., 382**

12. ——— **Charge under s. 82 of Registration Act (III of 1877).**—It is not necessary that sanction should be given before instituting a charge under section 82 of the Registration Act. GOPI NATH *v.* KULDIP SINGH **[I. L. R., 11 Calc., 566**

13. ——— **Prosecution for false charge in complaint made at police station.**—*Criminal Procedure Code, 1872, s. 468.*—A complaint made at a police station is not made before any Civil or Criminal Court, and, if it proved false, prosecution for it did not require the sanction of any Court under section 468, Code of Criminal Procedure. GOVERNMENT OF BENGAL *v.* GOKOOL CHUNDER CHOWDHRY . . . **24 W. R., Cr., 41**

RAM RUNJUN BHANDARI *v.* MADHUB GHOSE **[25 W. R., Cr., 33**

14. ——— **Giving false evidence before a police patel.**—*Criminal Procedure Code, 1872, ss. 467, 468.—Bom. Act VIII of 1867 (Village Police), s. 13.—Penal Code (XLV of 1860), ss. 181, 191, and 193.*—A person who makes a false statement upon oath before a police patel acting under section 13 of Bombay Act VIII of 1867, gives false evidence within the meaning of section 191 of the Penal Code and is punishable under section 193; but his trial for that offence required no sanction, a police patel not being a Criminal Court within the definition of section 4 of the Code of Criminal Procedure (see section 468), although offences under Chapter X of the Penal Code committed before the same officer cannot be tried without a sanction. (See section 467 of the Code of Criminal Procedure.) IMPERATRIX *v.* IRBASAPA . . . **I. L. R., 4 Bom., 479**

15. ——— **Prosecution of police patel.**—*Criminal Procedure Code, s. 466.—Bom. 1872, Village Police Act (VIII of 1867), s. 9.—Bom. Police Amendment Act (I of 1876).*—The prosecution of a police patel, for an offence committed by him in his official capacity as such, needs no previous sanction. The provisions of the Bombay Village Police Act (VIII of 1867), section 9, as amended by the Bombay Police Amendment Act (I of 1876), render a

SANCTION TO PROSECUTION—*continued.*

2. WHERE SANCTION IS NECESSARY—*continued.*

Prosecution of police patel—*continued.*

police patel removeable from his office without the previous sanction of Government, and therefore section 466 of the Criminal Procedure Code (Act X of 1872) did not apply. IMPERATRIX *v.* BHAGWAN DEVRAJ . . . I. L. R., 4 Bom., 357

16. ——— **Prosecution on alternative charge.**—*Giving false evidence in one Court or in another.—Criminal Procedure Code, 1872, s. 470.*—When it is intended to charge a person with having made a false statement in the Court of a Magistrate, or, alternatively, a false statement in the Court of a Subordinate Judge, there must be a proper sanction for a prosecution on each branch of the alternative. IN RE BALAJI SITARAM . . 11 Bom., 34

17. ——— *Accused to whom pardon has been tendered, Contradictory statements of.—False evidence.*—When a pardon is legally tendered to the accused under section 337 of the Criminal Procedure Code (X of 1882), and the accused makes a statement on oath which he retracts in a subsequent judicial proceeding, a proper sanction is necessary for a prosecution for giving false evidence on each branch of the alternative charges. *In re Balaji Sitaram, 11 Bom., 34,* followed. QUEEN-EMPRESS *v.* DALA JIVA . . . . . I. L. R., 10 Bom., 190

18. ——— **Charge of forgery.**—*Forged document used in civil case.—Power of Deputy Magistrate.—Criminal Procedure Code, 1861, ss. 169, 170.*—A Deputy Magistrate could not commit a person for forgery under section 170 of the Code of Criminal Procedure, when the Civil Court had sanctioned the prisoner's committal under section 169, unless with the express sanction of that Court. QUEEN *v.* DWARKANATH BOSE . 2 W. R., Cr., 31

19. ——— *Forged document used in civil case.—Power of Magistrate.—Criminal Procedure Code, 1861, s 170.*—Section 170, Code of Criminal Procedure, referred only to cases where a forged document had been put in evidence in a Civil or Criminal Court; in other cases, a Magistrate was competent *proprio motu* to inquire into allegations of forgery, and no sanction under section 170, Code of Criminal Procedure, was necessary. QUEEN *v.* RAMDHARRY SINGH . . 10 W. R., Cr., 5

20. ——— *Criminal Procedure Code, 1872, s. 469.—Prosecution of witness for forgery.*—The sanction required by section 469 of the Criminal Procedure Code as a condition precedent to the prosecution of a party to a civil suit for forgery of a document given in evidence in such suit is unnecessary in the case of persons not parties to, but witnesses in, the suit, who are charged with the forgery of the document jointly with a party to the suit. EADARA VIRANA *v.* QUEEN [I. L. R., 3 Mad., 400

SANCTION TO PROSECUTION—*continued.*

2. WHERE SANCTION IS NECESSARY—*continued.*

21. ——— **Offence before or against Mamlatdar's Court.**—*Code of Criminal Procedure, Act X of 1872, s. 468.*—The Mamlatdar's Court, constituted by Bombay Act III of 1876, was a Civil Court within the meaning of section 468 of the Code of Criminal Procedure; therefore a complaint of an offence mentioned in that section, when such offence is committed before or against the Mamlatdar's Court, could not be entertained in the Criminal Courts except with the sanction of the Mamlatdar's Court or of the High Court to which it is subordinate. IN RE SAVANTA . . . I. L. R., 5 Bom., 137

3. WHEN SANCTION MAY BE GRANTED.

22. ——— **Sanction previous to prosecution.**—*Jurisdiction of tribunal without sanction.—Illegal conviction.—Criminal Procedure Code, 1861, s. 167.*—Section 167 of the Code of Criminal Procedure required that sanction to prosecutions therein mentioned should be given before any such prosecution was commenced, and, until the sanction was obtained, the tribunal by which the offence was triable had no jurisdiction, and a conviction founded on evidence taken without such sanction would be bad. REG. *v.* PARSHRAM KESHAV [7 Bom., Cr., 61

See QUEEN *v.* MOHIMA CHUNDER CHUCKERBUTTY [7 B. L. R., 26: 15 W. R., Cr., 45

23. ——— **Prosecution for perjury.**—*Sanction after order for committal to sessions.*—Sanction to a prosecution for perjury may be given by the Court before which the perjury was committed at any time, even after the order for commitment to the sessions has been made. QUEEN *v.* GOLAB SINGH [3 B. L. R., A. Cr., 10

QUEEN *v.* LEKHRAJ [2 N. W., 132: Agra, F. B., Ed. 1874, 206

24. ——— **Sanction "at any time."**—*Criminal Procedure Code, 1861, s. 169.—"At any time."*—The words "such sanction may be given at any time" in section 169, Code of Criminal Procedure, must be construed reasonably, and "any time" meant a time which did not unduly prejudice the party to be prosecuted, or put him in a worse position than he was before. SEETARAM SAHOO *v.* SHEWGOLAM SAHOO . . 18 W. R., Cr., 62

25. ——— *Sanction after trial and conviction.—Criminal Procedure Code, 1872, s. 470.*—Under the words "at any time" in section 470 of Act X of 1872, sanction to prosecute could not be given after the trial and conviction of the accused person. EMPRESS OF INDIA *v.* SABSUKH . . . . I. L. R., 2 All., 533

26. ——— *Charge of false evidence on alternative statements after tender of pardon.*—The sanction necessary for a charge of giving false evidence made by the accused in retracting,

SANCTION TO PROSECUTION—*continued.*

3. WHEN SANCTION MAY BE GRANTED —*continued.*

Sanction "at any time"—*continued.*

in a subsequent judicial proceeding, a statement made by him on oath after a tender of pardon, can only be granted before, and not after, the commencement of the prosecution. QUEEN-EMPRESS *v.* DALA JIVA [I. L. R., 10 Bom., 190

4. NOTICE OF SANCTION.

27. ——— Necessity of notice.—*Criminal Procedure Code (Act X of 1882), s. 195, cl. c, para. 2.*—A sanction to prosecute, when applied for subsequently to the termination of the proceedings in the course of which the offence is alleged to have been committed, ought not to be granted, unless the person against whom the sanction is applied for has had notice of the application and an opportunity of being heard. ABBILAKH SINGH *v.* KHUB LALL [I. L. R., 10 Calc., 1100

28. ——— *Criminal Procedure Code (Act X of 1882), s. 195.—Notice to accused.—Held* by the Full Bench that no notice is necessary to the person against whom it is intended to proceed, before the Court, before which the alleged offence has been committed, can, under section 195 of the Criminal Procedure Code, sanction a complaint being made to a Magistrate regarding one of the offences specified in that section. IN THE MATTER OF THE PETITION OF KRISHNANUND DAS. KRISHNANUND DAS *v.* HARI BERA [I. L. R., 12 Calc., 58

5. NATURE, FORM, AND SUFFICIENCY OF SANCTION.

29. ——— Nature of sanction.—*Permissive nature of sanction.—Discretion of party obtaining sanction.—Criminal Procedure Code, 1872, s. 468.*—The sanction to prosecute, contemplated in section 468 of the Criminal Procedure Code, was not a direction to prosecute, but was a permission granted to a private person to exercise his own unfettered discretion as to whether he would take proceedings or not. IN THE MATTER OF THE PETITION OF GRIDHARI MONDUL. GRIDHARI MONDUL *v.* UCHIT JHA . I. L. R., 8 Calc., 435: 10 C. L. R., 46

30. ——— *Sanction by High Court to prosecution for perjury.—Presumption that proper procedure will be adopted.*—Where the High Court sanctions a prosecution for perjury, it is implied that the proper legal procedure will be adopted, and the proceedings instituted in a Court having jurisdiction to entertain the charge. KEERUT SINGH *v.* NARAIN PASSEE . 25 W. R., Cr., 14

31. ——— Form of sanction.—*Sanction in writing and attached to record.*—It is very desirable that such sanction or direction should be in writing and attached to the record, but it is by no means legally imperative. QUEEN *v.* KRISTNA RAU [7 Mad., 58

SANCTION TO PROSECUTION—*continued.*

5. NATURE, FORM, AND SUFFICIENCY OF SANCTION—*continued.*

Form of sanction—*continued.*

32. ——— The law does not require the sanction to a prosecution to be given in any particular form of words. QUEEN *v.* LEKHRAJ [2 N. W., 132: Agra, F. B., Ed. 1874, 206

33. ——— *Criminal Procedure Code, 1861, ss. 169, 170.—Statement of particular offences.*—When a Civil Court gives sanction to a prosecution under sections 169 and 170, Code of Criminal Procedure, it should state with precision the particular offence or offences for the prosecution of which it gives sanction. QUEEN *v.* OOMA MOYEE DEBEA . . . . 13 W. R., Cr., 25

34. ——— *General sanction.—Prosecution for false evidence.—Penal Code, s. 193.*—A general sanction by a Judge to a prosecution for giving false evidence under section 193 of the Penal Code, and for false verification, is not sufficient. The exact words upon which the prosecution is based, and the exact offences which the Magistrate is to investigate, should be pointed out. QUEEN *v.* KARTICK CHUNDER HOLDAR [9 W. R., Cr., 58

Contra, QUEEN *v.* KADIR BUX *alias* KADIR MAHOMED . . . 11 W. R., Cr., 17

35. ——— *Prosecution under Criminal Procedure Code, 1872, s. 470.—Requisites of proper sanction.*—A sanction for a prosecution under section 470 of the Criminal Procedure Code must designate the Court where the false statement was alleged to have been made and the occasion on which it was committed. It is desirable, if not necessary, that in the sanction for prosecution the description of the offence intended to be prosecuted should be stated in general terms, although details may be omitted. IN RE BALAJI SITARAM [11 Bom., 34

36. ——— *Criminal Procedure Code, 1882, s. 195.—False evidence.—Specification of place and time of offence.*—A sanction to a prosecution for giving false evidence granted under section 195 of the Criminal Procedure Code should specify the place where, and the time when, the alleged false evidence was given, and in substance the assignments of perjury, as also the sections of the Penal Code under which proceedings are authorised. HAR DIAL *v.* DOORGA PRASAD . I. L. R., 6 All., 105

37. ——— *Specification of place and occasion of offence.—Criminal Procedure Code, 1882, s. 195.*—Sanction to a prosecution granted under section 195, Criminal Procedure Code, 1882, should specify the Court or other place in which, and the occasion on which, the offence was committed; and such sanction should not be granted without a preliminary inquiry, where such inquiry is "neces-

SANCTION TO PROSECUTION—*continued.*

5. NATURE, FORM, AND SUFFICIENCY OF SANCTION—*continued.*

Form of sanction—*continued.*

sary," within the meaning of section 476 of the Code. EMPRESS *v.* NAROTAM DAS [I. L. R., 6 All., 98

38. ——————— *Specification of particulars of offence.—Criminal Procedure Code, 1882, s. 195.—False evidence.—Preliminary inquiry.*—In a suit on a bond, instituted in the Court of a Munsif, the question whether the defendant had executed the bond or not was referred to arbitration. The arbitrator decided that the defendant had not executed the bond, and that it was a forgery. The Munsif dismissed the suit in accordance with the award. The defendant then applied to the Munsif for sanction to prosecute the plaintiff, without specifying in his application the offences in respect of which he desired to prosecute. The Munsif granted sanction, merely observing that there were sufficient grounds for sanctioning the prosecution, without giving any reasons or specifying the offence or offences in respect of which sanction was granted. *Held* that the terms in which the Munsif had given his sanction to a prosecution were not sufficiently explicit, and that he should have mentioned the section or sections of the Penal Code under which he authorised criminal proceedings to be taken, as also in a general way the offence or offences to be charged, the date of commission, and the place where committed. Further, that as the Munsif himself had not determined the question of forgery in the suit, he should have made some inquiry to satisfy himself that there were materials to justify a prosecution. PARSOTAM LAL *v.* BIJAI [I. L. R., 6 All., 101

39. ——————— *Omission to specify particulars of offence.—False evidence.—Criminal Procedure Code (Act XXV of 1861), ss. 169 and 170.*—Where persons were charged with offences under sections 471 and 193 of the Penal Code, committed in proceedings before the Civil Court, and for which therefore the sanction of the Civil Court was necessary under sections 169 and 170 of Act XXV of 1861,—*Held* that the sanction, which simply gave permission, and did not specify the particular act or acts and the particular words which constituted the offences, was insufficient. QUEEN *v.* GABIND CHANDRA GHOSE [7 B. L. R., 28, note: 10 W. R., Cr., 41

40. ——————— *Refusal of sanction under mistake or as being unnecessary.—Held,* that the declining by a Court of Revenue to sanction a prosecution under sections 468 and 469 of Act X of 1872, under a mistaken view of the law and under the impression that sanction was unnecessary, did not constitute sanction. EMPRESS OF INDIA *v.* SABSUKH . . I. L. R., 2 All., 533

41. ——————— *Statement by Collector that he has no objection to give sanction again after sanction by Deputy Collector.*—In a suit by *A.* for arrears of rent above R100, a decree was passed against *B.*, *C.*, and *D.*, wherein certain documents filed by them were held to be forgeries. *A.* applied for, and obtained, an order from the Deputy Collector who tried the suit, for leave to prosecute *B.* and *C.* in the Criminal Court. *A.* afterwards applied to the Collector for leave to prosecute *B.*, *C.*, and *D.*, whereupon the Collector passed the following order: "Sanction has already been given once by the Deputy Collector. I, however, have no objection to give it a second time, as the petitioner desires it." *D.* was convicted by the Sessions Judge on a charge under section 471 of the Penal Code. On appeal by *D.*,—*Held* that no proper leave had been obtained to prosecute *D.*, and this defect was not cured by the subsequent proceedings, and the conviction must be quashed. QUEEN *v.* MAHIMA CHANDRA CHUCKERBUTTY [7 B. L. R., 26: 15 W. R., Cr., 45

42. ——————— *Statement by Munsif that he has no objection to give sanction if evidence is thought sufficient.—Sufficiency of sanction.*—On an application to a Munsif for sanction to prosecute, the following order was made upon the petition: "If the petitioner thinks there is sufficient evidence against *A.*, I have no objection to give such sanction." *Held* that the order was not a sufficient sanction to support a prosecution. IN THE MATTER OF JADU NATH HAZRA *v.* ANNODA PROSAD SIRCAR [11 C. L. R., 53

43. ——————— *Penal Code, s. 193.—Sufficiency of sanction.*—Sanction for the prosecution of the accused was accorded by an Assistant Sessions Judge in the following terms: "There is no doubt whatever that Tai, Baji, and Bala, these three persons, made before me certain statements contradictory of the statements which they had made before the committing Magistrate. Therefore, if from such statements of theirs they may be liable to any charge, there is sanction from here" (*i.e.*, I give my sanction). "for their prosecution." *Held* that this gave sufficient sanction for the prosecution of the accused under section 193 of the Penal Code, and that it was not necessary that the authority giving the sanction should specify the particular section of the Penal Code under which the accused was permitted to be prosecuted. REG. *v.* TAI . . . . . 8 Bom., Cr., 24

44. ——————— *Issue of warrant.—Implied sanction.—Criminal Procedure Code, 1861, s. 169.*—The object of the sanction required by section 169, Code of Criminal Procedure, was to ensure that the prosecution should be instituted after due consideration on the part of the Court before whom the false evidence was given, or on the part of a Court to which such Court was subordinate. When a Magistrate perused the papers of a case which had

SANCTION TO PROSECUTION—*continued.*

5. NATURE, FORM, AND SUFFICIENCY OF SANCTION—*continued.*

Form of sanction—*continued.*

been forwarded to him by a Subordinate Magistrate for consideration, and then sent on the papers to the District Superintendent of Police with an opinion adverse to the prisoner, and the District Superintendent of Police requested the Magistrate to issue a warrant against the prisoner, charging him with giving false evidence, it was held that the issue of the warrant was a sufficient sanction, under section 169, on the part of the Magistrate. QUEEN *v.* MAHOMED HOSSAIN . . **16 W. R., Cr., 37**

45. ——————— *Instruction from Sessions Judge to Magistrate.—Criminal Procedure Code, 1872, s. 468.—Prosecution for giving false evidence.*—An instruction to the Magistrate of the district by the Court of Session, contained in the concluding sentence of its judgment in a case tried by it, to prosecute a person for giving false evidence before it in such case, was held not to amount to sanction to a prosecution of such person for such offence, within the meaning of section 468 of Act X of 1872, that section supposing a complaint, or at least an application for sanction for a complaint. EMPRESS *v.* GOBARDHAN DAS . . **I. L. R., 3 All., 62**

46. ——————— *Order of Munsif directing that Magistrate inquire into a case.—Criminal Procedure Code, 1882, ss. 195 and 476.—"Sanction."—"Complaint."—Civil Procedure Code, 1882, s. 643.*—On the 2nd August 1884 a Munsif, who was of opinion that in the course of a suit which had been tried before him certain persons had committed offences under sections 193, 463, and 471 of the Penal Code, and that the prosecution of these persons was desirable, made an order which he described as passed under section 643 of the Civil Procedure Code, and in which he directed that the accused should be sent to the Magistrate, and that the Magistrate should inquire into the matter. In May 1885, upon an application by one of the accused to the District Court to "revoke the sanction for prosecution granted by the Munsif," it was contended that the "sanction" had expired on the 2nd February 1885, and had ceased to have effect. *Held* by the Full Bench that the Munsif's order, whether it was or was not a sanction, was a sufficient "complaint" within the meaning of section 195 of the Criminal Procedure Code, and that the limitation period prescribed by that section was not applicable to the case. *Per* PETHERAM, *C. J.*, and STRAIGHT, *J.*—That, considering that section 643 of the Civil Procedure Code was closely similar to section 476 of the Criminal Procedure Code, the Munsif's order might be taken as having been passed under the latter section. Also *per* PETHERAM, *C. J.*, and STRAIGHT, *J.*—The words in section 195 of the Criminal Procedure Code, "except with the previous sanction or on the complaint of the public servant concerned," must be read in connection with section 476, which was enacted with the object of avoiding the inconvenience which might be caused if a Munsif, or a Subordinate Judge, or a Judge, were obliged to appear before a Magistrate and make a complaint on oath, like an ordinary complainant, in order to lay the foundation for a prosecution. The language of section 476 indicates that where a Court is acting under section 195, a complaint in the strict sense of the Code is not required, and that the procedure therein laid down constitutes the "complaint" mentioned in section 195. ISHRI PRASAD *v.* SHAM LAL **[I. L. R., 7 All., 871**

47. ——————— *Report of police or medical officers.—Prosecution under Bom. Military Cantonments Act, III of 1867.*—Reports of police or medical officers are not a sufficient sanction for prosecutions under this Act. A complaint on oath or solemn affirmation is necessary. REG. *v.* LADU **[7 Bom., Cr., 87**

48. ——————— *Implied sanction.—Criminal Procedure Code, 1869, s. 168.—Penal Code, ss. 177, 193.—Framing charge.*—The form of an accusation by a District Superintendent of Police, under section 193 of the Penal Code, does not preclude a Magistrate from framing the charge under section 177; the sanction of the District Superintendent required under section 168, Code of Criminal Procedure, to give the Magistrate jurisdiction, need not be express, but might be implied. IN THE MATTER OF ASHRUFF HOSSEIN **[16 W. R., Cr., 67**

49. ——————— *Implied sanction.—Criminal Procedure Code, 1861, s. 169.*—Where the Magistrate before whom a witness gave false evidence himself committed such a witness for trial, his sanction of the prosecution, under section 169 of the Criminal Procedure Code, was held to be implied. REG. *v.* MUHAMMAD KHAN VALAD IMAM KHAN **[6 Bom., Cr., 54**

50. ——————— *Implied sanction.—Prosecution for non-attendance in obedience to summons.—Criminal Procedure Code, 1861, s. 168.*—Prosecution for non-attendance in obedience to a summons was entertained without the sanction required by section 168 of the Criminal Procedure Code. *Held* that there was an implied sanction for the prosecution, as the conviction was by the same Magistrate whose summons was treated with contempt. REG. *v.* GANU BIN TATIA SELAR . . **5 Bom., Cr., 38**

51. ——————— *Implied sanction.—Direction to commit.*—When a Sessions Court directs a commitment, it must be taken to sanction the prosecution out of which the commitment arises. QUEEN *v.* LEKHRAJ **[2 N. W., 132: Agra, F. B., Ed. 1874, 206**

52. ——————— *Letter from Civil Court to Subordinate Magistrate.—Specification of sections of Penal Code for which sanction is*

SANCTION TO PROSECUTION—*continued.*

5. NATURE, FORM, AND SUFFICIENCY OF SANCTION—*continued.*

Form of sanction—*continued.*

given.—Jurisdiction of Magistrate to commit under other section.—Where a Civil Court, by letter to a Subordinate Magistrate with committing powers, gave sanction for the prosecution of the accused under sections 463 and 471 of the Penal Code (making and using a false document), and where the Magistrate, in committing the accused for trial, in addition to framing a charge under these sections, added a head of charge under section 193 (giving false evidence), it was held that the Magistrate had no jurisdiction to commit the accused for trial on the last-mentioned head of charge. REG. *v.* SUBI SANI [8 Bom., Cr., 28

53. ——— Sufficiency of sanction.—*Sanction of official superior.—Penal Code, s. 182.—Criminal Procedure Code, 1861, s. 168.*—Where a prosecution of an offence under Chapter X of the Penal Code was instituted by an inferior ministerial servant under sanction of the authority of his official superior, the provisions of section 168 of the Code of Criminal Procedure were held to have been complied with. QUEEN *v.* RAM GOLAM SINGH [11 W. R., Cr., 22

See IN THE MATTER OF THE PETITION OF ABDOOL LUTEEF . . . . 9 W. R., Cr., 31

54. ——— *Sanction of official superior.—Criminal Procedure Code, 1861, s. 169.—Judicial Commissioner sitting as Sessions Judge.*—Where the Judicial Commissioner of Assam, sitting as Sessions Judge, certified, in his capacity of Judge of the Chief Civil Court in Assam, that a charge of false evidence was entertained with the sanction of the District Court of Assam, to which the Court of the Munsif of Debrooghur, before or against which the offence was committed, was subordinate,—*Held* that the sanction required by section 169, Code of Criminal Procedure, had been given. BAPOORAM AHAM *v.* GUNGARAM KACHAREE [17 W. R., Cr., 54

55. ——— *Sanction mentioning wrong section of Code.—Criminal Procedure Code, 1861, ss. 169, 170.—Prosecution under different section than that for which sanction was obtained.*—The prosecutor applied to a Civil Court for leave to prosecute, under section 170 of the Criminal Procedure Code, a witness who had appeared before the Court. The Court granted the permission as applied for. The prisoner was tried for and convicted of an offence coming under the provisions of section 169 of the Criminal Procedure Code. *Held* that the mention of section 170 in the permission to prosecute granted by the Civil Court might be treated as surplusage, and that the prisoner was rightly convicted. REG. *v.* KHUSHAL HIRAMAN [4 Bom., Cr., 28

56. ——— *Sanction by official superior.—District Superintendent of Police.*

SANCTION TO PROSECUTION—*continued.*

5. NATURE, FORM, AND SUFFICIENCY OF SANCTION—*continued.*

Sufficiency of sanction—*continued.*

—*"Inferior ministerial officer."—Criminal Procedure Code, 1861, s. 168.*—The sanction of a District Superintendent of Police to the prosecution of a charge of giving false information, not to such District Superintendent himself, but to an Assistant District Superintendent, was held to be no sufficient sanction under section 168 of the Criminal Procedure Code, 1861. The words "inferior ministerial officer" referred to public servants of a lower grade than an Assistant Superintendent of Police. QUEEN *v.* OOTUM CHUND . . . . 2 N. W., 287

57. ——— *Criminal Procedure Code, 1861, s. 168.—Person charged with giving false information under Penal Code, s. 182.*—Where a person was accused under section 182 of the Penal Code with having given false information to a head constable, it was held that the provisions of section 168 of the Code of Criminal Procedure, 1861, had been sufficiently complied with, inasmuch as the lower Appellate Court stated in its judgment that "the case had been forwarded under section 182 by the officer in charge of the District Superintendent's office," the District Superintendent being the official superior of the head constable. QUEEN *v.* GRISH CHUNDER SIRKAR . 19 W. R., Cr., 33

58. ——— *Sanction given by Judge who afterwards tried the case.—Criminal Procedure Code, 1872, s. 469.*—The Court declined in this case to say under section 469 of the Code of Criminal Procedure, 1872, that a conviction was bad, because the Judge who tried the case and the Judge who sanctioned the criminal proceedings was the same person. QUEEN *v.* SUBAL CHUNDER GANGOOLY [22 W. R., Cr., 16

6. POWER TO GRANT SANCTION.

59. ——— Implied power.—*Criminal Procedure Code, 1869, s. 167.—Prosecution of public servant.*—Upon the construction of section 167 of the Criminal Procedure Code,—*Held* that the section by implication vested in the Court or authority to whom the Judge or other public servant not removeable, &c., was subordinate, the power of sanctioning or directing such prosecution. It did not say that the Government must give the power, but that it shall exist unless limited or reserved. Every Court or authority, therefore, has it unless there is a limitation. QUEEN *v.* KRISTNA RAU . 7 Mad., 58

60. ——— Power to sanction where no particular party is accused.—*Sending case for investigation.*—A Court had power to send a case for investigation to a Magistrate under section 171 of the Criminal Procedure Code, 1861, where no particular individual had been accused. ESSAN CHUNDER DUTT *v.* PRANNATH CHOWDHRY [W. R., F. B., 71

SANCTION TO PROSECUTION—*continued.*

6. POWER TO GRANT SANCTION—*continued.*

61. ——— **What Courts can give sanction.**—*Criminal Procedure Code, 1872, s. 468.—Case settled without evidence.*—The Courts that had jurisdiction to grant a sanction to proceedings under section 468 of Act X of 1872, were the Court before which the offence was alleged to have been committed, and the Courts to which such Court is subordinate. IN THE MATTER OF THE PETITION OF KASI CHUNDER MOZUMDAR. JUGGUT CHUNDER MOZUMDAR *v.* KASI CHUNDER MOZUMDAR **[I. L. R., 6 Calc., 440**

S. C. KAZI CHUNDRA MOZOOMDAR *v.* JUGGUT CHUNDRA MOZOOMDAR . **7 C. L. R., 330**

62. ——— **Power of appellate Court to sanction prosecution of abetment.**—*Offence committed before lower Court.*—Where an offence was committed against a Court of first instance, the Appellate Court to which it was subordinate was competent to sanction a prosecution under Chapter XI of the Criminal Procedure Code, 1861. Sanction to such a prosecution might be given even if the offence was abetment. IN THE MATTER OF ISHAN CHUNDER GHOSE . . **15 W. R., 352**

63. ——— **Power of Civil Court.**—*Criminal Procedure Code, 1861, s. 170.*—A Civil Court had no power to make an order, under section 170 of the Criminal Procedure Code, sanctioning a prosecution for an offence committed before the Court of the Principal Sudder Ameen on the Small Cause side, that Court not being subordinate to the Civil Court. EX PARTE MAHALINGAIYAN **[6 Mad., 191**

64. ——— **Power of mamlatdar.**—*Sanction of Collector.—Prosecution of kulkarni for false report.—Criminal Procedure Code, 1861, s. 167.*—The sanction for the prosecution of a kulkarni for making a false report as a public servant, required by section 167 of the Code of Criminal Procedure, might be given by the mamlatdar or by the patil to whom such kulkarni was subordinate. The sanction of the Collector was not necessary for that purpose. REG. *v.* MALHAR RAMCHANDRA **[7 Bom., Cr., 64**

65. ——— **Power of Revenue Court.**—*Criminal Procedure Code, 1872, ss. 468, 469, 470.—Prosecution for offence against public justice and offence relating to document given in evidence.—"Subordination" of Revenue Courts to High Court.*—*Held* (SPANKIE, *J.*, doubting), on a reference to the Full Bench, that a Court of Revenue was a Civil Court within the meaning of sections 468 and 469 of Act X of 1872. Observations by STUART, *C. J.*, on the "subordination" of Courts of Revenue to the High Court within the meaning of sections 468 and 469 of Act X of 1872. EMPRESS *v.* SABSUKH **[I. L. R., 2 All., 533**

66. ——— **Power of District Magistrate.**—*Court of Assistant Magistrate.—Preliminary inquiry.—Criminal Procedure Code, 1882, ss.*

SANCTION TO PROSECUTION—*continued.*

6. POWER TO GRANT SANCTION—*continued.*

Power of District Magistrate—*continued.*

195, 476.—The Court of an Assistant Collector is not subordinate to that of the Magistrate of the district within the meaning of section 195 of the Criminal Procedure Code. EMPRESS *v.* NAROTAM DAS **[I. L. R., 6 All., 98**

67. ——— *Criminal Procedure Code, 1872, s. 468.—Relative positions of a Magistrate of the first class, the Magistrate of the District and the Court of Session.*—*Held* (OLDFIELD, *J.*, dissenting) that for the purposes of section 468 of Act X of 1872, a Magistrate of the first class was subordinate to the Magistrate of the district, and consequently application for sanction to prosecute a person for intentionally giving false evidence before the former might, where such sanction was refused by the former, be made to the latter, and not to the Court of Session, which had not power to give such sanction. IN THE MATTER OF THE PETITION OF GUR DAYAL . . **I. L. R., 2 All., 205**

68. ——— *Criminal Procedure Code, 1872, s. 468.—Sessions Court.—Magistrate of first class.—Magistrate of district.*—For the purposes of section 468 of the Code of Criminal Procedure (Act X of 1872), a Magistrate of the first class was subordinate to the Magistrate of the district: a sanction given by the latter to prosecute a person for intentionally giving false evidence before the former was, therefore, legal and sufficient, notwithstanding the refusal by the former to give such sanction himself. *Semble,*—That the Sessions Court had not power to give such sanction. IMPERATRIX *v.* PADMANABH PAI . **I. L. R., 2 Bom., 384**

69. ——— *Criminal Procedure Code, 1872, s. 468.—Subordinate Judge.—District Judge.*—For the purpose of sanctioning a criminal prosecution under section 468 of the Code of Criminal Procedure, the Court of the Subordinate Judge was subordinate to that of the District Judge, notwithstanding that the subject-matter of the litigation in the former Court involved more than R5,000, and an appeal lay direct to the High Court from the decision of that Court in that matter. IMPERATRIX *v.* LAKSHMAN SAKHARAM **[I. L. R., 2 Bom., 481**

70. ——— **Power of second class Magistrate.**—*Criminal Procedure Code, 1872, s. 467.—Sanction for prosecution for giving false information to police officer, given by second class Magistrate of taluk.*—A second class Magistrate of a taluk, not being the official superior of a police station-house officer within the meaning of section 467 of the Code of Criminal Procedure, 1872, could not sanction a prosecution under section 182 of the Penal Code for giving false information to the station-house officer. QUEEN *v.* VELAYUDAM PILLAI **[I. L. R., 6 Mad., 146**

71. ——— **Power of Subdivisional Magistrate.**—*Criminal Procedure Code, 1882, s.*

SANCTION TO PROSECUTION—*continued.*

6. POWER TO GRANT SANCTION—*continued.*

Power of Subdivisional Magistrate—*continued.*

195.—Sanction to prosecute for false evidence granted by Magistrate on revising calendar.—A Subdivisional Magistrate, after perusing the calendar of a case tried by a Magistrate subordinate to him, sent for the record, and passed an order under section 195 of the Criminal Procedure Code, sanctioning the prosecution of a witness in the case for perjury. *Held* that the order was illegal. QUEEN-EMPRESS *v.* KUPPU . . . . **I. L. R., 7 Mad., 560**

72. ——— **Power of Small Cause Court Judge.**—*Proceeding before Registrar.—Forgery.—Criminal Procedure Code (Act XXV of 1861), s. 170.*—A specially registered bond was presented before the Small Cause Court Judge for execution, under section 53, Act XX of 1866, and a decree passed upon it in usual form. Subsequently the Registrar sanctioned the prosecution of the decree-holder, on the ground that the bond was a forgery. The Small Cause Court Judge thereupon, on application made, without taking any evidence, or making further inquiry, set aside the decree, and sanctioned the prosecution under section 170 of the Criminal Procedure Code. *Held* that he was justified in sanctioning the prosecution, but not in setting aside the decree. QUEEN *v.* NAWAB SINGH **[3 B. L. R., A. Cr., 9**

73. ——— **Power of Civil Judge.**—*Criminal Procedure Code, 1861, ss. 170, 171.—Power of Judge to make order where application had been made to Sudder Ameen in whose Court offence occurred, and refused.*—The Civil Judge made an order, under sections 170 and 171 of the Penal Code, directing the Magistrate to investigate whether certain documents used before the Sudder Ameen were forged, and if so, by whom. *Held* that he had jurisdiction to make the order, notwithstanding the Sudder Ameen had been applied to and had refused to make a similar order. RADHANAUTH BANERJEE *v.* KANGALEE MOLLAH . . . **Marsh., 407: 2 Hay, 538**

74. ——— **Power of Sessions Judge.**—*Sanction given on inquiry ordered during trial.*—Where, during an inquiry into allegations that a confession had been made under such circumstances as to render it inadmissible in evidence, the Sessions Judge accorded his sanction to the prosecution for perjury of some of the witnesses who deposed on behalf of the prisoners, the High Court considered such a proceeding improper, and eminently calculated to defeat the object of the inquiry. REG. *v.* KASHINATH DINKAR . . **8 Bom., Cr., 126**

7. DISCRETION IN GRANTING SANCTION.

75. ——— **Exercise of discretion.**—*Criminal Procedure Code, 1861, s. 169.*—The discretion vested in a Civil Court under section 169, Code of Criminal Procedure, of sanctioning a criminal

SANCTION TO PROSECUTION—*continued.*

7. DISCRETION IN GRANTING SANCTION—*continued.*

Exercise of discretion—*continued.*

charge of perjury, was one that should be most carefully exercised. QUEEN *v.* POOSA RAM **[6 W. R., Cr., 11**

76. ——— *Case settled without evidence being gone into.—Criminal Procedure Code, 1872, s. 468.—Per* GARTH, *C. J.*—Where a case was settled without evidence being gone into, the Court in which the suit was brought, even if it had power to sanction criminal proceedings against any of the parties to such suit under section 468 of Act X of 1872, was guilty of great impropriety and indiscretion in so doing, inasmuch as it could have had no opportunity of judging of the *bona fides* of the claim or defence. IN THE MATTER OF THE PETITION OF KASI CHUNDER MOZUMDAR. JUGGUT CHUNDER MOZUMDAR *v.* KASI CHUNDER MOZUMDAR **[I. L. R., 6 Calc., 440**

S. C. KAZI CHUNDRA MOZOOMDAR *v.* JUGGUT CHUNDRA MOZOOMDAR . **7 C. L. R., 330**

77. ——— *Proof before Court of commission of offence.—Criminal Procedure Code, 1882, s. 195.*—Before granting a sanction to prosecute under section 195 of the Code of Criminal Procedure, a Court is bound to satisfy itself that an offence has been committed; but it is not bound to hold any inquiry as to all the persons who may be implicated in such offence. IN THE MATTER OF THE PETITION OF GOVINDANNAYAR **[I. L. R., 7 Mad., 224**

78. ——— *Proof before Court of commission of offence.—Criminal Procedure Code, 1882, s. 195.—False charge.—Penal Code, s. 211.—Preliminary inquiry.*—A prosecution of a charge under section 211 of the Penal Code should not be granted under section 195 of the Criminal Procedure Code as a matter of course, but only when the complainant can satisfy the Court that the interests of justice require a prosecution, and there is a strong *primâ facie* case against the accused. *Held*, therefore, where *S.*, who had been tried before the Court of Session for an offence, and acquitted, applied to the Court, in respect of the criminal proceedings which had been instituted against him, for sanction to prosecute *G.* for abetment of an offence under section 211 of the Penal Code, and the Sessions Judge granted the sanction, and there was nothing on the record of the criminal case or of the Judge's proceedings to show on what grounds *G.* was accused of abetting a false charge, or on what grounds the Judge gave the sanction, that before the Judge gave the sanction he should have satisfied himself, by examination of *S.* or other inquiry, whether *S.* had sufficient grounds in fact for accusing *G.*, and whether there were good *primâ facie* grounds for suspecting *G.* of abetting a false charge, and permitting a prosecution. IN THE MATTER OF THE PETITION OF GAURI SAHAI **[I. L. R., 6 All., 114**

SANCTION TO PROSECUTION—*continued.*

7. DISCRETION IN GRANTING SANCTION —*continued.*

Exercise of discretion—*continued.*

79. ——————— *Criminal Procedure Code, 1872, s. 468.—Discretion of High Court to grant sanction after refusal by Small Cause Court.*—In a case in which the High Court was asked under section 468, Code of Criminal Procedure, to sanction a prosecution for giving false evidence of a plaintiff in a suit before a Small Cause Court, which Court had refused such leave to the defendant, it was held that the High Court would not be justified in exercising the discretion vested in them by section 468 unless it appeared very clearly that there were strong grounds for granting the sanction. MONEY MOHUN DEY *v.* DINONATH MULLICK . . . . . **22 W. R., Cr., 11**

80. ——————— *Criminal Procedure Code, 1872, s. 468.—Grounds for sanction.—Record.*—On an application for sanction to prosecute under section 468 of the Code of Criminal Procedure, 1872, it was not competent to the Court to go beyond the record in determining whether or not sanction should be granted when the record itself discloses no foundation for the charges. In re *Kasi Chunder Mozumdar, I. L. R., 6 Calc., 440,* approved. SANGILI VIRA PANDIA CHINNATAMBIAR *v.* QUEEN. ZAMINDAR OF SIVAGIRI *v.* QUEEN **[I. L. R., 6 Mad., 29**

81. ——————— *Criminal Procedure Code, 1882, ss. 202, 203, 476.—Penal Code, s. 211.—Complaint dismissed without preliminary inquiry into the truth of complaint.*—A Magistrate of the first class, after considering the result of an investigation by a police officer under section 202 of the Code of Criminal Procedure, dismissed a complaint as false, and passed an order sanctioning the prosecution of the complainant for an offence punishable under section 211 of the Penal Code, and directed a third class Magistrate to hold a preliminary inquiry, the offence being cognisable by the Court of Sessions only,—*Held* that, as there was no application before the first class Magistrate for sanction to prosecute, the order must be taken to be a complaint made by the said Magistrate, and therefore, under section 476 of the Code of Criminal Procedure, the third class Magistrate had no jurisdiction to hold an inquiry. *Held*, also, that the first class Magistrate ought to have held a preliminary inquiry under section 476, in order that the complainant might have an opportunity of showing the truth or *bona fides* of the complaint. QUEEN *v.* YENDAVA CHANDRAMMA **[I. L. R., 7 Mad., 189**

82. ——————— *Forgery.—Evidence of charge, Necessity for.*—Sanction to a prosecution of a witness or of a party to a suit, for the forgery of a document put forward in course of the trial of that suit, should not be given, without all the testimony available at the trial and bearing on the question of forgery having been first received, and it being satisfactorily proved that there is a *primâ facie* case made out for the charge *Quære,*—Where a document was not put in evidence or dealt with as evidence, but merely had a place on the Judge's file, sanction was necessary. SEETARAM SAHOO *v.* SHEO GOLAM SAHOO . . . . **19 W. R., 183**

SANCTION TO PROSECUTION—*continued*

7. DISCRETION IN GRANTING SANCTION —*continued.*

Exercise of discretion—*continued.*

8. FRESH SANCTION.

83. ——————— **Necessity for fresh sanction.** —*Postponement of case.—Expiration of limitation.—Criminal Procedure Code, 1882, s. 195.*—It is competent for a Court which has granted sanction to a prosecution under section 195 of the Criminal Procedure Code to give a fresh sanction, if the one previously granted has expired by efflux of time. The limitation of six months mentioned in section 195 means that a Magistrate shall not take cognisance of a case under a sanction which is more than six months old, not that the whole prosecution must be completed within that period. *Held*, therefore, where sanction to a prosecution had been granted under section 195, and the prosecution had been instituted, and the Magistrate, in consequence of the evidence of the complainant not being procurable, had ordered "the case to be shelved for the present," and the complainant, after the six months mentioned in section 195 had expired, applied to the Magistrate to reopen the proceedings, that it was competent for the Magistrate, having once taken cognisance of the case, and it still remaining on his file undetermined, to take it up again at any moment, and proceed with the prosecution, without fresh sanction. IN THE MATTER OF THE PETITION OF GULAB SINGH. GULAB SINGH *v.* DEBI PROSAD **[I. L. R., 6 All., 45**

84. ——————— **Power to grant fresh sanction.**—*Fresh sanction granted more than six months after expiry of prior sanction.—Grounds upon which such fresh sanction should not be granted.—Criminal Procedure Code, Act X of 1882, s. 195.*—Sanction was granted to prosecute a defendant for forgery and perjury alleged to have been committed by him in a civil suit which was decided against him on the 22nd August 1882. The defendant then preferred an appeal which was dismissed on the 9th August 1883. The plaintiff commenced criminal proceedings against the defendant, under the sanction, on the 23rd July 1884, but such proceedings having been commenced more than six months after the date of the sanction, the charge was dismissed. The plaintiff then, on the 20th August 1884, applied for a fresh sanction, which was granted on the 13th April 1885. *Held* that, assuming that the Munsif who granted the fresh sanction had power to do so, as to which the Court expressed no opinion, such fresh sanction should not have been granted unless some explanation was given for the omission to commence proceedings within six months; and as no such explanation was given, nor any special grounds

SANCTION TO PROSECUTION—*continued.*

8. FRESH SANCTION—*continued.*

Power to grant fresh sanction—*continued.*

shown why a fresh sanction should be given, the Munsif did not exercise a sound discretion in granting such fresh sanction, and consequently his order was set aside. JOYDEO SINGH *v.* HARIHAR PERSHAD SINGH . . **I. L. R., 11 Calc., 577**

85. ——— Power to re-try without fresh sanction.—*Conviction quashed for want of jurisdiction.*—Where sanction is given for a prosecution for perjury, and the case tried by an incompetent Court and the conviction quashed on appeal, a competent Court may re-try the prisoner upon the subsisting sanction without any order of the Appellate Court by whom the conviction is quashed. IN THE MATTER OF THE PETITION OF RAMI REDDI . . . . **I. L. R., 3 Mad., 48**

9. POWER TO QUESTION GRANT OF SANCTION.

86. ——— Power of Deputy Magistrate.—*Penal Code, ss. 182 and 211.—Sanction granted by superior Court.*—A Deputy Magistrate has no power to question an order made by his superior, sanctioning a prosecution under sections 182 and 211 of the Penal Code. Whether such sanction has been rightly or wrongly given is a question for the accused to raise before a competent Court. EMPRESS *v.* IRAD ALLY . . **I. L. R., 4 Calc., 869**

S. C. NUSIBUNNISSA BIBEE *v.* ERAD ALI **[4 C. L. R., 413**

87. ——— Power of superior Court.—*Criminal Procedure Code of 1872, ss. 468, 469.—Finality of order as to sanction.—Held* that the sanction referred to in sections 468 and 469 of Act X of 1872, when given by any of the Courts empowered under the Act, could not be disturbed by a superior Court. *Per* TURNER, *Offg. C. J.*, and PEARSON, OLDFIELD, and SPANKIE, *JJ.*—When sanction is refused by one of the Courts, the refusal does not deprive the other Courts of the discretion given to them. BARKAT-UL-LAH KHAN *v.* RENNIE **[I. L. R., 1 All., 17**

10. WANT OF SANCTION.

88. ——— Objection to want of sanction.—*Semble,*—The objection to the want of sanction should be taken at the trial. QUEEN *v.* KRISTNA RAU . . . . . **7 Mad., 58**

89. ——— Jurisdiction of Court without sanction.—*Trial of offence under Criminal Procedure Code, 1872, s. 468.*—A complaint of an offence under section 468 of the Criminal Procedure Code, 1872, unaccompanied by the requisite sanction, could not be entertained at all by the Magistrate even for the examination of the complainant. ANONYMOUS . . . . . **8 Mad., Ap., 2**

SANCTION TO PROSECUTION—*continued.*

10. WANT OF SANCTION—*continued.*

90. ——— Institution of case without sanction.—*Discretion of High Court to interfere.—Trial finished without sanction.*—Where a charge was instituted without the necessary sanction, and the accused was tried and committed, the High Court refused to interfere, being of opinion that there was nothing to entitle the accused to the benefit of the exceptions in section 426 of the Criminal Procedure Code, 1861. KIRTI OJHA *v.* RAJKUMAR **[7 B. L. R., 29, note**

91. ——— Trial without sanction.—*Criminal Procedure Code, 1882, s. 197.—Effect of subsequent sanction.*—Where, after a magisterial inquiry, a European British subject, being a public servant within the meaning of section 197 of the Criminal Procedure Code (X of 1882), was committed for trial to the High Court of Bombay by the Judicial Superintendent of Railways in His Highness the Nizam's Dominions, without any previous sanction having been obtained as required by that section,—*Held* that the proceedings were illegal and without jurisdiction, and that a sanction subsequently obtained was of no effect. QUEEN-EMPRESS *v.* MORTON **[I. L. R., 9 Bom., 288**

92. ——— *Criminal Procedure Code, 1882, s. 195.*—Where a witness was prosecuted for disobedience to a summons without sanction previously obtained under section 195 of the Criminal Procedure Code, the High Court refused to interfere, there being no evidence that the want of sanction had occasioned a failure of justice. KALLY MOHUN MOOKERJEE *v.* EMPRESS . **13 C. L. R., 117**

93. ——— *Ground for quashing proceedings.—Criminal Procedure Code, 1872, ss. 468, 469.—Held* by the Judge making the reference (STRAIGHT, *J.*), on the case being returned to him, that the accused persons having been prosecuted without the sanction required by sections 468 and 469 of Act X of 1872, all the proceedings were invalid, and must be quashed, and the accused must be re-tried, sanction to their prosecution having been obtained. EMPRESS *v.* SABSUKH **[I. L. R., 2 All., 533**

94. ——— Inquiry and commitment without sanction.—*Insufficient sanction.—Criminal Procedure Code, 1882, ss. 195, 476.*—Where sanction to the prosecution of a person for the offence of using certain evidence known to be false was granted by a Court to which the Court in which such evidence was used was not subordinate, and such sanction did not specify the place in which, and the occasion on which, such offence was committed, and the Court granting the sanction did not make any preliminary inquiry, although such an inquiry was "necessary," in the sense of section 476 of the Criminal Procedure Code,—*Held* that the indispensable preliminary conditions of section 195 of the Code being wanting to the prosecution, the committing Magistrate was incompetent to entertain the

SANCTION TO PROSECUTION—*continued.*

10. WANT OF SANCTION—*continued.*

Inquiry and commitment without sanction—*continued.*

case, and the commitment was illegal and should be quashed. EMPRESS *v.* NAROTAM DAS

[I. L. R., 6 All., 98

95. ——— Commitment without sanction as to one prisoner.—*Ground for quashing commitment.*—Where the sanction to the prosecution accorded under section 169, Code of Criminal Procedure, 1861, extended only to one of the persons charged, the High Court quashed the commitment, and directed the discharge of the persons to whom the sanction did not apply. QUEEN *v.* WOODURNUL SINGH . . . . 10 W. R., Cr., 24

QUEEN *v.* RAJKISHORE ROY . 15 W. R., Cr., 55

96. ——— Proceedings without sanction.—*Extortion.—Public servant.—Criminal Procedure Code, 1861, s. 167.*—Where a complaint charged a person, who was one of the public servants mentioned in section 167 of the Criminal Procedure Code, with committing acts which, if committed by a private individual, would have constituted the offence of extortion, it was held that it was not illegal to treat the charge as a charge of extortion, and to proceed with the trial without sanction for the prosecution. REG. *v.* PARSHRAM KESHAV

[7 Bom., Cr., 61

11. NON-COMPLIANCE WITH SANCTION.

97. ——— Departure from terms of sanction.—*Power of Local Government. — Prosecution of Judge or public servant.—Criminal Procedure Code, 1861, s. 167.*—The Local Government, in sanctioning or directing (under section 167 of the Criminal Procedure Code) a charge against a public servant of an offence as such public servant, had power to limit its sanction, by giving directions as to the person by whom, and the manner in which, the prosecution was to be preferred and conducted, and a Court had no jurisdiction to entertain a charge against such public servant if preferred otherwise than in accordance with such directions. *Semble,*—The Local Government had power in the like case to direct that the accused public servant should be tried before a specified tribunal, being one having jurisdiction in that behalf. Therefore, where the sanction directed that the accused public servant should be prosecuted upon such charges as *Mr. C.* might be prepared to prefer against him, and there was nothing on the record to show, nor did it otherwise appear, that *Mr. C.* had preferred any charge against, or taken any part in the prosecution of, the accused public servant, the High Court quashed the conviction of the accused, as having been without jurisdiction. REG. *v.* VINAYAK DIVAKAR

[8 Bom., Cr., 32

98. ——— Non-prosecution under sanction.—*Criminal Procedure Code, 1872, s. 468 and s. 142.—Power of District Magistrate to proceed without complaint.*—Where sanction had been given under section 468 of Act X of 1872 by a

SANCTION TO PROSECUTION—*continued.*

11. NON-COMPLIANCE WITH SANCTION —*continued.*

Non-prosecution under sanction—*continued.*

Deputy Magistrate to a person to prosecute another for bringing a false charge, and such sanction was not proceeded under, it was open to the District Magistrate to take up the case under section 142 without complaint. EMPRESS *v.* NIPCHA

[I. L. R., 4 Calc., 712

SCHEDULE, VERIFICATION OF, BY AFFIDAVIT.

See INSOLVENT ACT, S. 6.

[11 B. L. R., Ap., 34

SCHEDULED DISTRICTS ACT, 1874.

See APPEAL IN CRIMINAL CASES—ACTS—ACT XXXVII OF 1855.

[I. L. R., 12 Calc., 536

See LOCAL GOVERNMENT.

[I. L. R., 10 Bom., 274

SCIRE FACIAS, WRIT OF—

——— *Suit upon writ.—Non-joinder of plaintiff.—Parties.*—Where a *scire facias* was issued under the old Supreme Court procedure at the suit of two, and one of them only sued upon it,—*Held* that the non-joinder of the other was a ground of non-suit, and that the objection might be taken at any stage. ISSUR CHUNDER MUNDUL *v.* HEIRS OF GOLAM ALI . . . . 1 Ind. Jur., N. S., 249

SEA CUSTOMS ACT (VIII OF 1878).

——— **s. 128.**—*Trans-shipment.—Permit.—Lien on goods mentioned in permit.*—A trans-shipment permit issued under section 128 of the Sea Customs Act (VIII of 1878) does not, like a bill of lading, represent the goods mentioned in it, or give any lien upon or control over them. PREMJI TRIKAMDAS *v.* MADHOWJI MUNJI

[I. L. R., 4 Bom., 447

——— **s. 197 and s. 8.**—*Duty and liability of Customs Collector.—Negligence of Superintendent of Customs.*—By the negligence of the Superintendent of Sea Customs at the port of C. in removing goods to a sea customs warehouse and in keeping them in the warehouse, which, owing to its leaky roof, was utterly unfit for such purpose, the goods were damaged. The owner of the goods sued the Collector of the district, who, under section 8 of the Sea Custom Act, 1878, has to perform all duties imposed by the Act on a Customs Collector, for damages. It was not proved that the Collector was aware of the condition of the warehouse, which had been repaired by the Public Works Department less than a year before. *Held* that the loss was not caused by the neglect or wilful act of the Collector within the meaning of section 197 of the Sea Customs Act, 1878, and that the Collector was not responsible for the acts of the Superintendent of Sea Customs. COLLECTOR OF GODAVARI *v.* ISUF KASIM NANA . . . . I. L. R., 7 Mad., 42

SEAMAN, DISCHARGE OF—

See MERCHANT SHIPPING ACT, 1854, s. 207. [6 Bom., O. C., 42

SEARCH-WARRANT.

See WARRANT . . 8 W. R., Cr., 74

SEAWORTHINESS.

See CONTRACT—CONDITIONS PRECEDENT. [2 B. L. R., O. C., 127

See INSURANCE—MARINE INSURANCE. [5 Moore's I. A., 361
Cor., 5: 2 Hyde, 107

SECOND APPEAL.

See CASES UNDER APPEAL.

See BURMA COURTS ACT, 1875, s. 27. [I. L. R., 10 Calc., 946

See CASES UNDER SMALL CAUSE COURT, MOFUSSIL.

See CASES UNDER SPECIAL APPEAL.

SECRETARY OF CHARITABLE INSITTUTION, SUIT BY, AGAINST SUBSCRIBER.

See RIGHT OF SUIT—SUBSCRIPTION TO CHARITABLE INSTITUTION. [10 C. L. R., 197

SECURITY FOR COSTS.

Col.
1. SUITS 5531
2. APPEALS 5533

See INSOLVENT ACT, s. 73. [5 B. L. R., 179
15 B. L. R., Ap., 10

See PAUPER SUIT—APPEALS. [17 W. R., 68
I. L. R., 3 Mad., 66

See PRACTICE—CIVIL CASES — SECURITY FOR COSTS . 3 Bom., O. C., 63, 64
[I. L. R., 3 Bom., 241
I. L. R., 5 Calc., 437

See SMALL CAUSE COURT, PRESIDENCY TOWNS—PRACTICE AND PROCEDURE—REFERENCE TO HIGH COURT. [5 B. L. R., Ap., 23, 24
11 B. L. R., 415
14 B. L. R., 180

See TRUST . I. L. R., 5 Calc., 700

1. SUITS.

1. ——— Security by plaintiff.—*"Immoveable property."—Leasehold.*—Leasehold property is "immoveable property" within the meaning of section 34, Act VIII of 1859. ULLMAN *v.* JUSTICES OF THE PEACE FOR CALCUTTA [7 B. L. R., Ap., 60

SECURITY FOR COSTS—*continued.*

1. SUITS—*continued.*

Security by plaintiff—*continued.*

2. ——— *Plaintiff in another presidency.*—The Court was held to have no power to order a plaintiff resident in another presidency to give security for costs. GAHAN *v.* OWEN . Cor., 11

3. ——— *Inhabitant of foreign territory.*—When an inhabitant of foreign territory sues within British territory, it is imperative on the Court to demand security from him for the payment of all costs that may be incurred by the defendant in the suit, even though the defendant also is a resident of foreign territory. KOROONAMOYEE DEBIA *v.* OOMA CHURN DEB . 12 W. R., 465

4. ——— *Plaintiff residing out of jurisdiction.—Suit for administration.*—The provisions of section 34, Act VIII of 1859, were not intended to apply to a case where the plaintiffs brought a suit for administration and partition of property in which they were entitled to a share, the extent of the share being in dispute. RUSSICK LALL DAY *v.* JADUBRAM DAY . 10 B. L. R., Ap., 25

5. ——— *Civil Procedure Code, 1877, s. 380.—"Residence."*—The meaning to be given to the word "residence" in legislative enactments depends upon the intention of the Legislature in framing the particular provision in which the word is used. The "residence" intended in section 380 of the Civil Procedure Code (Act X) of 1877 is residence under such circumstance as will afford a reasonable probability that the plaintiff will be forthcoming when the suit is decided. MAHOMED SHUFFLI *v.* LALDIN ABDULA . . I. L. R., 3 Bom., 227

6. ——— *Civil Procedure Code (XIV of 1882), s. 380.—Wadhwan.—British India.—Residence.—Held* that a plaintiff, being a resident in Wadhwan in Kathiawar, and possessed of immoveable property there, could not be required to give security for costs under section 380 of the Civil Procedure Code (XIV of 1880), Wadhwan being within the limits of British India. TRICCAM PANACHAND *v.* BOMBAY, BARODA, AND CENTRAL INDIA RAILWAY COMPANY . I. L. R., 9 Bom., 244

7. ——— *Security where plaintiff has left the country.*—Where a plaintiff leaves the country before the case is decided, the proper course for the defendant is to apply to the Court to take security for costs before the case is decided, and if no security be furnished, the Court will pass judgment against the plaintiff by default. But if the defendant allows the case to go to judgment, the Court on appeal cannot pass any order calling for security for the costs of the lower Court, which must be left to be realised in execution. IN THE MATTER OF THE PETITION OF CALCUTTA AND SOUTH-EASTERN RAILWAY COMPANY . . . 8 W. R., 217

8. ——— *Suit to enforce trust under a will.—Want of personal interest.*—In a suit by the representatives of a testator to enforce the due performance of charitable and religi-

SECURITY FOR COSTS—*continued.*

1. SUITS—*continued.*

Security by plaintiff—*continued.*

ous trusts in which they are not personally interested, the plaintiffs ought to be required to give security for costs. BROJOMOHUN DOSS *v.* HURROLOLL DOSS [6 C. L. R., 58

2. APPEALS.

9. ——— Security by appellant.—*Power of single Judge of High Court to make order for security.*—A single Judge has full power to make an order for security for the costs of an appeal. MUZHUR HOSSAIN *v.* DENOBUNDOO SEN. Bourke, O. C., 119

Affirmed on appeal . Bourke, A. O. C., 40

10. ——— *Power of single Judge of High Court to make order for security.*—On a rule *nisi* for security for the costs of an appeal to be given by a defendant, five twenty-fourths of the property in dispute having been decreed to him, but subsequently attached under a prohibitory order, cause was shown that the Court had not jurisdiction, and that no reason for the application had been given. *Held* that a single Judge is vested with all the powers of an Appellate Court with reference to the costs of an appeal; that, when an appellant resides within the jurisdiction of the Court he is amenable to its orders as to the costs of an appeal; and that an appellant who has no available property must, if required, give security for the costs of an appeal before proceeding with it. MONOHUR DOSS *v.* KHODEUM BEGUM . . . . . Bourke, O. C., 110

11. ——— *Appeal from order of Commissioner of Insolvent Court.—Civil Procedure Code, 1859, s. 342.*—Section 342 of Act VIII of 1859 did not apply to appeals from the orders of a Judge sitting as a Commissioner of the Insolvent Court. IN THE MATTER OF RAMSEBAK MISSER . . . . . 5 B. L. R., 179

12. ——— *Discretion of Judge.—Notice to party affected.—Civil Procedure Code, 1882, s. 549.*—The discretion conferred on an Appellate Court by section 549, Civil Procedure Code, 1882, to demand security for costs, must be properly exercised; and such discretion is not so exercised when the order requiring such security is made without notice to the appellant to show cause why the order should not be made. No order affecting a party should be made without notice to him calling upon him to show cause why the order should not be made. SIRAJ-UL-HAQ *v.* KHADIM HUSAIN [I. L. R., 5 All., 380

13. ——— *Notice of order for security.*—The issue of a preliminary notice to show cause why an appellant should not furnish security for the costs of appeal is not equivalent to a demand, and, if the order to furnish security is made in the absence of the appellant, the order must be communicated to him before he can be held to have disobeyed it. TIMMU *v.* DEVA RAI [I. L. R., 5 Mad., 265

SECURITY FOR COSTS—*continued.*

2 APPEALS—*continued.*

Security by appellant—*continued.*

14. ——— *Civil Procedure Code, 1859, s. 342.*—Circumstances under which an order may be made requiring security for costs of appeal to be deposited under section 342 of Act VIII of 1859. BAMASUNDARI DASI *v.* RAMNARAYAN MITTER . . . . . 7 B. L. R., Ap., 59

15. ——— *Civil Procedure Code, 1859, ss. 342, 345, 346.—Pauper appellant.*—By the words "before the appellant is called upon to appear and answer" in section 342, as compared with similar words used in subsequent sections, especially sections 345 and 346, is meant, not the date mentioned in the notice, but the date on which the appeal is called on to be heard; and the Court has a discretion at any time before the hearing of the appeal to make an order demanding security for costs from the appellant. Where the appellant was, according to his own statement, a pauper, and it appeared that others presumably able to furnish the necessary security were interested in the matter, the case was considered a proper one in which security should be given. IN THE MATTER OF JOGENDRO DEB ROYKUT *v.* FUNINDRO DEB ROYKUT . . . 18 W. R., 102

16. ——— *Grounds for order for security.—Poverty of appellant.—Civil Procedure Code, 1882, s. 549.*—Section 549 of the Civil Procedure Code was never intended by the Legislature to derogate from the right of appeal given by the law to every person who is defeated in a suit in the Court of first instance, and an application should not be granted under that section of which the only ground is a statement that the appellant is not pecuniarily in a position to pay the costs of the appeal if it should be dismissed. *Maneckji Limji Mancherji* v. *Goolbai, I. L. R., 3 Bom., 241,* followed. *Ross* v. *Jaques, 8 M. & W., 13; Seshayyangar* v. *Jainulavadin, I. L. R., 3 Mad., 66;* and *Jogendro Deb Roykut* v. *Funindro Deb Roykut, 18 W. R., 102,* referred to. LAKHMI CHAND *v.* GATTO BAI . . . I. L. R., 7 All., 542

17. ——— *Grounds for order for security.—Civil Procedure Code, 1882, s. 549.—Poverty of appellant.—Held* by the Full Bench (TYRRELL, *J., dubitante*), without laying down any general rule by which the exercise of the discretion conferred by section 549 of the Civil Procedure Code should be governed, that the mere fact of the poverty of an appellant, standing by itself, and without reference to any general facts of the case under appeal, ought not to be considered sufficient alone to warrant his being required to furnish security for costs. JIWAN ALI BEG *v.* BASA MAL [I. L. R., 8 All., 203

18. ——— *Civil Procedure Code, 1859, ss. 106, 342.—Assignee substituted for plaintiff.*—Under section 342, Act VIII of 1859, the High Court had discretion to demand security for costs from an appellant, if it saw fit to do so, at any time before the hearing of the appeal. Where an

SECURITY FOR COSTS—*continued.*

2. APPEALS—*continued.*

Security by appellant—*continued.*

assignee who had been substituted for the plaintiff under section 106 declined to furnish security for the costs within such reasonable time as the Court ordered, it was held that the defendant might within eight days after such neglect or refusal plead the bankruptcy or insolvency of the plaintiff as a reason for abating the suit. HEERALALL SEAL *v.* CARAPIET **[13 W. R., 431**

19. ——————— *Appellant out of jurisdiction.*—*Quære,*—Whether, in a case in which the appellant is not residing out of the British territories in India, the High Court has authority to demand security for costs from the appellant after the issue of summons,—*i.e.,* notice of the appeal. HUFAZUTTOOLAH CHOWDRY *v.* HUMREDHUR ROHMAN . . . . . **6 W. R., Mis., 123**

20. ——————— *Beng. Reg. XIV of 1829, s. 2, cl. 1.—Inhabitant of foreign territory.*—Bengal Regulation XIV of 1829, section 2, clause 1, enacted that every person being an inhabitant of a foreign territory should be required to furnish security for costs; such security to be furnished by a plaintiff or appellant within six weeks of the date on which his plaint or appeal was filed; and that unless such security be so furnished, the suit of such person, if plaintiff, should not be proceeded with, or appeal admitted unless he had furnished the necessary security to cover costs in the appeal. In an appeal to the Sudder Court from a decree of the Zillah Court by a party then temporarily absent in England, but having real estates and factories within the jurisdiction of the Court, no security was furnished by the appellant's vakil within six weeks after lodging the appeal. The respondent in the first instance put in an answer to the grounds of appeal filed by the appellant, but afterwards filed a petition for dismissal for non-compliance with the requirements of Bengal Regulation XIV of 1829, section 2, clause 1, contending that the appellant was a resident of a foreign territory, and had not furnished security within six weeks as required by that Regulation. The Sudder Court held that such security ought to have been furnished by the appellant, who, residing in England *pendente lite,* was to be considered as resident in a foreign territory within the meaning of the Regulation, and dismissed the appeal. *Held* by the Judicial Committee (remitting the suit to India for trial) that the Sudder Court had not, by Regulation XIV of 1829, any power *ex mero motu* to dismiss the appeal, (1) as the appellant was guilty of no default under that Regulation, not having been called upon by the respondent or the Court to furnish security for costs; (2) as the appellant was not guilty of laches in not voluntarily offering security; the Regulation providing only that a suit or appeal should not be proceeded with until security was furnished. *Semble,*—The putting in an answer to the appeal before objecting to the want of security for costs operated as a waiver by the respondent of the want of security for costs required by Bengal Regulation XIV of 1829, section 2, clause 1. *Quære,*—Whether Act III of 1845, repealed Bengal Regulation XIV of 1829, section 2, clause 1. WISE *v.* JUGBUNDOO BOSE **[7 Moore's I. A., 431**

21. ——————— *Grounds for ordering security.*—Cause being shown on a rule *nisi* for an order for security to be given by an appellant for the costs of an appeal (similar orders having been previously made on the application of other defendants), it appeared that an unusual number of defendants had been joined in the suit, which had been withdrawn on a previous occasion when nearly tried out; and that the plaintiff, who sued as a relator, was poor and resided out of the jurisdiction, and had not paid interlocutory costs, for which an attachment had issued. *Held* that an appellant will not be ordered to give security for costs previously incurred: that the fact of similar applications having been granted in the suit, the poverty of the appellant, and the fact of his dwelling out of the jurisdiction, as well as the peculiar circumstances of the case, non-payment of interlocutory costs, a former withdrawal of the suit, and the joining of an unusual number of defendants, are grounds for granting an order for security to be given by an appellant for the costs of an appeal: that a relator suing to enforce a public right must give security for the costs of those against whom he proceeds. MUZHUR HOSSEIN *v.* DINOBUNDOO SKIN **[Bourke, A. O. C., 40**

Confirming the judgment in the same case in **[Bourke, O. C., 119**

22. ——————— *Continuation of order made against plaintiff for security.*—*Civil Procedure Code, 1859, s. 34.*—A plaintiff who resided out of India paid a sum of money into Court as security for costs under section 34 of Act VIII of 1859. He subsequently obtained a decree against the defendant, and the defendant appealed against that decree. *Held* that the defendant was not entitled to an order detaining in Court, pending the appeal, the money which had been paid in under section 34. FLEMING *v.* SHEARMAN **[4 B. L. R., O. C., 92**

See IN RE DITTA HARAKMAN SINGH **[3 B. L. R., F. B., 45**

S. C. IN THE MATTER OF DITTIA HURRUCKMAN SINGH *v.* MODHOOSOODUN PYNE **[12 W. R., F. B., 16**

23. ——————— *Civil Procedure Code (Act XIV of 1882), s. 549.—Appeal rejected for want of security.—Extension of time for giving security.*—The proper construction of section 549 of the Civil Procedure Code is that, where an appellant has been ordered to furnish security within a certain time, and that order has not been complied with, and no application has been made to extend the time within the period allowed, the Court is bound to reject the appeal. BUDRI NARAIN *v.* SHEO KOER **[I. L. R., 11 Calc., 716**

SECURITY FOR COSTS—*continued.*

2. APPEALS—*continued.*

Security by appellant—*continued.*

24. ——————— *Civil Procedure Code, 1877, s. 549.—Extension of time for giving security.—Procedure.*—Where the Appellate Court demands from an appellant security for costs, the Court may extend the time within which it orders such security to be furnished; but if no application is made for such extension of time, and such security is not furnished within the time ordered, it is imperative on the Court to reject the appeal. HAIDRI BAI *v.* EAST INDIAN RAILWAY COMPANY [I. L. R., 1 All., 687

25. ——————— *Agreement to deposit security.—Failure to make deposit.*—An order was made by the Court (pursuant to an agreement between the parties after a decree for the plaintiff) that the defendant who had appealed should pay into Court, to the credit of the cause, a certain sum of money for decree, costs, &c., including a sum of money for costs to be incurred on appeal. On an application by the plaintiff that the case be struck off for default of deposit, and that the defendant pay costs already incurred at the time of the application, it was ordered that the defendant should deposit a sum to cover costs of the future appeal, and in default that the case should be struck off, although the summons to show cause was not in point of form to that effect. ELIAS *v.* CHUCKERBUTTY [1 Ind. Jur., N. S., 223

SECURITY FOR GOOD BEHAVIOUR.

See APPEAL IN CRIMINAL CASES—CRIMINAL PROCEDURE CODES. [I. L. R., 9 Calc., 878 22 W. R., Cr., 68

See SENTENCE—IMPRISONMENT—IMPRISONMENT GENERALLY . 3 N. W., 126 [I. L. R., 1 All., 666

1. ——— **Discretion of Court, Exercise of.**—*Criminal Procedure Code, 1872, ss. 505, 506.—Deposit of cash in lieu of security-bond for good behaviour.*—The powers given by sections 505 and 506 of Act X of 1872 should be exercised with extreme discretion: the former of these sections was not intended to apply to persons of "by no means a reputable character." EMPRESS *v.* KALA CHAND DASS . I. L. R., 6 Calc., 14: 6 C. L. R., 138

2. ——— **Person of violent or turbulent character.**—*Criminal Procedure Code, 1861, s. 297.*—Section 297 of the Code of Criminal Procedure, 1861, did not refer to persons of a violent or turbulent character. IN RE NARAIN SOOBOODHI [6 W. R., Cr., 6

3. ——— **Persons convicted of theft.**—*Criminal Procedure Code, 1861, s. 295.—Theft.*—Section 295 did not apply to persons convicted and punished for theft. QUEEN *v.* KUNEE SONAR [7 W. R., Cr., 57

SECURITY FOR GOOD BEHAVIOUR—*continued.*

4. ——— **Persons not proved to have committed crime.**—*Criminal Procedure Code, 1872, s. 505.*—The exercise of the power given by section 505 of the Criminal Procedure Code was not confined to cases in which positive evidence of the commission of crime is forthcoming against the persons charged. IN RE PEDDA SIVA REDDI [I. L. R., 3 Mad., 238

5. ——— **Absconded offender arrested without summons.**—*Criminal Procedure Code, 1861, s. 306.*—Where an accused person was arrested as an absconded offender, and without evidence being gone into on that charge, an inquiry was made into his mode of livelihood, without any summons being issued under section 306 of the Criminal Procedure Code, such proceedings were held to be irregular. QUEEN *v.* HUTTOOA . 3 N. W., 2

6. ——— **Opportunity to make defence.**—*Information of accusation to accused.—Criminal Procedure Code (Act X of 1882), ss. 109, 110, 112.*—Before a Magistrate can pass an order directing an accused to furnish bail and security for his good behaviour, it is necessary that the accused should be given an opportunity of entering into his defence, and that he should be clearly informed of the accusation which he has to meet. QUEEN-EMPRESS *v.* ISHWAR CHANDRA SUR [I. L. R., 11 Calc., 13

7. ——— **Requisites for order.**—*Evidence satisfying Magistrate of bad character of accused.—Criminal Procedure Code, 1861, s. 296.*—To justify a Magistrate in taking action under section 296 of the Criminal Procedure Code, it was held that there must be evidence before him legally sufficient to establish the fact that the person charged is a person of the character described in the section. QUEEN *v.* BUDLA . . . 2 N. W., 455

8. ——— **Information on which Magistrate may act.**—*Information showing that a breach of the peace is imminent.—Order to furnish security for good behaviour for three years.—Arrest of accused.—Inquiry as to truth of information.—Proof of information.—Statements of persons not called as witnesses.—Criminal Procedure Code, 1882, ss. 112, 114, 117.*—Conversations out of Court with persons, however respectable, are not legal or proper material upon which Magistrates should adopt proceedings under section 107 or section 110 of the Criminal Procedure Code. The information to be required by a Magistrate, before issuing an order under section 112, may to some extent be of a hearsay and general description; but when the party to whom the order is directed appears in Court in obedience thereto, the inquiry must be conducted on the lines laid down in section 117. It is not because a man has a bad character that he is therefore necessarily liable to be called upon for sureties of the peace or for good behaviour. There must be satisfactory evidence in the one case that he has done something, or taken some step, that indicates an intention to break the peace or that is likely to oc-

SECURITY FOR GOOD BEHAVIOUR.—Information on which Magistrate may act—*continued.*

casion a breach of the peace; and in the other, that he is within the category of persons mentioned in section 110, the determination of which question must always be guided by the considerations pointed out in *Empress* v. *Nawab*, *I. L. R., 2 All., 835.* A Magistrate is not competent, upon information that suggests the likelihood of a breach of the peace, to resort to section 110 of the Criminal Procedure Code, and it is altogether *ultra vires* for him to demand security for three years in such a case. In ordering the arrest of a person under section 114 of the Criminal Procedure Code, the Magistrate must act on recorded information; it is not enough for him to express a belief that such a course is necessary. Not only must he have "reason to fear the commission of a breach of the peace," but "that such breach of the peace cannot be prevented otherwise than by the immediate arrest of such person." EMPRESS *v.* BABUA . . **I. L. R., 6 All., 132**

9. ———— *Criminal Procedure Code, 1861, s. 306.—Information of police.*—In an inquiry under section 306 of the Code of Criminal Procedure as to proceedings against persons required to give security for good behaviour, a Magistrate had no power to use the information which the police may have obtained as evidence in the case. QUEEN *v.* KOMUL KISHEN . . **11 W. R., Cr., 35**

10. ———— **Ground for ordering security.**—*Criminal Procedure Code, 1872, s. 505.—Evidence of character.*—Act X of 1872, section 505, enabled the Magistrate to require security for good behaviour, whenever it appeared to him, from the evidence as to general character adduced before him, that any person was by repute a robber, house-breaker or thief, or a receiver of stolen property, knowing the same to have been stolen, or of notoriously bad livelihood, or was a dangerous character. But when the evidence was entirely in a person's favour, and showed him to be of excellent character and in every respect contrary to the sort of person against whom the section was directed, to apply its provisions to him on a weak and unsupported charge of mischief by fire, was foreign to the intentions of the Legislature, and not only illegal but oppressive. IN THE MATTER OF THE PETITION OF HAMIDOODEEN AHMED **[24 W. R., Cr., 37**

11. ———— **Evidence of general bad character.**—*Criminal Procedure Code, 1872, s. 505.—P.* was convicted by a Magistrate of the first class of dishonestly receiving stolen property. He confessed on his trial that he had twice previously been convicted of theft. *Held*, with some hesitation, that there was evidence as to general character adduced before the Magistrate which justified him in dealing with *P.* under section 505 of Act X of 1872. EMPRESS *v.* PARTAB . . . . **I. L. R., 1 All., 666**

12. ———— **Evidence of bad character.**—*Criminal Procedure Code, 1861, ss. 296, 297.*—Previous convictions for a simple breach of the peace were not sufficient to justify a Magistrate in demanding security under section 296 of Act XXV of 1861. Nor was repute that a person was one of the leaders of a gang of petty bullies and extortioners sufficient to justify a conviction under section 297 of the same Act, unless in addition it was shown that he was of a character so desperate and dangerous as to render his release, without security for one year, hazardous to the community. QUEEN *v.* MISREE LALL **[4 N. W., 117**

SECURITY FOR GOOD BEHAVIOUR.—Evidence of bad character—*continued.*

13. ———— **Record of previous convictions.**—*Criminal Procedure Code, 1882, ss. 110, 117, and 118.*—The object of taking security for good behaviour from a person is solely to secure his good behaviour in future. The mere record of previous convictions, on account of which the person has undergone punishment, does not satisfy the requirements of sections 110, 117, and 118 of the Code of Criminal Procedure (Act X of 1882), and it is wrong to use these provisions so as to add to the punishment for past offences. IN RE RAJA VALAD HUSSEIN SAHEB **[I. L. R., 10 Bom., 174**

14. ———— *Criminal Procedure Code (Act X of 1882), ss. 110, 112.*—The mere fact that a person from whom security is required has been previously convicted of offences against property, is not sufficient to justify proceedings under section 110 of the Code of Criminal Procedure, unless there be additional evidence that the person complained against has done some act or resumed avocations indicating on his part an intention to return to his former course of life. IN THE MATTER OF THE PETITION OF HAIDAR ALI **[I. L. R., 12 Calc., 520**

15. ———— **Person guilty only of acts of violence.**—*Criminal Procedure Code, 1872, s. 506.—Held* that section 506 of Act X of 1872 solely relates to the calling upon persons of habitually dishonest lives, and in that sense "desperate and dangerous," to find security for good behaviour, as a protection to the public against a repetition of crimes by them in which the safety of property is menaced and not the security of the person alone is jeopardised. Where, therefore, the evidence adduced before the Magistrate did not show that a person was "by habit a robber, house-breaker, or thief, or a receiver of stolen property, knowing the same to have been stolen" but showed only that he had been guilty of acts of violence,—*Held* that the Magistrate could not, under section 506 of Act X of 1872, order such person to furnish security. Observations regarding the evidence on which the procedure of section 506 should be enforced. EMPRESS *v.* NAWAB **[I. L. R., 2 All., 835**

16. ———— **Person convicted and punished for theft.**—*Form of order.—Code of Criminal Procedure (Act X of 1872), ss. 504, 505.*—An accused person was convicted of theft and sentenced to two years' rigorous imprisonment, and was further ordered to enter into his own recognisances for R50, and find two sureties, each for a like sum, for his good behaviour for one year after the term of his im-

SECURITY FOR GOOD BEHAVIOUR.—Person convicted and punished for theft —*continued.*

prisonment had expired; in default to suffer rigorous imprisonment for one year. *Held* that the latter part of the order was bad, and that the Magistrate should have proceeded under the provisions of section 504, clause 2, of the Code of Criminal Procedure. *Empress* v. *Partab, I. L. R., 1 All., 666,* followed. TAMIZ MANDAL *v.* UMID KARIGAR [I. L. R., 9 Calc., 215

17. ——— **Inquiry as to necessity for security.**—*Criminal Procedure Code, 1872, s. 504. —Power of Sessions Judge.—Jurisdiction of Magistrate.*—A Sessions Judge had no power under Act X of 1872, section 504, or any of the preceding sections, to decide as to the necessity for taking security for good behaviour, or, without inquiry, to pass orders as to the nature of the security to be furnished, or as to the time it is to remain in force. The jurisdiction as to the necessity was in the Magistrate, and after sending the accused to the Magistrate under section 504, the Sessions Judge was *functus officio.* QUEEN *v.* GUNGARAM POTDAR . . **24 W. R., Cr., 10**

18. ——— **Form of order.**—*Criminal Procedure Code, 1872, s. 297.—Sureties.—Order for deposit in cash.*—Where a person, under section 297 of the Criminal Procedure Code, is ordered to provide security for his good behaviour, the order should, under section 300, state the number of sureties required from the defendant. The object of the law as to security for good behaviour is, that sureties shall be responsible for the good behaviour of the person called upon to provide security, not that a deposit be made in cash. QUEEN *v.* SHEO BUKSH [2 N. W., 295

19. ——— *Order for deposit in cash.—Security-bond.*—An order requiring persons to deposit cash in lieu of entering into a bond as security for their future good behaviour is bad in law. EMPRESS *v.* KALA CHAND DASS [I. L. R., 6 Calc., 14 6 C. L. R., 128

Contra, QUEEN *v.* KRISTENDRO ROY [7 W. R., Cr., 30

20. ——— **Statement of grounds for order.**—*Opportunity to comply with order.—Criminal Procedure Code, 1872, s. 505.*—On a requisition from the High Court, a Magistrate is bound to state the grounds upon which he fixed the amount of security. A person from whom security for good behaviour is demanded should have a fair chance afforded him to comply with the required conditions of security. EMPRESS *v.* DEDAR SIRCAR [I. L. R., 2 Calc., 384: 1 C. L. R., 95

21. ——— **Order for surety to pledge rights in land.**—*Illegal order.*—An order by a Magistrate requiring security for good behaviour which directed that the surety should pledge all his proprietary rights in land worth R200 was held to be illegal. QUEEN *v.* GANNI . . . **7 N. W., 249**

SECURITY FOR GOOD BEHAVIOUR—*continued.*

22. ——— **Order with arbitrary condition imposed.**—*Criminal Procedure Code, 1872, ss. 505, 516.—Sureties.*—In making an order for security to keep the peace under section 505, Criminal Procedure Code, 1872, a Magistrate had no right to impose an arbitrary condition not essential to restrain a party from the infringement of the law,—*e.g.,* a condition requiring the accused to furnish two sureties, being persons of respectability and substance, not related to him, and residing within one mile of his house. The ground on which a Magistrate has power to refuse to accept any surety under section 516 must be a valid and reasonable ground. IN THE MATTER OF THE PETITION OF NARAIN SOOBODDHEE [22 W. R., Cr., 37

23. ——— **Order for security and imprisonment in default.**—*Illegal order.—Criminal Procedure Code, 1861, ss. 296, 301.*—Where a Magistrate required security from persons for their good behaviour, under section 296 of the Criminal Procedure Code, and in default sentenced them to six months' rigorous imprisonment,—*Held* that the order was illegal, section 301 requiring that they should be committed to prison until they furnish the security demanded. In fixing the amount of security, the Magistrate should not go beyond a sum for which there is a fair probability of the defendants being able to find security. ANONYMOUS . **4 Mad., Ap., 47**

24. ——— **Second order for security without further proof.**—*Criminal Procedure Code, 1861, ch. XIX.*—Where a person is confined in default of giving security for his good behaviour, under Chapter XIX of the Code of Criminal Procedure, a second security cannot be demanded after the expiration of the first term of confinement, except on some new proof of bad livelihood, or that the person is not capable of following an honest calling. IN RE JUSWUNT SINGH [I Ind. Jur., N. S., 301: 6 W. R., Cr., 18

25. ——— **Form of security-bond.**—*Criminal Procedure Code, 1861, ss. 305, 306.—Forfeiture of bond.*—Where sureties who were required to show cause, under section 305 of the Code of Criminal Procedure, why the bond executed by them should not be put in force, failed to establish by evidence the statements which they made, it was held that the order putting the bond in force was a proper one. *Per* PHEAR, *J.*—Although the form of security-bond given in form (F) of the appendix combines two bonds,—namely, one for the principal, and one on the part of the sureties, the provisions even of section 300 would be complied with if these two bonds were upon two pieces of paper instead of one. IN THE MATTER OF THE PETITION OF BRINDABUN CHUNDER DASS. IN THE MATTER OF THE PETITION OF TARINEE CHURN MOZOOMDAR . . . **19 W. R., Cr., 29**

26. ——— **Procedure.**—*Power of Sessions Judge after acquittal.—Information to Magistrate as to taking security from accused.*—If a Sessions Judge be of opinion that a person acquitted by him ought to give security for future good behaviour,

SECURITY FOR GOOD BEHAVIOUR.—Procedure—*continued.*

he should discharge him, and inform the Magistrate of his opinion that security should be taken, leaving the Magistrate to take the necessary steps for that purpose, and the Sessions Judge should not send the party in custody to the Magistrate. REG. *v.* BYHA VALAD SURJIM . . . **1 Bom., 91**

27. ——————— *Suspicion.—Production of witnesses.—Bail.*—A person against whom proceedings for bad livelihood have been taken is entitled to have embodied in a charge the precise matter which the Magistrate considers established by evidence against him. It is not sufficient to say generally that there is suspicion. He should be asked to produce his witnesses, or offered assistance to procure their attendance. He should be admitted to bail. A Magistrate is not competent to refuse bail unless the law sanctions such refusal. IN THE MATTER OF KOOKOR SING . . **1 C. L. R., 130**

28. ——————— *Criminal Procedure Code, 1861, s. 296.—Examination of witnesses.*—In proceedings taken against a person to obtain security for good behaviour under section 296 of the Criminal Procedure Code, the examination of the witnesses must be taken in the presence of the accused person, who should be permitted to cross-examine them. QUEEN *v.* SHUNKUR **[2 N. W., 406**

QUEEN *v.* NURSINGH NARAIN **[2 B. L. R., A. Cr., 7, note: 10 W. R., Cr., 1**

MAGHAN MISRA *v.* CHAMMAN TELI **[2 B. L. R., A. Cr., 7: 10 W. R., Cr., 46**

29. ——————— *Opportunity to accused of cross-examining witnesses and calling witnesses.*—In an inquiry under Chapter XIX of the Criminal Procedure Code, 1861, it was held that the defendant should have an opportunity of cross-examining the witnesses produced against him, of making his own statement, and of calling witnesses on his own behalf. ANONYMOUS . . **4 Mad., Ap., 23**

30. ——————— *Evidence.—Previous trial for dacoity.—Criminal Procedure Code, 1861, s. 296.*—Where a person was adjudicated to be a person of notorious bad character, under section 296, Code of Criminal Procedure, after having been tried for dacoity, it was held that the evidence taken in the trial for dacoity should not be used against the accused with reference to the accusation under section 296, which evidence should be taken immediately. IN THE MATTER OF ROJONI KANT BHOOMICK **[13 W. R., Cr., 24**

31. ——————— *Sentence of imprisonment.—Criminal Procedure Code, 1861, s. 296.—Illegal direction.*—A direction annexed to a sentence of imprisonment, under section 448 of the Penal Code, that the convict be brought up at the expiration of the sentence, in order that he may give security for good behaviour for the period of one year, reversed, as not being authorised by section 296 of the Criminal Procedure Code. REG. *v.* KRISHNAJI BAPUJI GAIKAVAD **3 Bom., Cr., 39**

SECURITY FOR PAST LOAN.

See BANK OF BENGAL . **7 B. L. R., 653**

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1. GENERAL CASES.

1. ——————— **Obligation to pass sentence on conviction.**—*Duty of Magistrate.*—Where a Magistrate convicts a person of an offence, he is bound to pass some sentence, if only a nominal one. ANONYMOUS . . . . **4 Mad., Ap., 66**

SENTENCE—*continued.*

1. GENERAL CASES—*continued.*

2. ——— **Principals and abettors.**—*Abetment of same offence committed as principal.*—Persons punished as principals cannot also be punished for abetment of the same offence. QUEEN *v.* JEETOO CHOWDRY . . . 4 W. R., Cr., 23

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3. ——— *Registration Act, 1866, s. 94, Abetment of offence under.*—Under section 94, Act XX of 1866, an abettor could be punished more severely than his principal could be. QUEEN *v.* GOPAL PROSAUD SEIN . 8 W. R., Cr., 16

4. ——— **Ground for passing lighter sentence.**—*Difference between opinions of Judge and jury.*—A difference of opinion between the Judge and the jury is no ground for the Judge passing a lighter sentence than he would otherwise have done. (*Per* JACKSON, *J.*). QUEEN *v.* GHOLAM MUSTUFFA [3 W. R., Cr., 29

5. ——— **Ground for mitigation of sentence.**—*False evidence.*—Discussion as to the extent of punishment to be passed on certain ryots who, in a case of criminal trespass brought by an indigo planter, falsely swore that cotton, and not indigo, had been raised on the land in question during the past year. Punishment reduced. SETON-KARR, *J.*, would have reduced the punishment still more for reasons given. QUEEN *v.* DHURRANI DUTT RAI [8 W. R., Cr., 7

6. ——— **Punishment for escape from custody.**—*Penal Code, s. 224.—Additional punishment.*—The punishment for escape from lawful custody (section 224) in a case in which that is one of the offences of which the prisoner is convicted, must be "in addition" to any punishment awarded for the substantive offence. QUEEN *v.* DHOONDA BHOOYA [8 W. R., Cr., 85

7. ——— **False evidence.**—*Simple misstatement.*—A deliberate misstatement made in a Court of Justice, whether it tends to endanger the life and property of others or to defeat and impede the progress of justice, is not an offence which should be lightly passed over; but for a simple misstatement from which no such inferences can be drawn, a comparatively light sentence will suffice, particularly where the prisoner pleads guilty, and throws himself on the mercy of the Court. QUEEN *v.* GURJOON AHEER . . . . . 7 W. R., Cr., 37

8. ——— **Voluntarily causing hurt.**—*Sentence by Subordinate Magistrate.—Causing grievous hurt.*—Where a District Magistrate annulled a conviction passed by a Subordinate Magistrate (first class) of voluntarily causing hurt by means of an instrument for stabbing, cutting, &c., under section 324 of the Penal Code (an offence cognisable by the Subordinate Magistrate), and directed the Subordinate Magistrate to commit the accused to the Court of Session for trial on the charge of voluntarily causing grievous hurt by means, &c. (a charge cognisable by the Court of Session), the High

SENTENCE—*continued.*

1. GENERAL CASES—*continued.*

Voluntarily causing hurt—*continued.*

Court annulled the order of the District Magistrate, and restored the conviction and sentence of the Subordinate Magistrate. REG. *v.* HANMAPA BIN MALAPA . . . . . 7 Bom., Cr., 37

9. ——— **Taking illegal gratification.**—*Order to refund money.*—In a conviction of taking illegal gratification, a simple order to refund the money taken is not a sufficient punishment. IN THE MATTER OF MUTTY LALL CHUTTOPADHYA [16 W. R., Cr., 74

10. ——— **Kidnapping.**—*Maximum sentence.*—The maximum sentence prescribed for the offence of kidnapping should only be awarded in a case of the most aggravated nature. QUEEN *v.* BHOODEEA . . . . 8 W. R., Cr., 3

11. ——— **Measure of punishment.**—*Murder.—Severity of sentence, Mitigation of.*—Where a prisoner convicted of murder against the opinion of the assessors was sentenced to transportation for life, the High Court reduced the sentence to ten years' rigorous imprisonment, remarking on the severity of the Penal Code, and on the necessity of administering it so as to make it apply to the various gradations and degrees of crime in this country. QUEEN *v.* HOSSEIN ALLY . . 7 W. R., Cr., 47

12. ——— *Rape.—Circumstances for consideration.*—The measure of punishment in a case of rape should not depend on the social position of the party injured, but on the greater or less atrocity of the crime, the conduct of the criminal, and the defenceless and unprotected state of the injured female. QUEEN *v.* JHANTAH NOSHYO [6 W. R., Cr., 59

13. ——— *Rioting with deadly weapons.*—In a case of rioting with deadly weapons, the one side found guilty of using them and causing grievous hurt are properly punishable more severely than the men of the other side. QUEEN *v.* MOORUT MAHTON . . . 8 W. R., Cr., 3

14. ——— *Rioting and unlawful assembly.—Affray.*—Where the evidence in a case failed to establish anything like an unlawful assembly, the conviction was reduced from rioting and being members of an unlawful assembly to one for affray, although grievous hurt from which death resulted was caused to one of the persons. The insufficiency of the punishment allowed by the law in cases of affray pointed out. QUEEN *v.* PHOOLLEE MISSER . . . . . 12 W. R., Cr., 72

15. ——— **Sentence on alternative finding.**—*Penal Code, s. 72.*—An alternative finding is perfectly legal. The sentence should be as provided by section 72, Penal Code. QUEEN *v.* TARINEE MYTEE . . . . . 7 W. R., Cr., 13

16. ——— **Contemporaneous sentences.**—Contemporaneous sentences are not justified by the Penal Code. QUEEN *v.* MOHESH CHUNDER SIRCAR [3 W. R., Cr., 13

SENTENCE—*continued.*

1. GENERAL CASES—*continued.*

Contemporaneous sentences—*continued.*

17. ——— *Sentence under Penal Code and under special law.*—A sentence under the Penal Code and also under a special law in respect of one and the same offence is illegal. QUEEN *v.* HUSSUN ALI . . . . . 5 N. W., 49

18. ——— *Simultaneous conviction for offence, and order for security for good behaviour.*—When a conviction of an offence is contemporaneous with an order for taking security for good behaviour, the sentence for the substantive offence is to be first carried out, and the person to be bound then brought up for the purpose of being bound. QUEEN *v.* SHONA DAGEE [24 W. R., Cr., 13

19. ——— **Sentence running from period prior to conviction.**—*Illegal sentence.*—A Sessions Judge has no power to declare that a sentence shall run from a period prior to the conviction. QUEEN *v.* BUL SINGH . . . 4 N. W., 8

20. ——— **Commencement of sentence where appeal is brought.**—*Date of committal to jail.*—Where on the appeal of Government an order of acquittal is set aside and sentence passed, that sentence will commence to run from the date of the committal of the accused to jail, and not from the date of their arrest or of the sentence on the appeal. EMPRESS *v.* MAHUDDI . 6 C. L. R., 349

21. ——— **Sentence to commence at future date.**—*Conviction, and admission to bail to give means of appeal.*—Where a Magistrate, after sentencing two prisoners to separate terms of imprisonment, admitted them to bail, in order that they might have the means of appealing,—*Held* that such admission to bail did not make the previous sentence one to commence at a future time, and consequently illegal. The case of *Kishen Chunder Bhuttacharjee, 3 B. L. R., A. Cr., 50 : 12 W. R., Cr., 47,* distinguished. IN THE MATTER OF OKHOY KUMAR . . . . . 7 C. L. R., 393

22. ——— **Order for punishment on contingent failure to perform work.**—*Act XIII of 1859, s. 2.*—An order of a Magistrate passed under section 2 of Act XIII of 1859, "that the prisoner should work for a certain period, and in case he failed to do so should suffer rigorous imprisonment for one month," annulled as to the latter part, the Magistrate having no power to make such an order until the failure had occurred and been proved before him. REG. *v.* JOMA BIN BALU [4 Bom., Cr., 37

23. ——— **Sentence under repealed Act.**—*Cattle Trespass Acts, III of 1857 and I of 1871.—Conviction under wrong Act.*—Where a prisoner was properly convicted on the evidence of illegally seizing cattle, but was sentenced under the old law (Act III of 1857), when the Act had been repealed by Act I of 1871, the High Court declined to interfere with the sentence, as the latter Act was in force at the time of the conviction and sentence, and no injustice had been done. MOHESH NATH *v.* HURRO MOHUN GHOSAL . . . 16 W. R., Cr., 12

SENTENCE—*continued.*

1. GENERAL CASES—*continued.*

Sentence under repealed Act—*continued.*

2. CAPITAL SENTENCE.

24. ——— **Sentence on conviction of murder.**—*Sentence of death or transportation.*—On a conviction for murder, the only punishments that can legally be awarded are death or transportation for life. QUEEN *v.* BANI DOSS [14 W. R., Cr., 2

QUEEN *v.* JAMAL . . . 16 W. R., Cr., 75

25. ——— *Duty of Magistrates.*—Judges must not shrink from doing their duty, and they are bound to pass a capital sentence in a case of murder when they believe the evidence. QUEEN *v.* SIB NARAIN PALODHEE [7 W. R., Cr., 33

26. ——— **Justification for sentence of death.**—*Convict undergoing transportation.*—The fact that except death no punishment more severe than that which the prisoner is undergoing at the time of the commission of the offence can be inflicted, is not of itself sufficient to justify the Court in condemning the convict to death. QUEEN *v.* NGA SHOAY DE . . . . . 19 W. R., Cr., 68

27. ——— **Conviction of person under transportation of murder,**—*Penal Code, s. 303.*—Where a person under sentence of transportation for life on a conviction for murder is found guilty of murder on a subsequent and different charge, the only sentence that can be passed on him under section 303 of the Penal Code is death. QUEEN *v.* DOORJODHUN SHAMONTO *alias* DREJOBOR [19 W. R., Cr., 45

28. ——— **Pregnancy of accused convicted of murder.**—*Suspension of sentence.*—Capital sentence should be pronounced on a conviction for murder even if the accused be pregnant, although the execution of the sentence should be deferred till after delivery. QUEEN *v.* PANHEE AUBUT . . . . . 15 W. R., Cr., 66

29. ——— *Suspension of sentence.*—When a prisoner was pregnant, the sentence of death passed upon her was ordered not to be carried out until after her delivery. QUEEN *v.* GHURBHURNEE . . W. R., 1864, Cr., 1

QUEEN *v.* TEPOO . . 3 W. R., Cr., 15

Since expressly provided for by section 306, Criminal Procedure Code, 1872, and section 382 of Act X of 1882.

3. CUMULATIVE SENTENCES.

30. ——— **Sentencing twice for same offence.**—*Conviction for two offences, one of which is*

SENTENCE—*continued.*

3. CUMULATIVE SENTENCES—*continued.*

Sentencing twice for same offence—*continued.*

integral portion of another.—The conviction of prisoners for two offences, when the one offence formed an integral portion of the other, held to be in effect punishing twice for the same offence, and therefore illegal. GOVERNMENT *v.* LALAWUN SINGH [1 Agra, Cr., 31

31. ——— **Cases where same acts are the basis of two charges and convictions.**—*Sentence on each charge.*—Where substantially only one offence has been committed, and the acts which are the basis of a prisoner's conviction on one charge are the same as the acts which are the basis of his conviction on another charge, cumulative sentences on each charge should not be passed. QUEEN *v.* RADHAKANTH PAUL . . 9 W. R., Cr., 12

QUEEN *v.* CHUNDER KANT LAHOREE [12 W. R., Cr., 2

32. ——— **Conviction on several charges forming substantially one offence.**—*Criminal Procedure Code, 1861, s. 46.*—Where a person, though charged under different sections of the Penal Code, was convicted of what was substantially but a single offence,—*Held* that it was not lawful for the Magistrate who tried him to pass a sentence of imprisonment as for separate offences, under section 46 of the Code of Criminal Procedure, exceeding in the aggregate the punishment which it was competent for the Court to inflict on conviction of a single offence. REG. *v.* GANU LADU [2 Bom., 132: 2nd Ed., 126

33. ——— *Improper sentence.*—Where a person, though charged under two heads, was found guilty of what was substantially but one offence,—*Held* that it was improper for the Sessions Judge to record a conviction under two sections of the Penal Code, and thereupon to award a punishment of two years' imprisonment in excess of what the law prescribed for the offence committed. REG. *v.* ZORA KARUBEG . . 4 Bom., Cr., 12

34. ——— **Acts constituting offence founded on one continuous transaction.**—*Sentence for principal offence.*—Where the acts constituting the offence are founded on one single continuous transaction, sentence should only be passed for the principal offence. ANONYMOUS [6 Mad., Ap., 47

35. ——— **Act coupled with intention.**—*Same act constituting a less grave offence.*—Where the act of an accused person, coupled with his intention or knowledge, constitutes a graver offence, the circumstance that the same act also answers to the definition of another less grave offence does not render him liable to a cumulative punishment. Case where different statutes provide separate punishments for the same act, distinguished. REG. *v.* DOD BASAYA . . . . . 11 Bom., 13

SENTENCE—*continued.*

3. CUMULATIVE SENTENCES—*continued.*

36. ——— **Conviction of separate offences.**—*Criminal Procedure Code, 1861, s. 46.—Separate sentences to take effect successively.*—Where prisoners are convicted of separate offences, a separate sentence should be passed in each case, with a direction that the imprisonment in the second case should commence on the expiration of that in the first, and so on. ANONYMOUS . 4 Mad., Ap., 27

37. ——— *Separate sentences to take effect successively.*—In a case of several offences under one section of the Penal Code, the proper way is to try the accused (under separate charges) for each of the several distinct offences under the section which have been clearly proved against them. On conviction on each of these separate charges, a separate sentence on each conviction should be passed, with a direction (under section 317 of the Criminal Procedure Code, 1872) that each should take effect on the expiry of the next prior sentence. QUEEN *v.* SOBRAI GOWALAH [20 W. R., Cr., 70

38. ——— *Maximum term of punishment.—Joinder of charges.*—Where a person who is accused of several offences of the same kind is tried for each of such offences separately by a Magistrate, the aggregate punishment which such Magistrate can inflict on him in respect of such offences is not limited to twice the amount which he is by his ordinary jurisdiction competent to inflict, but such Magistrate can inflict on him for each offence the punishment which he is by his ordinary jurisdiction competent to inflict. IN THE MATTER OF DAULATIA [I. L. R., 3 All., 305

39. ——— **Conviction of several instances of same offence.**—*Aggregate sentence for purpose of appeal.—Separate sentence on each offence.*—For purposes of appeal the whole punishment awarded to one person on one trial for several instances of the same offence is to be regarded as one sentence. *Semble,*—that where a person is tried at the same time for several instances of the same offence, it is not necessary that more than a single sentence should be passed. But if a separate sentence be passed on each head,—*Held* that an appeal brings the aggregate of those sentences, as together constituting the punishment awarded in a single trial, within the jurisdiction of the Appellate Court. REG. *v.* GULAM ABAS . . . . . 12 Bom., 147

40. ——— **Simultaneous convictions.**—*Sentence for purposes of appeal.—Criminal Procedure Code, 1872, s. 314.*—The aggregate of the sentences passed under section 314 of the Code of Criminal Procedure in a case of simultaneous convictions for several offences, must be considered a single sentence for the purposes of confirmation or appeal. REG. *v.* RAMA BHIVGOWDA [I. L. R., 1 Bom., 223

41. ——— **Separate sentences.**—*Abetment of abduction and wrongful confinement.—Penal Code, ss. 343, 498.*—The prisoners having been

SENTENCE—*continued.*

3. CUMULATIVE SENTENCES—*continued.*

Separate sentences—*continued.*

sentenced for abetment of abduction of a woman under sections 109 and 498 of the Penal Code, and for wrongful confinement of her under section 343,—*Held* that both sentences could not stand, and that as the essence of the case was abduction, the prisoners, as abettors therein, should be punished for it alone. QUEEN *v.* ISHWAR CHANDRA JOGEE [W. R., 1864, Cr., 21

42. ——————— *Abduction of child to get property from its person.—Theft after preparation to cause death.—Penal Code, ss. 369, 382.*—Separate sentences cannot be awarded in one case for abducting a child in order to take property from its person (section 369), and theft after preparation to cause death, &c. (section 382), where the evidence shows that the act is one and the same. The sentence under the latter section was cancelled, there being no evidence of any preparation having been made to cause death, &c., within the meaning of that section. QUEEN *v.* KASHEE NATH CHUNGO [8 W. R., Cr., 84

43. ——————— *Penal Code, s. 369.—Abduction with intent to take moveable property.—Second punishment for theft.*—A prisoner tried, convicted, and punished under section 369 of the Penal Code of abducting a child with intent dishonestly to take moveable property, cannot also be punished for the theft of a part of the moveable property which he intended dishonestly to take through means of the abduction; and the second punishment for a theft is by the present Code of Criminal Procedure illegal. QUEEN *v.* NOUJAN. NOUJAN *v.* QUEEN [7 Mad., 375

44. ——————— *Penal Code, ss. 71, 183, and 353.—Resisting taking of property by public servant.—Using criminal force to deter public servant from doing his duty.—Held* on the facts of this case, that a party (*A.*) who objected to accompany a constable who had been directed to produce him before the Court, and also seized the constable by the arm, and resisted his carrying away a pony which *A.* was charged with having misappropriated, was guilty of separate offences under sections 353 and 183 of the Penal Code, and the infliction of separate sentences for each offence was not prevented by section 71 of that Code. QUEEN *v.* JOYAH MOHUN CHUNDER . . 14 W. R., Cr., 19

45. ——————— *Threatening witnesses.—Sentence for each offence.*—An accused who threatened three witnesses was convicted and sentenced to four months' imprisonment for the threat to each witness, in all to one year. It was held that if a person at one time criminally intimidates three different persons, and each of those persons brings a separate charge against him, the accused may be convicted for an offence as against each person, and be punished separately for each offence. The facts and evidence in this case, however, were considered insufficient to support the sentence, which was reversed as extremely harsh and unjust. IN THE MATTER OF GOOLZAR KHAN [9 W. R., Cr., 30

SENTENCE—*continued.*

3. CUMULATIVE SENTENCES—*continued.*

Separate sentences—*continued.*

46. ——————— *Culpable homicide and being member of unlawful assembly.*—The prisoner was convicted and sentenced separately for culpable homicide not amounting to murder, and for being a member of an unlawful assembly. The two offences, however, being held to be one (the latter being only part of the evidence of the former), the conviction and sentence for the second offence were quashed. QUEEN *v.* RUBBEEOOLAH [7 W. R., Cr., 13

47. ——————— *Dacoity with murder.—Penal Code, s. 396.*—If a person concerned in a dacoity unintentionally commits murder, he is liable to punishment under section 396 of the Penal Code. But he cannot be separately convicted of murder under section 302, and of committing dacoity under section 395. QUEEN *v.* RUGHOO [W. R., 1864, Cr., 30

48. ——————— *Dacoity and receiving stolen property.*—A person convicted of and sentenced for dacoity cannot also be convicted of and sentenced for receiving or retaining the stolen property thereby acquired (*dissentiente* LOCH, *J.*). BHYRUB SEAL *v.* QUEEN. QUEEN *v.* BHYRUB SEAL [W. R., 1864, Cr., 27

QUEEN *v.* ABOOL HOSSEIN . 1 W. R., Cr., 48

49. ——————— *Rescuing from lawful custody and using criminal force.—Penal Code, ss. 224, 225, and 353.*—Where substantially but one offence has been committed, and the acts which are the basis of one charge are the same which form the basis of another charge on which the prisoner has also been convicted, cumulative sentences on each charge should not be passed. Where prisoners were convicted under section 224 for escape, section 225 for rescuing from lawful custody, and under section 353 for using criminal force in so doing, and sentenced to separate punishments under each section,—*Held* that the prisoners had only done one act, and were guilty of only one offence, and should have been found guilty under sections 224 and 225 of "escape" and "rescuing" respectively, and sentenced accordingly. QUEEN *v.* KALISANKAR SANDYAL [3 B. L. R., A. Cr., 14

QUEEN *v.* DINA SHEIKH [3 B. L. R., A. Cr., 15, note: 10 W. R., Cr., 63

So where prisoners were accused of rioting and using criminal force, it was held only one offence. IN THE MATTER OF NILRUTTON SEIN [16 W. R., Cr., 45

50. ——————— *Making false charge.—Giving false evidence.—Separate offences.*—The offence of making a false charge and the offence of intentionally giving false evidence are not cognate

SENTENCE—*continued.*

3. CUMULATIVE SENTENCES—*continued.*

Separate sentences—*continued.*

offences or parts of the same offence, but may be punished separately. QUEEN *v.* ABDOOL AZEEZ [7 W. R., Cr., 59

51. ——— *Penal Code, ss. 71, 193, 211.—Concurrent sentences.—Criminal Procedure Code (Act X of 1882), s. 35.—Enhancement of sentence.*—Where the accused, who was a head constable, was found guilty of making a false charge under section 211, and of giving false evidence under section 193 of the Penal Code (XLV of 1860), and the Sessions Judge passed sentences of three months' simple imprisonment for each offence, and, taking into consideration the accused's past conduct, directed that the sentences should run concurrently,—*Held* that the sentences were inadequate and illegal. Accordingly, the sentences were enhanced to three months' rigorous imprisonment for each offence; and as the two offences were distinct, the High Court directed, under section 35 of the Criminal Procedure Code (X of 1882), one sentence to commence after the expiration of the other. *Queen* v. *Abdool Azeez, 7 W. R., Cr., 59,* followed. QUEEN-EMPRESS *v.* PIR MAHOMED [I. L. R., 10 Bom., 254

52. ——— *Conviction of several offences.*—Two prisoners having been convicted of forgery and other offences were sentenced each to an aggregate amount of punishment. *Held* that it was an irregularity not to pass a separate sentence under each independent head of the charge. REG. *v.* VINAYAK TRIMBAK . 2 Bom., 414: 2nd Ed., 391

REG. *v.* MURAR TRIKAM . . 5 Bom., Cr., 3

53. ——— *Distinct offences.—Simultaneous sentence.*—Three prisoners were charged with five distinct offences of house-breaking by night, and were sentenced to two years' rigorous imprisonment in each case. *Held* that the Magistrate had power only to pass sentence of four years' imprisonment upon each prisoner, but according to the sentence all the punishments inflicted would be going on simultaneously. ANONYMOUS [5 Mad., Ap., 42

54. ——— *House-breaking and theft.*—If a man break into a dwelling-house at night and steal property therefrom, the crime is in its nature one single and entire offence, and should be treated accordingly. QUEEN *v.* TONAOKOCH [2 W. R., Cr., 63

Under section 457 of the Penal Code. QUEEN *v.* CHYTUN BOWRA . . 5 W. R., Cr., 49

JOGEEN PULLEE *v.* NOBO PULLEE [6 W. R., Cr., 49

IN RE MUSSAHUR DAOUDH . 6 W. R., Cr., 92

55. ——— *House-breaking by night and theft.*—A prisoner may be convicted of theft in a building and of house-breaking by night with intent to commit theft, though if the Judge considers the punishment for the first offence sufficient, he need not award any additional sentence for the second. QUEEN *v.* TINCOURER [W. R., 1864, Cr., 31

SENTENCE—*continued.*

3. CUMULATIVE SENTENCES—*continued.*

Separate sentences—*continued.*

56. ——— *House-breaking and theft.—Joinder of charges.—Limit of conviction.—Criminal Procedure Code (Act X of 1872), ss. 452, 454, 455.—Held* that, where in the course of one and the same transaction an accused person appears to have committed several acts, directed to one end and object, which together amount to a more serious offence than each of them taken individually by itself would constitute, although for purposes of trial it may be convenient to vary the form of charge and to designate not only the principal but the subsidiary crimes alleged to have been committed, yet in the interests of simplicity and convenience it is best to concentrate the conviction and sentence on the gravest offence proved. Where, therefore, a person who broke into a house by night and committed theft therein was charged and tried for offences under sections 380 and 457 of the Penal Code, and was convicted of both those offences, and punished for each with rigorous imprisonment for eighteen months, the Court convicted him of the offence under section 457 and sentenced him to rigorous imprisonment for three years, and acquitted him of the offence under section 380. EMPRESS *v.* AJUDHIA [I. L. R., 2 All., 644

57. ——— *Offence made up of parts.—House-breaking and theft.—Penal Code, ss. 71, 380, 457.*—Section 71 of the Penal Code applies to the case of a person charged with house-breaking under section 457 and theft committed on the same occasion under section 380 of the Penal Code. REG. *v.* ARJUN . . . 1 Bom., 87

58. ——— *Conviction of several offences.—House-breaking to commit theft.—Compound offence.*—It is competent to a Magistrate to pass a separate sentence in respect of each of the two charges, of house-breaking in order to commit theft, and of theft in a human dwelling, of which a prisoner is found guilty, provided the aggregate punishment awarded on the two charges does not exceed the punishment which the case warrants for the greater of the two offences of which the accused has been convicted, and provided, further, such aggregate punishment does not exceed the jurisdiction of the Court passing the sentences. REG. *v.* ANVARKHAN VALAD GULKHAN . . . . 9 Bom., 172

59. ——— *House-breaking and theft.—Penal Code, ss. 380 and 457.—Simultaneous convictions for separate offences.*—In a case of conviction of house-breaking by night, in order to commit theft, under section 457, and theft, under section 380 of the Penal Code, there may either be one sentence for both offences, or separate sentences for each offence, provided that the total punishment awarded does not exceed that which may be given for the graver offence. REG. *v.* TUKAYA BIN TAMANA . . . . I. L. R., 1 Bom., 214

SENTENCE—*continued.*

3. CUMULATIVE SENTENCES—*continued.*

Separate sentences—*continued.*

60. ——————— *Criminal Procedure Code, ss. 35 and 235.—Penal Code (Acts XLV of 1860 and VIII of 1882), ss. 71, 380, 457.—Simultaneous convictions for several offences.—Sentence.*—The accused was convicted at one trial by a Magistrate of the first class of the offences of house-breaking by night with intent to commit theft, punishable under section 457, and of theft in a dwelling-house, punishable under section 380 of the Penal Code (XLV of 1860),—the two offences being part of the same transaction, the theft following the house-breaking. The prisoner was sentenced to two years' rigorous imprisonment under section 457, and to six months' rigorous imprisonment and a fine of R100, or, in default of payment, three months' further rigorous imprisonment, under section 380. The District Magistrate referred the case to the High Court, on the ground that the aggregate of punishment awarded on the two heads of charge exceeded the powers of the First Class Magistrate who tried the case. The Sessions Judge, to whom an appeal had been preferred, was of the same opinion, and reduced the sentence to two years' rigorous imprisonment. *Held* that as the accused committed two distinct offences which did not "constitute, when combined, a different offence" punishable under any section of the Penal Code (XLV of 1860), section 71 of the Code did not apply, and as the aggregate punishment did not exceed twice the amount of punishment which the trying Magistrate was competent to inflict, the sentences were legal under section 35 of the Criminal Procedure Code (Act X of 1882). *Per* JARDINE, *J.*—The rules for assessment of punishment, contained in section 454 of the Criminal Procedure Code of 1872, having been omitted in section 235 of the Criminal Procedure Code of 1882, must now be sought for in section 71 of the Penal Code (XLV of 1860) and in section 35 of the Criminal Procedure Code (X of 1882). QUEEN-EMPRESS *v.* SAKHARAM BHAU [I. L. R., 10 Bom., 493

61. ——————— *Lurking house-trespass and theft.—Penal Code, ss. 380 and 454.*—Discussion as to whether cumulative punishment under sections 454 and 380 is legal for lurking house-trespass and theft. QUEEN *v.* MINA NUGGERBHATIN . . . . . 3 W. R., Cr., 19

62. ——————— *House-trespass and grievous hurt.*—The prisoner entered a house for the purpose of committing an assault, and, in carrying out that intention, caused grievous hurt. In convicting and punishing him for the substantive offence (grievous hurt),—*Held* that it was not necessary to pass a separate sentence for the offence of house-trespass. QUEEN *v.* BASSOO RANNAH [2 W. R., Cr., 29

63. ——————— *Kidnapping.—Taking property from child.—Penal Code, ss. 363, 369.*—The offence described in section 363 of the Penal Code is included in that described in section 369, the kidnapping and the intention of dishonestly taking property from the kidnapped child being included in the latter section. QUEEN *v.* SHAMA SHEIKH . . . . . 8 W. R., Cr., 35

64. ——————— *Kidnapping.—Selling for purpose of prostitution.*—There is nothing illegal in passing separate sentences for kidnapping and for selling for purposes of prostitution. QUEEN *v.* DOORGA DOSS . . . 7 W. R., 104

65. ——————— *Rioting.—Unlawful assembly.*—There cannot be a conviction both of "rioting" and of "being members of an illegal assembly." The greater charge includes the less, and to punish under both sections of the Penal Code would be cumulative and illegal. MEELAN KHALIFA *v.* DWARKANATH GOOPTO . . 1 W. R., Cr., 7

66. ——————— *Joining unlawful assembly and rioting with deadly weapon.—Penal Code, ss. 144, 148.*—There is nothing illegal in sentencing a prisoner for both offences of joining an unlawful assembly armed with a deadly weapon (section 144), and rioting armed with a deadly weapon, though the former is almost merged in the latter offence. SREEKISSEN *v.* JUGLAL . 9 W. R., Cr., 5

67. ——————— *Rioting armed with deadly weapon.—Causing hurt by shooting.*—Where prisoners are charged both with rioting, being armed with deadly weapons, and with causing hurt by shooting, and their conviction of the latter offence rests solely on the fact of their belonging to a party by one of whom (not one of the prisoners) fire-arms were used, it is wrong to pass a cumulative sentence, and to punish the prisoner both for the rioting and for the causing hurt. The punishment should be for either one or other of those offences. QUEEN *v.* DURZOOLLA . . . . . 9 W. R., Cr., 33

68. ——————— *Rioting with deadly weapon.—Grievous hurt.—Penal Code, ss. 148, 149, and 324.*—The offence of rioting, armed with deadly weapons, and stabbing a person on whose premises the riot takes place, are distinct offences and punishable as separate offences under sections 148, 149, and 324 of the Penal Code,—section 149 being read as a proviso to section 148. QUEEN *v.* CALLACHAND . . . 7 W. R., Cr., 60

69. ——————— *Conviction of rioting and causing hurt by dangerous weapons.—Distinct offences.—Separate charges.—Penal Code, ss. 71, 148, 149, 324.—Act X of 1882 (Criminal Procedure Code), ss. 35, 285.—Act X of 1872 (Criminal Procedure Code), ss. 314, 454.—Act VIII of 1882, s. 4.*—The offences of rioting armed with a deadly weapon and voluntarily causing hurt with a dangerous weapon to two persons are distinct offences, and a person charged with such offences can be convicted and sentenced in respect of the rioting and of the hurt caused to each of the persons injured. *A.* and *B.* were charged with rioting armed with deadly weapons under section 148 of the Penal Code, and

SENTENCE—*continued.*

3. CUMULATIVE SENTENCES—*continued.*

Separate sentences—*continued.*

they were also charged under section 324, coupled with section 149, with causing hurt by a dangerous weapon to *X.*, and *B.* was further charged under section 324 with causing a like hurt to *Y.*, *A.* being also charged under section 324, coupled with section 149, in respect of the hurt caused by *B.* to *Y.* *A.* and *B.* were convicted on all charges, and separate sentences, to take effect in succession, were awarded in respect of each offence charged. The offences under section 324 were committed during the riot. *Held* that the several acts with regard to which the prisoners were charged did not fall within the provisions of section 71 of the Penal Code, inasmuch as it was not found that the causing of the hurt was the force or violence which alone constituted the rioting, and that consequently under section 235 of the Criminal Procedure Code the several sentences passed were strictly legal. LOKE NATH SIRCAR *v.* QUEEN-EMPRESS **[I. L. R., 11 Calc., 349**

70. ——————— *Separate convictions for more than one offence where acts combined form one offence.—Penal Code (Act XLV of 1860), ss. 143, 147, 324, 353 (Act VIII of 1882), s. 4.—Criminal Procedure Code, Act X of 1882, s. 235.*—Four persons were charged with being members of an unlawful assembly consisting of themselves and others, the common object of which assembly was resisting the execution of a legal process, namely, the arrest of a judgment-debtor by a Civil Court peon, who went with a warrant for his arrest accompanied by other persons, *A.* and *B.*, for the purpose of identifying him, and with using force or violence in prosecution of the common object, such force or violence consisting of an assault on the Civil Court peon, and another by means of a dangerous weapon on *A.* The Deputy Magistrate convicted all the accused of offences under sections 147 and 353 of the Penal Code, and sentenced them to six months' rigorous imprisonment under the former section and two months' rigorous imprisonment under the latter. He further convicted one of the accused of an offence under section 324, in respect of the assault on *A.*, and sentenced him to one month's rigorous imprisonment in respect of that offence, and directed that the sentences were to take effect one on the expiry of the other. *Held* that the offence of rioting was completed by the assault on *A.*, and that the assault on the peon was a further offence under the first sub-section of section 235 of the Code of Criminal Procedure. *Held*, further, that even if *A.* had not been assaulted, the conviction and sentences passed for rioting and the assault on the peon were legal, inasmuch as the acts of the accused, taken separately, constituted offences under sections 143 and 353 of the Penal Code, and, combined, an offence under section 147; and under 235, sub-section 3 of the Code of Criminal Procedure, the accused might be charged with and tried at one trial for the offence under section 147, and those under sections 143 and 353, and therefore also separately convicted and sentenced for each such offence,

SENTENCE—*continued.*

3. CUMULATIVE SENTENCES—*continued.*

Separate sentences—*continued.*

provided the punishment did not exceed the limit imposed by section 71 of the Penal Code, as amended by section 4 of Act VIII of 1882, which limit had not been exceeded in the present case. IN THE MATTER OF CHANDRA KANT BHATTACHARJEE. CHANDRA KANT BHATTACHARJEE *v.* QUEEN-EMPRESS . . . **I. L. R., 12 Calc., 495**

71. ——————— *Penal Code Amendment Act (VIII of 1882), s. 4.—Offence made up of several offences.—Rioting.—Grievous hurt.—Criminal Procedure Code, 1882, s. 235.—Penal Code, ss. 146, 147, 149, 325.*—A member of an unlawful assembly, some members of which have caused grievous hurt, cannot lawfully be punished for the offence of rioting as well as for the offence of causing grievous hurt. EMPRESS *v.* RAM PARTAB **[I. L. R., 6 All., 121**

72. ——————— *Separate charges.—Criminal Procedure Code (Act X of 1872), s. 454, illus. (f).—Penal Code (Act XLV of 1860), ss. 147, 148, and 324.*—Under section 454 of the Criminal Procedure Code, the collective punishment awarded under sections 147, 148, and 324 of the Penal Code must not exceed that which may be awarded for the graver offence. *Quære,*—Whether separate convictions under sections 147 and 324 of the Penal Code are legal. IN THE MATTER OF THE PETITION OF JUBDUR KAZI. EMPRESS *v.* JUBDUR KAZI **[I. L. R., 6 Calc., 718**

S. C. IN RE JUBDUR KAZI . **8 C. L. R., 390**

73. ——————— *Rioting.—Grievous hurt.—Criminal Procedure Code, 1882, s. 235.—Penal Code, ss. 146, 147, 149, 325.*—Three persons who were convicted (i) of riot under section 147 of the Penal Code, (ii) of causing grievous hurt in the course of such riot, were respectively sentenced to six months' rigorous imprisonment under section 147, and three months' rigorous imprisonment under section 147, and three months' rigorous imprisonment under section 325. *Held* by PETHERAM, *C. J.*, and STRAIGHT and TYRRELL, *JJ.*, that inasmuch as the evidence upon the record showed that the three prisoners had committed individual acts of violence with their own hands, which constituted distinct offences of causing grievous hurt or hurt separate from and independent of the offence of riot, which was already completed, and the fact of the riot was not an essential portion of the evidence necessary to establish their legal responsibility under section 325 of the Penal Code, the separate sentences passed under sections 147 and 325 were not illegal. *Queen-Empress* v. *Ram Partab, I. L. R., 6 All., 121*, distinguished. *Per* BRODHURST, *J.*, that the evidence showed that only one of the three prisoners had caused grievous hurt with his own hands, and that the others could only be properly convicted of that offence under the provisions of section 149 of the Penal Code, but that the separate sentences passed under sections 147 and 325 were not illegal. *Queen-Empress* v. *Dungar Singh, I. L. R., 7 All.,*

SENTENCE—*continued*

3. CUMULATIVE SENTENCES—*continued.*

Separate sentences—*continued.*

29, followed. Also *per* BRODHURST, *J.*—Illustration (*g*) of section 235 of the Criminal Procedure Code does not apply merely to the case of persons who, in addition to the offence of rioting, have with their own hands committed the further offences of voluntarily causing grievous hurt, and of assaulting a public servant when engaged in suppressing a riot; and the convictions referred to in the illustration relate especially to convictions obtained under the provisions of section 149 of the Penal Code. QUEEN-EMPRESS *v.* RAM SARUP [I. L. R., 7 All., 757

74. ——————— *Criminal Procedure Code, 1882, s. 35 and s. 235.—Convictions of rioting and causing grievous hurt.—Offences distinct.—Penal Code (Act VIII of 1882), s. 4.—Penal Code, ss. 147, 325.*—The offences of rioting, of voluntarily causing hurt, and of voluntarily causing grievous hurt, each of the two latter offences being committed against a different person, are all distinct offences within the meaning of section 35 of the Criminal Procedure Code. Under the first paragraph of section 235 of the Criminal Procedure Code, a person accused of rioting and of voluntarily causing grievous hurt may be charged with and tried for each offence at one trial, and, under section 35, a separate sentence may be passed in respect of each. *Queen-Empress* v. *Ram Partab, I. L. R., 6 All., 121*, dissented from. QUEEN-EMPRESS *v.* DUNGAR SINGH . . . . I. L. R., 7 All., 29

75. ——————— *Penal Code, s. 71.—Criminal Procedure Code, ss. 39, 235.—Rioting, grievous hurt, and hurt.—Punishment for more than one of several offences.*—On the 8th August 1884 a Magistrate of the second class began an inquiry in a case in which several persons were accused of rioting and of voluntarily causing grievous hurt. On the 6th September the powers of a Magistrate of the first class were conferred on the Magistrate by an order of Government, which was communicated to him on the 8th September. On the 9th September, the case for the prosecution having closed, the Magistrate framed charges against each of the accused under sections 323 and 325 of the Penal Code, recorded the statements of the accused and the evidence for the defence, and on the 10th September convicted the accused of all the charges, passing upon each of them, in respect of each charge, sentences which he could pass as a Magistrate of the first class, but could not have passed as a Magistrate of the second class. On appeal, the Sessions Judge, on the ground that the prisoners had committed the offence described in section 148 of the Penal Code, held that the sentences passed by the Magistrate were illegal, as being inconsistent with the provisions of section 71, paragraphs 2 and 4; and he accordingly reduced the sentences of imprisonment which the Magistrate had passed to the maximum of imprisonment which the Magistrate could have inflicted under section 148. *Held* by the Full Bench (PETHERAM, *C. J.*, and BRODHURST, *J.*, dissenting) that the sentences passed by the Magistrate were legal. *Per* OLDFIELD and DUTHOIT, *JJ.*, that the provisions of section 71 of the Penal Code had no application to the case, inasmuch as the offences of causing grievous hurt and hurt formed no part of the offence of rioting. *Per* BRODHURST, *J.*, that the sentences passed by the Magistrate were, as a whole, illegal; that if he had convicted the accused under section 148 of the Penal Code, his order would, under the circumstances, have been legal, and that a member of an unlawful assembly, some members of which have caused grievous hurt, can be legally punished for the offence of rioting as well as for the offence of causing grievous hurt. *Empress* v. *Dungar Singh, I. L. R., 7 All., 29*, referred to. QUEEN-EMPRESS *v.* PERSHAD . I. L. R., 7 All., 414

76 ——————— *Receiving stolen property and assisting in concealment of it.—Penal Code, ss. 411, 414.—Criminal Procedure Code, 1861, s. 46.*—The offences specified in sections 411 and 414 of the Penal Code cannot be considered as two distinct offences, so as to allow of the procedure of section 46 of the Criminal Procedure Code being adopted. ANONYMOUS . . . 4 Mad., Ap., 14

77. ——————— *Theft from two persons in same room.*—Where the accused stole property at night belonging to two different persons from the same room of a house, it was held that he could not be sentenced separately as for two offences of theft. QUEEN *v.* MONEEAH [11 W. R., Cr., 38

78. ——————— *Theft.—Receiving stolen property.*—A person convicted of robbery or theft cannot be also convicted of dishonestly receiving in respect of the same property. QUEEN *v.* MUDDUN ALLY . . . . 1 W. R., Cr., 27

QUEEN *v.* SREEMUNT ADUP . 2 W. R., Cr., 63

QUEEN *v.* SEEBCHURN HAREE [11 W. R., Cr., 12,

QUEEN *v.* SHEEB CHUNDER HAREE [11 W. R., Cr., 12, note

79. ——————— *Theft and mischief.—Double sentence.*—A double sentence for theft and mischief is illegal and improper. BICHUK AHEER *v.* AUHUCK BHOONEEA . 6 W. R., Cr., 5

80. ——————— *Mischief and theft.—House-breaking and theft.*—Separate convictions and sentences under sections 429 and 379, and under sections 457 and 380 of the Penal Code were set aside; and the convictions under section 429 in the former case, and under section 457 in the latter, allowed to stand. QUEEN *v.* SAHEAE [8 W. R., Cr., 31

81. ——————— *Criminal trespass.—Mischief.—Criminal Procedure Code, 1872, s. 454.*—Where a person committed a trespass with the intention of committing mischief, thereby com-

SENTENCE—*continued.*

3. CUMULATIVE SENTENCES—*continued.*

Separate sentences—*continued.*

mitting criminal trespass, and at the same time committed mischief,—*Held* that such person could not, under clause iii of section 454 of Act X of 1872, receive a punishment more severe than might have been awarded for either of such offences. The provisions of that law do not in such a case prohibit the Court from passing sentence in respect of each offence established. EMPRESS *v.* BUDH SINGH [I. L. R., 2 All., 101

82. ——— *Separate offences.*—*Penal Code, ss. 143, 253.*—A cumulative sentence under section 143 of the Penal Code (being a member of an unlawful assembly), and under section 253 (using criminal force against a public servant), was upheld by the High Court in this case. IN THE MATTER OF GOBIND CHUNDER ROY [16 W. R., Cr., 70

4. FINE.

83. ——— Specific fine on each prisoner.—*Trial of several prisoners.*—A sentence of fine must impose a specific fine on each prisoner. ANONYMOUS . . . . . 5 Mad., Ap., 5

84. ——— Wrongful confinement.—*Penal Code, s. 344.*—Fine alone is not a legal sentence for a prisoner convicted under section 344 of the Penal Code. REG. *v.* BAHIRJI BIN KRISHNAJI [1 Bom., 39

85. ——— Separate offences.—*Alternative sentence allowed only in one.*—Where a conviction has been had under two sections of the Penal Code, in one of which only an alternative sentence of imprisonment or fine is allowed, a sentence of fine cannot be passed. QUEEN *v.* BHOOBUN MOHUN [11 W. R., Cr., 39

86. ——— Offence under Act XIX of 1838, s. 13.—*Omission of owner of harbour craft to produce certificate of registry.*—The Legislature when it enacted in section 13 of Act XIX of 1838 that persons who committed certain acts should be "subject to a fine of ten times the fee," or "subject to a fine of ten rupees," intended that the penalties so specified should be inflicted in full. The owner of a harbour craft having been fined R2 for omission to produce a certificate of registry when demanded by the customs authorities, the High Court annulled the sentence as being illegal, and inflicted the full penalty of ten rupees. EMPRESS *v.* MHASNYA RAMA [I. L. R., 7 Bom., 280

87. ——— Theft in dwelling-house.—*Penal Code, s. 380.—Imprisonment.*—On conviction for theft in a dwelling under section 380 of the Penal Code, fine cannot be substituted in lieu of imprisonment, though it may be added to imprisonment. DULLOO *v.* ZAINAH BEBEE . 16 W. R., Cr., 17

88. ——— Offence under Act XVIII of 1854 (Railway Act), s. 34.—*Imprisonment.*—

SENTENCE—*continued.*

4. FINE—*continued.*

Offence under Act XVIII of 1854 (Railway Act), s. 34—*continued.*

Section 34 of Act XVIII of 1854 prescribes the mode in which fines levied under that Act are to be recovered. It is only on the return of the warrant of distress unsatisfied, or on the Magistrate being otherwise satisfied that no sufficient distress exists, that imprisonment can be imposed. ANONYMOUS [6 Mad., Ap., 37

89. ——— Transportation with fine.—*Levy of portion of fine.*—When a fine is imposed in addition to transportation, and the whole or part of the fine is levied, it is the duty of the Sessions Judges to inform the authorities at Port Blair of the fact. ANONYMOUS . . 5 Mad., Ap., 44

5. IMPRISONMENT.

(*a*) IMPRISONMENT GENERALLY.

90. ——— False statement on oath to public servant.—*Penal Code, s. 181.—Illegal sentence.*—A sentence under section 181 of the Penal Code which awards no term of imprisonment is illegal. ANONYMOUS . . . . . 4 Mad., Ap., 18

91. ——— Accumulation of sentences of imprisonment.—*Criminal Procedure Code, 1861, s. 46.—Sentences not simultaneous.*—Sentences of imprisonment might be accumulated beyond the period of fourteen years, notwithstanding section 46 of the Criminal Procedure Code, which limit had reference only to sentences passed simultaneously, or passed upon charges tried simultaneously. QUEEN *v.* PUBAN . . . . . 7 W. R., Cr., 1

92. ——— Criminal Procedure Code, 1872, s. 309.—*Penal Code, s. 65.*—Section 309 of the Criminal Procedure Code did not extend the period of imprisonment which might be awarded by a Magistrate under section 65 of the Penal Code; it only regulated the proceedings of Magistrates whose powers were limited. EMPRESS *v.* DARBA [I. L. R., 1 All., 461

93. ——— Commencement of sentence of imprisonment.—*Postponement of sentence.—Criminal Procedure Code (Act XXV of 1861), ss. 46, 47, 48, and 421.*—A sentence of imprisonment ought to commence from the time that the sentence is passed, unless there is some lawful reason for ordering it to commence at some future period. Except as in the cases provided for by sections 46, 47, and 48 of the Criminal Procedure Code, a Magistrate cannot authorise a sentence passed by him to take place from some future date, nor, except as provided for by section 421 of the Code of Criminal Procedure, can a sentence, which is to take place immediately, be suspended. IN THE MATTER OF KRISHNANAND BHUTTACHARJEE [3 B. L. R., A. Cr., 50

S. C. IN THE MATTER OF KISHEN SOONDER BHUTTACHARJEE . . 12 W. R., Cr., 47

SENTENCE—*continued.*

5. IMPRISONMENT—*continued.*

(*a*) IMPRISONMENT GENERALLY—*continued.*

94. ——— **Confirmation of sentence.**—*Criminal Procedure Code, 1872, s. 36.*—Section 36 of the Criminal Procedure Code, as regards the necessity for confirmation of the sentence by the Sessions Judge, referred to cases in which the sentence of imprisonment was a sentence of upwards of three years, without including any additional sentence as to fine or whipping. IN THE MATTER OF THE PETITION OF SUMSHER KHAN. EMPRESS *v.* SUMSHER KHAN . . . I. L. R., 6 Calc., 624

95. ——— **Attempt to commit offence.**—*Penal Code, s. 511.*—The term of imprisonment for attempting to fabricate false evidence for the purpose of being used in a stage of a judicial proceeding cannot extend beyond one half of seven years. QUEEN *v.* SOONDUR PUTNAICK [3 W. R., Cr., 59

96. ——— **Offence under Act XIII of 1859, s. 2.**—*Form of sentence.*—A sentence of imprisonment should not be announced beforehand in the order directing performance of the contract in a case under Act XIII of 1859, section 2, but should follow on a complaint of non-compliance. ANONYMOUS . . . . . 6 Mad., Ap., 24

97. ——— **Interruption of public servant in course of judicial proceeding.**—*Penal Code, s. 228.—Criminal Procedure Code, 1861, s. 163.*—In a case of interruption to a public servant in a stage of a judicial proceeding, under section 228, Penal Code, a sentence of imprisonment cannot be passed under section 163 of the Code of Criminal Procedure. IN THE MATTER OF BUHRAM KHAN [10 W. R., Cr., 47

98. ——— **Dacoity.**—*Penal Code, s. 395.*—A sentence of fourteen years' imprisonment cannot be passed for dacoity under section 395 of the Penal Code. QUEEN *v.* HAROO RUJWAR [13 W. R., Cr., 27

99. ——— **Disobedience to order of public servant.**—*Rigorous imprisonment.—Penal Code, s. 188.*—A sentence of rigorous imprisonment passed by a Magistrate, under section 188 of the Penal Code, for disobedience to an order duly promulgated by a public servant, altered to one of simple imprisonment, as the Magistrate's finding did not show that the case came within the latter part of the section, in which case alone the infliction of rigorous imprisonment was authorised. REG. *v.* RATANRAV BIN MAHADEVRAV CHAVAN [3 Bom., Cr., 32

100. ——— **Giving false evidence.**—*Penal Code, s. 193.—Duty of Court.*—Under section 193 of the Penal Code, it is obligatory upon the Court, in every case of conviction under that section, to pass some sentence of imprisonment. EMPRESS *v.* KHODAI SINGH . . . . 3 C. L. R., 527

SENTENCE—*continued.*

5. IMPRISONMENT—*continued.*

(*a*) IMPRISONMENT GENERALLY—*continued.*

101. ——— **False evidence to procure acquittal of guilty person.**—*Measure of sentence.—Held* by the majority of the Court that a sentence of five years' imprisonment was not excessive in the case of a man convicted of making a false statement in a judicial proceeding, with the intention of defeating the ends of justice by procuring the acquittal of a guilty person. QUEEN *v.* ANOO [W. R., 1864, Cr., 16

102. ——— **Deliberately fabricating false evidence.**—*Measure of sentence.*—A sentence of three years' imprisonment is not too severe a punishment for a deliberate attempt to pervert justice by fabricating in one office false statements to be designedly and corruptly used in another. QUEEN *v.* KALACHAND BOIDYO . . 8 W. R., Cr., 18

103. ——— **Grievous hurt.**—*Penal Code, s. 325.—Fine.*—The offence of voluntarily causing grievous hurt is punishable, not by fine alone, but by imprisonment, the offender being also liable to fine. QUEEN *v.* SHARODA PESHAGUR . 2 W. R., Cr., 32

QUEEN *v.* MENAZOODIN . 2 W. R., Cr., 33

104. ——— **House-breaking.**—*Whipping.—Rigorous imprisonment.—Commutation of punishment.*—Upon conviction of the offence of house-breaking, the accused was sentenced by the Deputy Magistrate to six months' rigorous imprisonment, and to be whipped. On appeal, the Judge found that, as this was the first offence, the additional punishment of whipping was illegal, and, setting aside so much of the sentence, passed a sentence of three months' rigorous imprisonment, in addition to the six months' rigorous imprisonment passed by the Deputy Magistrate. *Held* that the commutation of the punishment was illegal QUEEN *v* BANDA ALI [6 B. L. R., Ap., 95 : 15 W. R., Cr., 7

105. ——— **Offence under Mad. Police Act, 1859, s. 48.**—*Rigorous Imprisonment.—Measure of sentence.*—A sentence of rigorous imprisonment under conviction for an offence under section 48, Act XXIV of 1859, was illegal. ANONYMOUS [5 Mad., Ap., 35

106. ——— **Offence under Registration Act, VIII of 1871, s. 80.**—*General Clauses Consolidation Act, I of 1868, s. 2, cl. 18.—Rigorous and simple imprisonment.—Held* that under Act I of 1868, section 2, clause 18, the Sessions Judge should have specified in his warrant whether the imprisonment awarded to a person convicted under section 80, Act VIII of 1871, should be simple or rigorous, but that as he had omitted this at the proper time, simple imprisonment should now be set forth in the sentence and warrant. LEGAL REMEMBRANCER *v.* RADHOO CHURN ASH. GOVERNMENT *v.* RADHOO CHURN ASH . . . . . 18 W. R., Cr., 3

107. ——— **Indefinite period of imprisonment in default of security, Order for.**—An order directing an accused "to be imprison-

SENTENCE—*continued.*

5. IMPRISONMENT—*continued.*

(*a*) IMPRISONMENT GENERALLY—*continued.*

Indefinite period of imprisonment in default of security, Order for—*continued.*

ed until he gives security" is bad; a definite period for such imprisonment, not exceeding one year, should be stated in the order. MAILAMDI FAKIR *v.* TARIPULLA PRAMANIK . **I. L. R., 8 Calc., 644**

108. ——— Receiving stolen property. —*Criminal Procedure Code, 1872, s. 505.—Addition to sentence of order for security for good behaviour.* —*P.* was convicted by a Magistrate of the first class of dishonestly receiving stolen property. He confessed on his trial that he had twice previously been convicted of theft. He was sentenced to be whipped, to be rigorously imprisoned, and on the expiration of the term of imprisonment to furnish security for good behaviour. *Held* that the order requiring security should not have formed part of the sentence for the offence of which *P.* was convicted. A proceeding should have been drawn out representing that the Magistrate was satisfied, from the evidence as to general character adduced before him in the case, that *P.* was by repute an offender within the terms of section 505 of Act X of 1872, and therefore security would be required from him, and an order should have been recorded to the effect that, on the expiry of imprisonment, *P.* should be brought up for the purpose of being bound. EMPRESS *v.* PARTAB **[I. L. R., 1 All., 666**

(*b*) IMPRISONMENT AND FINE.

109. ——— Case under s. 21, Cattle Trespass Act, 1871.—*Sentence of fine or imprisonment.—Default in payment of compensation.*—It is not lawful to pass a sentence of fine or imprisonment in default of payment of the compensation awarded in a matter under section 21 of the Cattle Trespass Act, 1871. IN THE MATTER OF KETABDI MUNDUL **[2 C. L. R., 507**

110. ——— Contempt of Court.—*Imprisonment added to fine. - Trial of case of contempt.* —Where, in punishing for contempt of Court, the summary procedure sanctioned by section 163 of the Code of Criminal Procedure, 1861, is followed, the Court must sit as the Court before which the offence was committed, and not in any other capacity, and is bound to take cognisance of the contempt on the day on which it was committed. In such a case imprisonment cannot be added to fine as a punishment. In a case in which it was dealt with in a summary manner, the offence must, under section 163, be tried by an officer other than the person before whom the contempt was committed. QUEEN *v.* CHUNDER SEEKUR ROY . . . . **12 W. R., Cr., 18**

111. ——— Making false charge.— *Penal Code, s. 211.—Imprisonment with or without fine.*—A prisoner convicted under the 2nd clause of section 211 of the Penal Code should be sentenced to imprisonment, with or without fine, and not to fine alone. REG. *v.* RAMA BIN RABHAJI . **1 Bom., 34**

SENTENCE—*continued.*

5. IMPRISONMENT—*continued.*

(*b*) IMPRISONMENT AND FINE—*continued.*

112. ——— Conviction under Military Cantonment Act, Bombay, III of 1867.— *Simultaneous sentence of fine and imprisonment.*— In cases of convictions under sections 11 and 12 of the Military Cantonment Act (Bombay Act III of 1867), a simultaneous sentence of fine and imprisonment in default of the payment of the fine can only be awarded, under section 14 of the Act, in the event of no property sufficient for the payment of the fine being found. REG. *v.* LADU . **7 Bom., Cr., 87**

113. ——— Conviction under s. 48, Act XXIV of 1859.—*Mad. Act V of 1865.*— *Procedure to enforce fine.*—Persons convicted under section 48 of the Police Act (XXIV of 1859) are not liable to both fine and imprisonment in default of payment. The procedure to be followed in enforcing the fine is that laid down in Madras Act V of 1865. ANONYMOUS . . . **3 Mad., Ap., 9**

ANONYMOUS . . . **7 Mad., Ap., 22**

114. ——— Attempt to commit suicide: —*Penal Code, s. 309.*—A prisoner found guilty, under section 309 of the Penal Code, of an attempt to commit suicide, must be sentenced to some imprisonment, and not merely to payment of a fine. REG. *v.* CHANVIOVA . . . **1 Bom., 4**

(*c*) IMPRISONMENT IN DEFAULT OF FINE.

115. ——— Additional imprisonment. —*Rigorous imprisonment.*—Additional imprisonment in default of payment of fine for the offence of dacoity must be rigorous. QUEEN *v.* SRIMONTO KOTAL . . . . **7 W. R., Cr., 31**

116. ——— Limitation of imprisonment in summary trials.—*Fine.—Criminal Procedure Code, 1882, ss. 32, 33, 262.—Penal Code, s. 67.—Act VIII of 1882.*—In cases of simple imprisonment ordered as a process for enforcement of payment of fine, the rule of section 262 of the Criminal Procedure Code limiting the period of imprisonment in summary trials does not apply, as that section only refers to substantive sentences of imprisonment. EMPRESS *v.* ASGHAR ALI **[I. L. R., 6 All., 61**

117. ——— Presidency Magistrates' Act, 1877, s. 167.—*Award of substantive sentence of imprisonment.*—The words "to imprisonment for a term exceeding six months or to fine exceeding R200" in section 167 of the Presidency Magistrates' Act (IV of 1877) are confined in their meaning to substantive sentences, and cannot be extended to include an award of imprisonment in default of payment of fine, the operation of which is contingent only on the fine not being paid. IN THE MATTER OF JOTHARAM DAVAY **I. L. R., 2 Mad., 30**

118. ——— Committing affray.—*Penal Code, s. 160.—Criminal Procedure Code, 1872, s. 309.*—Prisoners were convicted of having committed

SENTENCE—*continued.*

5. IMPRISONMENT—*continued.*

(*c*) IMPRISONMENT IN DEFAULT OF FINE—*continued.*

Committing affray—*continued.*

an offence punishable under section 160 of the Penal Code, and were sentenced to pay a fine of R25 each, or in default to be rigorously imprisoned for thirty days, the full term of imprisonment under the section. *Held* by a majority of the High Court (KINDERSLEY, *J.*, dissenting) that having regard to the provisions of section 309 of the Criminal Procedure Code, Act X of 1872, the sentence was legal. REG. *v.* MUHAMMAD SAIB . **I. L. R., 1 Mad., 277**

119. ——— Assault.—*Penal Code, ss. 65 and 352.*—In a case of assault, a sentence inflicting a fine of R50 and awarding imprisonment for one month in default of payment of the fine is illegal, with reference to sections 65 and 352 of the Penal Code. IN THE MATTER OF JEHAN BUKSH **[16 W. R., Cr., 42**

120. ——— Sentence under Bom. Act VII of 1867, s. 31.—*Simple imprisonment.*—Imprisonment in default of payment of a fine inflicted under Act (Bombay) VII of 1867, section 31, ought to be simple, not rigorous. REG. *v.* BECHAR KHUSHAL . . . . . **5 Bom., Cr., 43**

121. ——— Conviction under Cattle Trespass Act (III of 1857).—*Fine and imprisonment.*—Certain persons were convicted under section 13, Act III of 1857, and sentenced to fifteen days' imprisonment and a fine, or in default imprisonment for the term of seven days. No provision was made in the Act for awarding imprisonment in default of payment of fine, but the prisoners were liable under the section to six months' imprisonment and a fine of R500. The High Court refused to interfere with the sentence passed. ANONYMOUS **[5 Mad., Ap., 21**

But *see* ANONYMOUS . . **7 Mad., Ap., 22**

122. ——— Contempt of Court.—*Criminal Procedure Code, 1861, s. 163.—Power of Magistrate.*—The Magistrate convicted the defendant of contempt of Court under section 163 of the Code of Criminal Procedure, and sentenced him to pay a fine of R10, or in default two days' imprisonment. *Held* that the Magistrate had not exceeded his powers. ANONYMOUS . . . . **6 Mad., Ap., 16**

123. ——— Offence under Income Tax Act (IX of 1869).—*Power of Magistrate.*—A Magistrate has no power under section 25, Act IX of 1869, to sentence to imprisonment in default of the payment of the fine imposed for not paying income tax. QUEEN *v.* NODIAR CHAND KOONDOO **[14 W. R., Cr., 70**

124. ——— Offence under Income Tax Acts (IX of 1869 and XXIII of 1869).—*General Clauses Consolidation Act (I of 1868), s. 5.*—The Income Tax Act (Act IX of 1869, supplemented by Act XXIII of 1869) having been passed subsequently to the General Clauses Act (No. I of 1868), section 5 of the latter authorised the award of imprisonment in default of payment of the fine imposed under section 25 of the former. REG. *v.* SANGAPA BIN BASHIAPA . . . **7 Bom., Cr., 76**

SENTENCE—*continued.*

5. IMPRISONMENT—*continued.*

(*c*) IMPRISONMENT IN DEFAULT OF FINE—*continued.*

Offence under Income Tax Acts (IX of 1869 and XXIII of 1869)—*continued.*

125. ——— Offences under Mad. Abkari Act, III of 1864, ss. 21, 22, 30, 32.—*Penal Code, s. 64.*—Prisoners were sentenced to fines under sections 21 and 22 of Madras Act III of 1864, and in default of payment of fine to rigorous imprisonment. *Held* that as fine in these cases was the only assignable punishment, and by sections 30, 31, and 32 a specified procedure is laid down for the levy of the penalty, section 64 of the Penal Code had no application. ANONYMOUS . **6 Mad., Ap., 40**

126. ——— Offence under License Acts (XXI of 1867, s. 15, and XXIX of 1867, s. 3).—*Power of Magistrate.*—Where a Magistrate sentenced a person, who had neglected to take out a license, under Act XXI of 1867, section 15, and Act XXIX of 1867, section 3, to pay a fine of R10, and in default of payment to suffer seven days' simple imprisonment, the High Court reversed so much of the sentence as awarded imprisonment, as the trying Magistrate had under the Act no power to make such an order. REG. *v.* CHENAPPA VALAD NAGAPPA **[5 Bom., Cr., 44**

127. ——— Neglect to comply with order for maintenance.—*Criminal Procedure Code, 1882, s. 488.—Subsequent offer to pay, Effect of, on sentence.*—A sentence of imprisonment awarded under section 488 of the Code of Criminal Procedure for wilful neglect to comply with an order to pay maintenance is absolute, and the defaulter is not entitled to release upon payment of the arrears due. BIYACHA *v.* MOIDIN KUTTI . **[I. L. R., 8 Mad., 70**

128. ——— Committing public nuisance.—*Penal Code, s. 290.*—The sentence of imprisonment passed in default of the payment of a fine inflicted under section 290 of the Penal Code (for committing a public nuisance) should be one of simple, not rigorous, imprisonment. REG. *v.* SANTU BIN LAKHAPPA KORE . . **5 Bom., Cr., 45**

129. ——— *Penal Code, s. 290.*—A sentence of rigorous imprisonment in default of payment of fine for the offence of nuisance under section 290 of the Penal Code is legal. QUEEN *v.* YELLAMANDU . . **I. L. R., 5 Mad., 157**

Contra, see REG. *v.* SANTU BIN LAKHAPPA KORE **[5 Bom., Cr., 45**

130. ——— Salt Act, XVII of 1840, Breach of.—*Mad. Reg. I of 1805.*—A sentence of imprisonment in default of payment of a fine im-

SENTENCE—*continued.*

5. IMPRISONMENT—*continued.*

(c) IMPRISONMENT IN DEFAULT OF FINE—*continued.*

Salt Act, XVII of 1840, Breach of—*continued.*

posed under the provisions of Act XVII of 1840 is illegal. QUEEN *v.* AMIRTAM [I. L. R., 4 Mad., 335

131. ——— *Substantive sentence.—Mad. Reg. I of 1805.*—Act XVII of 1840 authorises a substantive sentence of imprisonment. ANONYMOUS CASE . I. L. R., 4 Mad., 335, note

132. ——— **Offence under Salt, Revenue Act, XXXI of 1850.**—*Criminal Procedure Code, 1861, ss. 21 and 45.—Penal Code, s. 65.*—Section 45 of the Criminal Procedure Code made applicable the provisions of section 65 of the Penal Code not only to offences falling under that Code as defined in its 40th section, but to every case in which a Magistrate had jurisdiction under section 21 of the Criminal Procedure Code. Imprisonment for one month awarded in default of payment of a fine under section 3 of the Salt Revenue Act (XXXI of 1850) was accordingly reduced to three weeks' simple imprisonment. REG. *v.* VITHOBA BIN SOMA [5 Bom., Cr., 61

133. ——— **Addition to sentence of further imprisonment in default of engagement to keep the peace.**—*Criminal Procedure Code, 1869, s. 280.*—The prisoner was convicted of an offence punishable under section 307 of the Penal Code. In addition to the sentence passed upon him under that section, the Sessions Judge directed, under section 280 of the Code of Criminal Procedure, that, at the expiration of the term of imprisonment imposed, the prisoner do execute a formal engagement in a sum of R100 for keeping the peace towards the prosecutor for a period of one year, and in default to undergo simple imprisonment for that period. The High Court set aside so much of the sentence as directed the imprisonment of the prisoner in default of entering into the required engagement. QUEEN *v.* SELLAM . . . . . 6 Mad., 25

134. ——— **Imprisonment in default of giving security for good behaviour.**—*Criminal Procedure Code, 1861, s. 296.*—Where a prisoner, in addition to a sentence passed upon him, is required to furnish security for his good behaviour, under section 296 of the Criminal Procedure Code, for a period of one year, his imprisonment in default of providing such security must commence to run from the date of the order to furnish security, and cannot be directed to run from the expiry of the sentence passed upon the prisoner. QUEEN *v.* TORAL GUJAR . . . . . 3 N. W., 126

6. SENTENCE AFTER PREVIOUS CONVICTION.

135. ——— **Penal Code, s. 75.**—*Receiving stolen property acquired by dacoity.*—Where soon after his release on expiry of a sentence of

SENTENCE—*continued.*

6. SENTENCE AFTER PREVIOUS CONVICTION—*continued.*

Penal Code, s. 75—*continued.*

seven years' imprisonment on conviction of "receiving stolen property acquired by dacoity" a person is convicted of house-breaking and theft, he is sufficiently punished by a sentence of seven years' transportation; a sentence of transportation for life is too severe. It is not the intention of the Legislature that a previous conviction should so enormously enhance the heinousness of petty offences. IN THE MATTER OF SHAMJEE NASHYO . 1 C. L. R., 481

136. ——— *Previous convictions of offence before Penal Code came into operation.*—*Held* by the majority of the Court (CAMPBELL, *J.*, dissenting) that section 75 of the Penal Code only applies to conviction of offences committed after the Code came into operation. QUEEN *v.* HURPAUL [4 W. R., Cr., 9

REG. *v.* KUSHYA BIN YESU . 4 Bom., Cr., 11

137. ——— *Previous conviction not under Penal Code.*—An accused person can only be punished under section 75 of the Penal Code where the previous conviction has been under that Code. BUDHUN RUJWAR *v.* EMPRESS [10 C. L. R., 392

138. ——— *Evidence of previous conviction.*—To warrant a sentence awarding an additional punishment under section 75 of the Penal Code, as on a second conviction, the evidence that there was a previous conviction against the accused under the Penal Code must be clear and precise. QUEEN *v.* NAIMUDDI SHEIKH *alias* ABBAS SHEIKH [14 W. R., Cr., 7

139. ——— *Amalgamation of sentence.—Transportation.*—Sentence of transportation for fourteen years under section 392 of the Penal Code annulled, as the offence for which such sentence was passed was not committed subsequently to any conviction; and section 75 had therefore been improperly applied. *Semble,*—That a Sessions Judge cannot (under section 75 of the Penal Code or otherwise) by amalgamating a sentence which he is competent to pass upon a prisoner with a sentence under which such prisoner is already undergoing imprisonment, and commuting the latter sentence, condemn such prisoner to a longer period of transportation than he is liable to suffer for the crime of which he has last been convicted. REG. *v.* SAKYA VALAD KAVJI . . . . . 5 Bom., Cr., 36

140. ——— *Attempt to commit offence.—Penal Code, ch. XXIII.*—Section 75 of the Penal Code is restricted to offences under Chapters XII and XVII of the Penal Code when the term of imprisonment awardable is three years' imprisonment and upwards, and does not refer to an attempt to commit any of those offences (Chapter XXIII), nor can any case be brought within it merely because the punishment that may be given for it extends to three years and upwards. QUEEN *v.* DAMU HAREE [21 W. R., Cr., 35

SENTENCE—*continued.*

6. SENTENCE AFTER PREVIOUS CONVICTION—*continued.*

Penal Code, s. 75—*continued.*

141. ——————— *Previous convictions of offence not under ch. XVII of Penal Code.*—An offender is only liable to enhanced punishment, under section 75 of the Penal Code, for an offence punishable under Chapter XVII, after having been punished with imprisonment for the same offence or for an offence punishable under the same chapter. QUEEN *v.* PUBON . . . . . **5 W. R., Cr., 66**

142. ——————— *Previous offence under ch. XII or ch. XVII of the Penal Code.*—*Held* that where a person commits an offence punishable under Chapter XII or Chapter XVII of the Penal Code punishable with three years' imprisonment, and, previously to his being convicted of such offence, commits another such offence punishable under either of such chapters, he is not subject on being convicted of the second offence to the enhanced punishment provided in section 75 of the Penal Code. EMPRESS *v.* MEGHA . . . . . **I. L. R., 1 All., 637**

143. ——————— *Additional sentence.*—*Sufficiency of sentence.*—The object of section 75 of the Penal Code is to provide for an additional sentence, not a less severe sentence, on a second conviction. Recourse should not be had to that section if the punishment for the offence committed is itself sufficient. SHEO SARAN TATO *v* EMPRESS **[I. L. R., 9 Calc., 877**

144. ——————— *Enhanced punishment.*—*Transportation for seven years.*—*Imprisonment.*—The accused having been previously convicted of offences punishable, under Chapter XII or Chapter XVII of the Penal Code, with imprisonment for a term of three years or upwards, was subsequently convicted of an offence under one of those chapters punishable with imprisonment which may extend to three years, and sentenced to imprisonment for seven years. *Held* that a sentence of imprisonment for seven years was illegal. Under section 75 of the Penal Code the accused might be transported for life, but he could not be imprisoned for a longer period than six years. EMPRESS *v.* MAHADU **[I. L. R., 6 Bom., 690**

145. ——————— *Further sentence after actual sentence.*—*Penal Code, s. 46.*—Where a first class Subordinate Magistrate sentenced a prisoner to six months' imprisonment, under section 457 of the Penal Code, and finding that the prisoner was liable to enhanced punishment under section 75 of the Penal Code, sentenced the prisoner to six months' further imprisonment, under section 46 of the Code of Criminal Procedure, the latter sentence was set aside by the High Court. ANONYMOUS **[5 Mad., Ap., 3**

146. ——————— *Prisoner having had several previous convictions.*—Where the prisoner had already been several times convicted of similar offences, the Magistrate should have committed him to the Court of Session, with a view to his being punished as after previous conviction under section 75 of the Penal Code. REG. *v.* GANU LADU **[2 Bom., 132; 2nd Ed., 126**

147. ——————— *Imprisonment.*—*Power of Magistrate.*—*Counterfeiting marks on documents.*—The prisoner was convicted under section 475 of the Penal Code, and having been previously convicted of an offence punishable under Chapter XVII of the Code, the Magistrate sentenced him to four years' rigorous imprisonment. *Held* that the Magistrate had power to pass sentence of two years' imprisonment only under section 75, Penal Code. ANONYMOUS . . **6 Mad., Ap., 3**

148. ——————— *Attempt to commit offence.*—*Penal Code, ch. XVII, s. 457.*—*Lurking house-trespass.*—A person having been convicted of an offence punishable under section 457 (Chapter XVII) of the Penal Code, was subsequently guilty of an attempt to commit such an offence. *Held* that the provisions of section 75 of the Penal Code were not applicable to such person. EMPRESS *v.* RAM DAYAL **[I. L. R., 3 All., 773**

149. ——————— *Conviction of an attempt to commit theft.*—*Previous conviction of theft.*—(MELVILL, *J., dissentiente*)—If a person who has been convicted of an offence punishable, under Chapter XII or Chapter XVII of the Penal Code, with imprisonment for a term of three years or upwards, is convicted of an attempt to commit any such offence, he does not thereby become liable to the enhanced punishment allowed by section 75 of the Code. EMPRESS *v.* NANA RAHIM **[I. L. R., 5 Bom., 140**

7. SOLITARY CONFINEMENT.

150. ——————— **s. 74.**—*Duration of solitary confinement.*—Solitary confinement must not be imposed for the whole term of a person's imprisonment. Under section 74 of the Penal Code, it is to be imposed at intervals. IN THE MATTER OF NYAN SUK METHER . . **3 B. L. R., A. Cr., 49**

151. ——————— **s. 73.**—*Criminal Procedure Code, ss. 32 (a), 262.*—*Summary trial.*—It is not illegal to impose solitary confinement as part of the sentence in a case tried summarily. EMPRESS *v.* ANNU KHAN . . . **I. L. R., 6 All., 83**

8. TRANSPORTATION.

152. ——————— **Measure of punishment.**—*Murder.*—A sentence of transportation other than for life is illegal in the case of a prisoner convicted of murder. QUEEN *v.* BHOOTOO MULLICK **[6 W. R., Cr., 85**

153. ——————— *Reasons for sentence.*—*Criminal Procedure Code, 1861, s. 380.*—

SENTENCE—*continued.*

8. TRANSPORTATION—*continued.*

Measure of punishment—*continued.*

Section 380 of the Code of Criminal Procedure, 1861, did not authorise a Sessions Judge to sentence a prisoner convicted of murder to anything less than transportation for life, and it required the Judge, if he sentence such prisoner to transportation for life instead of capitally, to assign his reasons for so doing. QUEEN *v.* DABEE . **W. R., 1864, Cr., 27**

154. ——— *Unpremeditated murder.*—Where murder is not premeditated, transportation for life is a sufficient punishment. QUEEN *v.* RAM CHURN KURMOKAR **[24 W. R., Cr., 28**

155. ——— *Penal Code, ss. 307 and 394.—Attempt to murder.—Causing hurt in committing robbery.*—Neither under section 307 nor under section 394 of the Penal Code can a prisoner be sentenced to fourteen years' transportation, the punishment awardable under those sections being transportation for life, or rigorous imprisonment for ten years, with fine. QUEEN *v.* BHAMOUR DOOSADH . . . . **7 W. R., Cr., 41**

156. ——— *Waging war with Power in alliance with the Queen.*—The punishment for a prisoner convicted of waging war with an Asiatic Power in alliance with the Queen must, under the Penal Code, be either transportation for life or imprisonment of either description which may extend to seven years. Where such a prisoner was sentenced to ten years' transportation the sentence was held to be illegal. QUEEN *v.* KEIPA SINGH **[3 W. R., Cr., 16**

157. ——— *Killing a wizard.*—A sentence of death was commuted into one of transportation for life in the case of a prisoner who committed murder in the belief that the deceased was a wizard and the cause of his child's illness, and that by killing the deceased the child's life might be saved. QUEEN *v.* OORAM SUNGRA **[6 W. R., Cr., 82**

158. ——— *Murder by way of retaliation.*—The sentence of death reduced to transportation for life in a case of murder committed rather by way of retaliation for injury than under the influence of any worse passion. QUEEN *v.* TONOO . . . . . **6 W. R., Cr., 46**

159. ——— *Reckless assault with deadly weapon.*—The punishment of transportation for life was inflicted instead of capital punishment in a case where there was no intention to cause death, but a reckless assault with a deadly weapon which inflicted an injury likely in the ordinary course of nature to cause death. QUEEN *v.* KHOAZ SHEIKH . . . . . **5 W. R., Cr., 20**

160. ——— **Commutation of capital sentence.**—*Likelihood of accident at execution.*—Where the condition of the convict rendered it likely that, if he were hanged, decapitation would ensue, the sentence of death was commuted to one for transportation for life. BOODHOO JOLAHA *v.* EMPRESS . . . . . **2 C. L. R., 215**

161. ——— **Penal Code, s. 59.**—*Measure of punishment.—Penal Code, s. 412.*—A sentence of transportation under sections 412 and 59 of the Penal Code cannot exceed ten years. QUEEN *v.* MOHANUNDO BHUNDARY . . . **5 W. R., Cr., 16**

162. ——— *Measure of punishment.—False evidence and forgery.*—Under section 59 of the Penal Code no sentence of transportation for a shorter period than seven years can be passed on any charge. Therefore where a prisoner was convicted on separate charges of giving false evidence in a judicial proceeding, under section 193, and of forgery under section 467, and sentenced to seven years' transportation for the first offence, and a further period of transportation for three years for the second offence, the second sentence was quashed as illegal. QUEEN *v.* GOUR CHUNDER ROY **[8 W. R., Cr., 2**

163. ——— *Criminal Procedure Code, 1861, s. 59.—Power to commute punishment after sentence of imprisonment.*—Under section 59 of the Penal Code, a Court can sentence to transportation only in a case in which the offence is punishable with imprisonment for seven years or upwards. It may, in passing sentence for the offence, commute the imprisonment to transportation; but it cannot commute the sentence after the sentence of imprisonment has been passed. QUEEN *v.* PREM CHUND OUSOWAL . . **W. R., 1864, Cr., 35**

164. ——— *Commutation of sentence after amalgamating two sentences.*—To bring section 59 of the Penal Code into operation, the punishment awarded on one offence alone must be seven years' imprisonment, and cannot be made up by adding two sentences together, and then commuting the amalgamated period to transportation. QUEEN *v.* MOOTKEE KORA . . **2 W. R., Cr., 1**

QUEEN *v.* TONOORAM . . **3 W. R., Cr., 44**

QUEEN *v.* SHONAULLAH . **5 W. R., Cr., 44**

165. ——— *Commutation of sentence.—Imprisonment in default of payment of fine.*—Section 59 of the Penal Code does not authorise the substitution of transportation for the imprisonment to which a Court can sentence an offender in default of payment of fine. KUNHUSSA *v.* QUEEN . . . . **I. L. R., 5 Mad., 28**

166. ——— *Imprisonment.—Penal Code, s. 377.—Unnatural offence.*—When an offence is punishable either with transportation for life or imprisonment for a term of years, if a sentence of transportation for a term less than life is awarded, such term cannot exceed the term of imprisonment. QUEEN *v.* NAIADA **[I. L. R., 1 All., 43**

SENTENCE—*continued.*

8. TRANSPORTATION—*continued.*

Penal Code, s. 59—*continued.*

167. ——— *Commutation of sentence.—Powers under Act XV of 1862, s. 1.—Imprisonment or transportation.*—An officer who, in the exercise of the powers described in section 1, Act XV of 1862, had passed a sentence of imprisonment for seven years, had power, under section 59 of the Penal Code, to commute that sentence into one of transportation for the like period. JACKSON, *J.*, dissented. QUEEN *v.* BOODHOOA

[B. L. R., Sup. Vol., 869: 9 W. R., Cr., 6

168. ——— *Commutation of sentence.—Penal Code, ss. 376, 511.—Attempt at rape.*—*A.* was convicted of an attempt to commit rape, and was sentenced by the Judge to rigorous imprisonment for seven years, which he commuted, under section 59 of the Penal Code, to transportation for the same term. *Held* that, under sections 376 and 511 of the Penal Code, a sentence of imprisonment for the offence committed could not be for a longer term than five years, and such sentence could not be commuted, under section 59, to transportation for a longer term. QUEEN *v.* MERIAM

[1 B. L. R., A. Cr., 5: 10 W. R., Cr., 10

169. ——— *Commutation of sentence.—Imprisonment.*—When the law gives the alternative punishments of death, transportation for life, or rigorous imprisonment extending to ten years, a sentence of fourteen years' transportation is illegal. If the Judge thinks it proper to pass a sentence of transportation short of life, he should pass a sentence of imprisonment for the term fixed by law, and then, under section 59, change it to transportation for that period. QUEEN *v.* RUGHOO

[W. R., 1864, Cr., 30

170. ——— **Successive sentences of transportation.**—*Criminal Procedure Code, 1861, s. 46.*—A sentence of transportation for two periods, each of seven years, one sentence to commence after the expiration of the other, was not warranted by section 46 of the Code of Criminal Procedure, that section allowing such sentences only when the penalties consist of imprisonment. QUEEN *v.* KASSIM ALLY . . . . . **11 W. R., Cr., 10**

9. WHIPPING.

171. ——— **Sentence giving both whipping and imprisonment.**—*Power of Magistrate.—Act XIII of 1856, s. 27.*—Act XIII of 1856, section 27, gave a Magistrate power to award either imprisonment or whipping, but not both, and a sentence which gave both was illegal. QUEEN *v.* FYZO . . . . . **Bourke, O. C., 269**

172. ——— **Person convicted of two or more offences under Penal Code.**—*Imprisonment and whipping.*—When a person is convicted at one time of two or more offences punishable under the Penal Code, the Court is empowered to sentence the prisoner in the one case to rigorous imprisonment and in the other case to whipping under Act VI of 1864. ANONYMOUS

[5 Mad., Ap., 18

SENTENCE—*continued.*

9. WHIPPING—*continued.*

Person convicted of two or more offences under Penal Code—*continued.*

173. ——— **Ground for sentence.**—*Statement of grounds in judgment.*—When whipping is imposed as a punishment, the grounds for that form of punishment should be set out in the judgment. BADIYA *v.* QUEEN . **I. L. R., 5 Mad., 158**

10. POWER OF HIGH COURT AS TO SENTENCES.

(*a*) GENERALLY.

174. ——— **Power of High Court to interfere with sentence.**—After a sentence has once been passed by a competent authority, the High Court has no more power to interfere with it than a private individual, except upon appeal, or on a reference, or by way of revision, as provided by the Code of Criminal Procedure. QUEEN *v.* PUBAN

[7 W. R., Cr., 1

(*b*) ENHANCEMENT.

175. ——— **Power to enhance.**—*Criminal Procedure Code, 1861, s. 419.—Sessions Judge.*—A Sessions Judge had, under section 419 of the Criminal Procedure Code, 1861, no authority to enhance a sentence on appeal. QUEEN *v.* BULORAM DOSS

[4 W. R., Cr., 20

176. ——— *Acquittal by Sessions Judge and assessors.*—Where a Sessions Judge and assessors acquit in a case of murder, but find the prisoner guilty of a minor charge, the Appellate Court has no power to interfere to enhance the punishment awarded. IN THE MATTER OF TOYAB SHAIKH . . **1 Ind. Jur., N. S., 58**

177. ——— *Appellate Court.—Criminal Procedure Code, 1872, s. 280.*—Section 280 of the Code of Criminal Procedure, 1872, authorised an Appellate Court, subject to the proviso in the final sentence, to enhance any punishment that had been awarded. ANONYMOUS CASE

[I. L. R., 1 Mad., 54

178. ——— *Criminal Procedure Code, 1872, s. 18.—"Modify."*—The word "modify," in section 18, clause 2 of the Code of Criminal Procedure, did not include the power to enhance a sentence: consequently where an Assistant Sessions Judge passed a sentence of more than three years' imprisonment, the Sessions Judge could not enhance it. IMPERATRIX *v.* RAMA PREMA

[I. L. R., 4 Bom., 239

179. ——— *Criminal Procedure Code, 1872, s. 280.—Enhancement without notice.*—Where a District Magistrate on appeal made an order under the Code of Criminal Procedure,

SENTENCE—*continued.*

10. POWER OF HIGH COURT AS TO SENTENCES—*continued.*

(*b*) ENHANCEMENT—*continued.*

Power to enhance—*continued.*

section 280, enhancing the sentence, appealed from, without having served notice on the appellant, the order of enhancement was quashed as illegal. QUEEN *v.* HEKMUT ALI . . . **24 W. R., Cr., 72**

180. ——— Exercise of power.—*Criminal Procedure Code, 1872, s. 280.*—Circumstances under which the High Court would, on appeal by the prisoner, enhance the punishment under section 280, Act X of 1872. QUEEN *v.* SOFFIRUDDI PALWAR **[13 B. L. R., Ap., 23: 22 W. R., Cr., 5**

181. ——— *Criminal Procedure Code, 1872, s. 280 (1861-69, s. 419).*—The High Court on appeal being of opinion that the case was one where no circumstances of mitigation were set forth, and where, without any sufficient reason, the Judge had awarded a punishment which in ordinary cases would be quite inadequate, enhanced the punishment, under section 280, Act X of 1872. QUEEN *v.* GOOJREE PANDAY **[11 B. L. R., Ap., 3: 20 W. R., Cr., 21**

182. ——— *Enhancement of sentence on appeal.—Criminal Procedure Code, Act X of 1882, ss. 423, 439.*—A head constable was convicted under section 330 of the Penal Code, and at a trial before a Sessions Judge sentenced to four months' simple imprisonment. The prisoner appealed. The High Court, in dismissing the appeal, directed, as a Court of Revision, that the sentence passed should be enhanced. METHER ALI *v.* QUEEN-EMPRESS . . . **I. L. R., 11 Calc., 530**

183. ——— *Criminal Procedure Code, 1872, s. 280.—Alteration of conviction from culpable homicide to murder.*—Under section 280 of the Code of Criminal Procedure the High Court altered the conviction in this case from culpable homicide into one for murder, and enhanced the sentence accordingly. QUEEN *v.* ROHEEM **[21 W. R., Cr., 39**

184. ——— *Enhancement of sentence on persons not appealing.*—Five persons were convicted of mischief; one prisoner appealed. Notice to attend the hearing of the appeal was sent to all five prisoners, of whom only three attended. The Head Assistant Magistrate, however, enhanced the sentence passed on all. *Held* that the enhanced sentence passed on the prisoners who did not appear and who did not appeal must be annulled. ANONYMOUS . . . . . **8 Mad., Ap., 8**

(*c*) MITIGATION.

185. ——— Power to mitigate sentence.—*Criminal Procedure Code (Act XXV of 1861), ss. 405 and 428.*—The High Court could, under sections 405 and 428 of the Criminal Procedure Code, mitigate a sentence passed by a Magistrate and confirmed or altered on appeal by the Sessions Judge, on the ground that the sentence was excessive. IN THE MATTER OF THE PETITION OF BISSUMBHUR SHAHA **[B. L. R., Sup. Vol., 484: 6 W. R., Cr., 7**

Overruling QUEEN *v.* RAMDHONE MUNDUL **[4 W. R., Cr., 15**

SENTENCE—*continued.*

10. POWER OF HIGH COURT AS TO SENTENCES—*continued.*

(*c*) MITIGATION—*continued.*

Power to mitigate sentence—*continued.*

186. ——— *Criminal Procedure Code, 1861, s. 405.*—The High Court (like the Sessions Judge) could not, under section 405, Criminal Procedure Code, 1861, nullify the verdict of a jury by interfering to lessen the punishment. Section 405 referred to cases where the offence was proved, but where the punishment inflicted was held to be too severe, and not to cases where the conviction itself was considered improper. QUEEN *v.* BISSONATH MITTER . . . . . **6 W. R., Cr., 6**

187. ——— Exercise of powers.—*Case submitted for consideration of Government.*—If there are circumstances which render expedient or advisable a mitigation of the sentence required by the law to be passed in cases of murder, the Judge may record these circumstances and submit them for the consideration of the Government, and the Government might, under section 54, Criminal Procedure Code, 1861, act as to it seems proper. QUEEN *v.* DABEE **[W. R., 1864, Cr., 27**

(*d*) REVERSAL.

188. ——— "Reverse," Meaning of.—*Criminal Procedure Code (Act XXV of 1861), ss. 419, 426.*—The word "reverse" in sections 419 and 426, Code of Criminal Procedure (Act XXV of 1861), sections 280 and 283 of Act X of 1872, meant to make void, to set aside or annul, and not merely to change or turn into the contrary. QUEEN *v.* ELAHI BAX **[B. L. R., Sup. Vol., 459: 5 W. R., Cr., 80**

189. ——— Power to reverse sentence.—*Criminal Procedure Code (Act XXV of 1861), s. 426.*—*A.* was charged with the offence of voluntarily causing hurt to *C.*, and *B.* was charged with the same offence, and also with the offence of abetting *A.* The Magistrate found *A.* guilty of the offence and sentenced him to three months' rigorous imprisonment. The Magistrate also found *B.* guilty of abetment of the offence of voluntarily causing hurt to *C.*, and sentenced him to one month's rigorous imprisonment and a fine. On appeal, the Sessions Judge held that there was no evidence to convict *A.*, and he accordingly released the prisoner. The appeal of *B.*, however, was rejected, on the ground that the evidence, though it did not prove him guilty of abetment, proved him guilty of voluntarily causing hurt; and therefore, under section 426 of the Code of Criminal Procedure, the sentence could not be reversed. No "error or defect either in the charge or in the proceedings on

SENTENCE—*continued.*

10. POWER OF HIGH COURT AS TO SENTENCES—*continued.*

(*d*) REVERSAL—*continued.*

Power to reverse sentence—*continued.*

trial" was alleged. *Held* (by MITTER, *J.*,) that section 426 of the Code of Criminal Procedure did not apply. QUEEN *v.* MAHENDRANATH CHATTERJEE [5 B. L. R., Ap., 39

S. C. GOUR MOHUN GHOSE *v.* MOHINDRO NATH CHATTERJEE . . . 13 W. R., Cr., 78

190. ——————— *Reversal of conviction.—Reception of evidence inadmissible.—Criminal Procedure Code, 1872, s. 280.*—If, in a case tried by a jury, the High Court finds that inadmissible evidence has been received, but that, after setting it aside, there is other evidence on the record on which the jury may find a verdict of guilty, the High Court may reverse the conviction and sentence, and order a new trial (section 280 of the Code of Criminal Procedure). REG. *v.* AMRITA GOVINDA [10 Bom., 497

SEPARATE ACQUISITION.

See CASES UNDER HINDU LAW—JOINT FAMILY—PRESUMPTION AND ONUS OF PROOF AS TO JOINT FAMILY.

See HINDU LAW—JOINT FAMILY—NATURE OF AND INTEREST IN PROPERTY—ACQUIRED PROPERTY.

SEPARATE CHARGES.

See CASES UNDER JOINDER OF CHARGES.

SEPARATE OFFENCES.

——— Conviction of—

See STOLEN PROPERTY—OFFENCES RELATING TO— . I. L. R., 1 All., 379

See REVISION—CRIMINAL CASES — SENTENCES . B. L. R., Sup. Vol., 488

——— Trial of—

See CASES UNDER JOINDER OF CHARGES.

SEPARATE PROPERTY.

See HUSBAND AND WIFE.
[I. L. R., 2 Bom., 75
8 B. L. R., 372
2 Mad., 283
1 Hyde, 130
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See SUCCESSION ACT, s. 4.
[13 B. L. R., 383

——— Execution of decree against—

See HUSBAND AND WIFE.
[I. L. R., 4 Calc., 140

SEQUESTRATION.

1. ——— Writ of sequestration.—*Contempt of decree or order of Court—Rule of Bombay Supreme Court, 389.—"Forthwith."*—The process of sequestration for contempt of a decree or order of Court, as it existed in the late Supreme Court, will, in a proper case, issue out of the High Court. The object of Rule 389 of the Supreme Court Rules, which required a party, who wished to enforce an order by sequestration, to indorse, upon the copy of the order served upon his opponent, a memorandum to the effect that in default of performance of the order he would be liable to be arrested, and to have his estate sequestered, was to enable the party making such endorsement to apply *ex parte* for the writ. In the absence of such a memorandum indorsed upon the copy order, a party desirous of enforcing an order by sequestration must give proper notice to his opponent of his intention to apply for the writ. An order commanding an act to be done "forthwith" is sufficiently in conformity with the rule that requires the time within which an act ordered to be done is to be performed to be specified in the order. HARIVALLABHDAS KALLIANDAS *v.* UTAMCHAND MANIKCHAND . . . . 8 Bom., O. C., 135

2. ——————— *Property out of jurisdiction of High Court.—Power of High Court.*—The High Court will assert its jurisdiction for the purpose of preventing a writ of sequestration issued by it from becoming a mere form, and under proper circumstances will operate *in personam* where the property sought to be sequestered is outside its jurisdiction. HARIVALLABHDAS KALLIANDAS *v.* UTAMCHAND MANIKCHAND. IN RE GOPALRAV MYRAL [8 Bom., O. C., 236

SERVANT.

See CASES UNDER LIMITATION ACT, 1877, ART. 7 (1859, s. 1, CL. 2).

See CASES UNDER MASTER AND SERVANT.

See CASES UNDER PUBLIC SERVANT.

——— Custody of—

See CONTRACT ACT, s. 178.
[I. L. R., 4 Calc., 497

——— Domestic—

See ACT XIII OF 1859.
[2 B. L. R., A. Cr., 32

——— remunerated by fees.

See PUBLIC SERVANT . 7 B. L. R., 446

SERVICE OF PROCESS.

1. ——— Cost of service of process.—*Act XXIII of 1861, s. 2.—Civil Procedure Code, 1877, 1882, s. 93.—Tulubana.*—A plaintiff in the Munsif's Court filed a list of witnesses, but failed to deposit tulubana, or cost of the service of summons, for their attendance. The Court failed to fix a time for the service of tulubana. The processes were not served, and the Court dismissed the suit because the plaintiff had produced no evidence in support of his

SERVICE OF PROCESS.—Cost of service of process—*continued.*

claim. *Held*, under Act XXIII of 1861, section 2, the lower Court should first have fixed a time for the deposit of tulubana. Case remanded. LALA PRASADI LAL *v.* LALA AMBIKA PRASAD [3 B. L. R., Ap., 25

S. C. PURSHADEE LALL *v.* UMBIKA PERSHAD LALL . . . . . 11 W. R., 290

2. ——— **Substituted service.**—*Native woman of rank.*—Where by the custom of India the respondent, being a Hindu woman of rank, could not be personally served with an order of revivor, the Judicial Committee allowed service to be substituted on her dewan or chief servant. CLARK *v.* ROUPLALL MULLICK. CLARK *v.* DOORGAMONEY DOSSEE . . . . 2 Moore's I. A., 263

3. ——— **Sufficiency of service.**—*Act VIII of 1859, s. 239.—Service of prohibitory order, Sufficiency of.*—Where service of the prohibitory order was effected by affixing it to the wall of the dwelling-house of the person on whom it was intended to serve it,—*Held*, it was not a sufficient service under section 239 of Act VIII of 1859. It ought to have been served by delivery or by registered letter. GOBIND CHUNDER DUTT *v.* KHERODE CHUNDER MITTER . . . . . 10 B. L. R., Ap., 12

4. ——— *Attachment.—Private alienation.*—Where an attachment of land was made by written order under section 235 of Act VIII of 1859, the conditions in section 239 had to be fulfilled in order to render any private alienation of the property attached null and void under section 240. INDRA CHANDRA BABU *v.* AGRA AND MASTERMAN'S BANK . . . . . 1 B. L. R., S. N., 20

S. C. INDRO CHUNDER BABOO *v.* DUNLOP [10 W. R., 264

NUR AHMAD *v.* ALTAF ALI [I. L. R., 2 All., 58

5. ——— *Service on attorney's clerk.*—Service upon an attorney's clerk of an order directed to be served upon an attorney is not good service. EMRITLALL SALIGRAM *v.* KIDD [2 Hyde, 116

6. ——— *Service on pleader.—Order under s. 165, Civil Procedure Code, 1859.*—An order under section 165 of the Civil Procedure Code, requiring a party to a suit to attend and give evidence, might be served on such party's pleader and not necessarily personally. SHIVRUDRAPPA *v.* KASHINATH VISHNU . . 6 Bom., A. C., 141

7. ——— *Service of notice on pleader.*—Service upon a respondent's pleader is good service upon himself, so far as notice of the appeal is concerned. ISHUR DUTT MUNDUL *v.* SHIB PERSHAD THAKOOR . . . 15 W. R., 290

8. ——— **Service in foreign territory.**—*Service of notice of appeal.—Civil Procedure Code, 1859, s. 60.*—Where a respondent resides in Chandernagore,—*i.e.*, out of British territory,—the

SERVICE OF PROCESS.—Service in foreign territory—*continued.*

summons or notice of appeal should be forwarded to him by post, under a registered cover; and if he does not appear, a verified statement should be put in to show that he is at present or has recently been residing there. SONATUN BUKSHEE *v.* GOPAL CHUNDER SHAMUNTO . . . 15 W. R., 31

9. ——— **Fresh notice, Application for.**—*Failure for long time to serve notice of appeal.—Sufficiency of service.*—Where an appellant failed for twelve months to serve notice of appeal upon his respondent, the Court refused to allow him the opportunity to have a fresh summons issued and served. Where the party serving a notice of appeal finds the respondent absent from home, and is told where he is, and yet affixes the notice to the door of his house, such service is void and of no effect. DOOLEE CHUND *v.* NIRBAN SINGH [20 W. R., 62

10. ——— **Inability to trace party for purpose of service.**—*Service of notice of appeal.—Civil Procedure Code, 1859, s. 57.*—Where an appellant to the High Court was unable to serve notice on the plaintiff (respondent), because of inability to trace the plaintiff in the place given as his place of residence, when he (plaintiff) commenced the suit and sent in his petition of appeal to the Zillah Court,—*Held* that the case might be dealt with in analogy to the procedure in respect to summons under section 57 of the Code of Civil Procedure. BEDHOO KOOLANEE *v.* BONOMALEE GURAIN [11 W. R., 496

11. ——— **Proof of service.**—*Return of service of notice.*—The return of service of notice with the name of the officer who effected the service on the back of it is *primâ facie* evidence of the service of the notice. LOOTF ALI *v.* ABOO BIBEE [15 W. R., 203

MOOKOONDONATH BHADOORY *v.* SHIB CHUNDER BHADOORY . . . 19 W. R., 102

SERVICE OF SUMMONS.

See WITNESS—CRIMINAL CASES—SUMMONING WITNESSES . 5 Bom., Cr., 20
[3 Mad., Ap., 5
6 Mad., Ap., 29

——— **Fine for avoiding—**

See WITNESS—CIVIL CASES—ABSCONDING WITNESSES. [1 B. L. R., A. C., 186

——— **Time allowed for—**

See SMALL CAUSE COURT, PRESIDENCY TOWNS—PRACTICE AND PROCEDURE. [9 B. L. R., 256

——— **on wrong person.**

See COSTS—SPECIAL CASES—SERVICE OF SUMMONS BY MISTAKE. [I. L. R., 4 Bom., 619

SERVICE OF SUMMONS—*continued.*

1. ——— Proof of service.—*Presumption.—Objection taken on appeal.*—No legal decree can be passed *ex parte* without a Court being satisfied of the due service of the summons. From the mere fact of the plaintiff obtaining an *ex parte* decree, it is not to be presumed that the service of summons was proved. To satisfy a Court of Appeal if the objection is raised, there must be proof that the service of summons was actually made. RAM LOCHUN SOOR *v.* NITTYA KALLEE DEBIA . . 12 W. R., 211

2. ——— *Onus probandi.—Civil Procedure Code, 1859, s. 119.*—Under Act VIII of 1859, section 119, the onus of proving non-service of summons was on the party claiming the benefit of that section. TORAB ALI *v.* CHOORAMUN SINGH CHOWDHRY . . . 24 W. R., 262

3. ——— Omission to serve summons.—*Appearance of defendant.*—Where a summons has not been issued to a defendant, the defect is cured by his appearance. KHALUT CHUNDER GHOSE *v.* SARODA SOONDERY DOSSEE . Bourke, O. C., 244

4. ——— Mode of service.—*Act XIX of 1853, s. 26, Suit under.—Personal service.*—To maintain an action under Act XIX of 1853, section 26, it was necessary that the summons to attend should have been personally delivered. DHUNPUT SINGH *v.* PREM BIBEE . . . 24 W. R., 72

5. ——— *Substituted service.—Civil Procedure Code, 1859, s. 57.—Application to set aside ex parte decree.*—Substituted service if duly effected under the provisions of the law, is as valid as personal service; and therefore, where substituted service had been effected under section 57 of Act VIII of 1859, an *ex parte* judgment would not be set aside on an allegation of no notice, and of good defence on the merits. KISSUR CHUND *v.* BHOOBUNESSUR CHUNDER [Bourke, O. C., 25 : Cor., 151

6. ——— *Practice.—Setting aside ex parte decree.—Civil Procedure Code, 1877, ss. 82, 84.*—Where substituted service of the summons is ordered under section 82 of the Civil Procedure Code (Act X of 1877), a sufficient time ought, under section 84, to be given for notice of the fact to reach the defendant, wherever he may be; and, if an *ex parte* decree be obtained by the plaintiff, the Court, on being satisfied that the time fixed was insufficient, will set aside the decree. ALLY BEBANEE *v.* HYDER HOOSEIN . I. L. R., 2 Bom., 449

7. ——— *Procedure in case of non-service.*—Every summons not actually served on a defendant or respondent or his recognised agent must be stuck up on the house in which the defendant or respondent is dwelling. If the defendant or respondent cannot be found, the summons should be returned to the Court and an order obtained from the Court as to the mode of service. GOPAUL DOSS *v.* GREEDHAREE DOSS . . . 6 W. R., 13

8. ——— *Affixing copy of summons to door of defendant's residence.—"Dwelling."*—Service of a copy of the summons on the door of the house in which the defendant is dwelling is one of the modes of service provided in lieu of personal service, but it is necessary that the defendant should be residing in the house in such a manner as to make it probable that knowledge of the service of the summons will reach him. There may be a dwelling sufficient to give jurisdiction, and yet not the kind of dwelling necessary to make a good service. ANANTHA NARAYANA *v.* PERIYANA KONE [5 Mad., 101

It should be shown he was dwelling in the house and that he could not after diligent search be found. KHUDEERUN LALL *v.* CHUTTERDHAREE LALL [21 W. R., 242

9. ——— *Service on railway company.*—For the purposes of summons, a railway company must be deemed to dwell at its principal office. HANLON *v.* INDIA BRANCH RAILWAY COMPANY . . . . 1 Hyde, 197

10. ——— *Service in foreign territory.—Act VIII of 1859, ss. 60 and 66.*—A summons cannot be sent by post to any place to which letters are not registered by a post office. A special bailiff cannot be sent to serve civil process in a foreign territory. KASIM AJIM DUPLAY *v.* KASIM MOHAMMED BARUCHA [2 B. L. R., A. C., 59

S. C. CASSIM AZIM DOOPLAY *v.* CASSIM MAHOMED BAROOCHA . . . . 10 W. R., 349

11. ——— *Affixing summons to place of business.—Civil Procedure Code, 1859, s. 55.—Quære.*—Whether the affixing of a summons to the outer door of the place of business of a defendant was good service upon him under section 55 of the Code of Civil Procedure. CHANBASAPPA BIN SANGAPPA *v.* MAINABA BIN MAHADSHET [7 Bom., A. C., 138

12. ——— *Civil Procedure Code, 1877, s. 37, cl. (a).—Non-resident.—Recognised agent.*—The term "non-resident" in section 37, clause (*a*), of the Code of Civil Procedure (Act X of 1877), covers every absence which may reasonably be supposed to have been within the contemplation of the Legislature in using that term: thus, where a Marwadi had resided for forty years at Pen, and had also a place of business there, but who had gone to his native country to get his sisters married, and had been absent upwards of four months, it was held that he was "non-resident" within the local limits of the jurisdiction of the Pen Court, and that a person holding a general power of attorney from him was a recognised agent within the meaning of the section. RAMCHANDRA SAKHARAM *v.* KESHAV DURGAJI [I. L. R., 6 Bom., 100

13. ——— *Service on agent.—Suit to obtain relief respecting immoveable property.—Civil Procedure Code (Act XIV of 1882), s. 16 and s. 77.*—In a suit for foreclosure or sale of im-

SERVICE OF SUMMONS.—Mode of service—*continued.*

moveable property, it appeared that the mortgagee had conveyed the mortgaged premises to trustees. The summons to one of the trustees was personally served upon his duly constituted agent, who was at the time of service in charge of the mortgaged premises. *Held* that the service was sufficient, the suit being one to obtain "relief respecting immoveable property" within the meaning of section 16 of Act XIV of 1882. MICHAEL *v.* AMEENA BIBI

[I. L. R., 9 Calc., 733: 13 C. L. R., 161

14. ——————— *Service of summons on agent.—Principal and agent.—Civil Procedure Code (Act X of 1877,) ss 76 and 37, cl. (c).—Carrying on business.*—To satisfy the conditions of section 76 of the Civil Procedure Code (Act X of 1877) as to service of summons on an agent, there must be a person residing without the local jurisdiction but carrying on business or work within those limits by a manager or agent, and sued on account of such work, —that is, business either actually itself carried on by the agent or manager, or forming part of the business in the sense of a connected course of transactions to the management of which he has been duly appointed. Section 76 and section 37, clause (*c*), are to be construed together, and are intended to carry out the scheme of relief which rests upon the idea that where an agent has been put forward substantially to take the place of his principal within a particular jurisdiction, he should take the place of such principal (at the option of any person who has dealt with him) in any legal proceedings that may arise out of the business or work in which the agent has been virtually a local principal. The manager or agent contemplated by the Code is one who has an initiative and independent discretion, albeit subject possibly to principles and general orders prescribed for his guidance. A mere servant employed to carry out orders or to execute a particular commission, or a factor or common agent who is not identified with the firm for which he acts, is not such an agent. The firm of *G. S.* carried on business at Agra. It had no place of business in Bombay, but it employed *G.* as its agent in Bombay in certain dealings which it had with the plaintiff. The letters and telegrams of the firm to *G.* were sent to the plaintiff's place of business, or addressed to *G.* as an individual, not in the name of the firm. *G.* did not himself initiate any business or in any way stand between his employers' firm and the plaintiff. *Held* that *G.* was not the defendants' manager or agent within the meaning of the Civil Procedure Code, section 76, and that in an action against the defendants, service of summons upon him was not due service. *G.* in particular instances drew hundis on the firm of *G. S.* which that firm duly accepted and paid. *Held* that he might reasonably be deemed their agent or manager for this particular kind of business, if for no other, and service on him might probably suffice in the case of a plaintiff suing on hundi transactions as with the firm through him. Service unduly made under section 76 does not become effectual by reason of the fact of service being subsequently notified to the parties really interested as defendants. *Semble,*—Service duly effected under section 76 is effectual without reference to the circumstance of its being or not being communicated to the real defendants. GOKULDAS *v.* GANESHLAL

[I. L. R., 4 Bom., 416

15. ——————— *Agent to whom ship is consigned.—Matters connected with ship.*—Service of a summons on an agent to whom a ship is consigned is good service on the owner in respect of matters connected with such ship. RAJARAM GOVINDRAM *v.* BROWN 7 Bom., O. C., 97

16. ——————— *Civil Procedure Code, 1859, s. 17.—Recognised agent.—Carrying on business in name of principal.—Ship's agents.*—Messrs. *R. S. & Co.*, European merchants, carrying on business in Bombay, received a letter from the owner of the ship *Rialto* by which Messrs. *R. S. & Co.* were constituted agents to obtain freight for the *Rialto* on a voyage from Bombay to Liverpool, the ship being placed in their hands for that purpose. Acting on this letter Messrs *R. S. & Co.* obtained freight for the *Rialto*, signing the shipping orders in their own name as agents for the master of the *Rialto*. Messrs. *R. S. & Co.* held no other authority from the owner of the *Rialto* than that contained in the above letter. *Held* that Messrs. *R. S. & Co.* did not carry on business for, and in the name of, the owner of the *Rialto*, and were not, therefore, his recognised agents within the meaning of sections 17, clause 2, of the Code of Civil Procedure, to accept service of a summons on his behalf in respect of a cause of action that arose out of the loading of the *Rialto*. Whether, in order to constitute a recognised agent within the meaning of the above section, the business carried on by him must be continuous, and not an occasional or desultory business. *Quære. Semble,*—A Bombay firm simply employed by the owners of a ship visiting Bombay to procure freight for her for a particular voyage cannot, under ordinary circumstances, be regarded as carrying on business in the name of the owners of such ship. RATANSI PANCHAM *v.* SAUNDERS . 8 Bom., O. C., 159

17. ——————— *Civil Procedure Code, 1859, s. 49.—Agent.*—Persons merely looking after the affairs of a defendant are not agents on whom service of summons will be sufficient under section 49, Act VIII of 1859. RAM SOONDUREE DASSIA *v.* SURUT SOONDUREE DEBIA

[17 W. R., 33

18. ——————— *Service on co-partner for partner.*—Service of a summons intended for one partner upon another partner of the same firm is not a sufficient service. Partners are not the recognised agents of each other within the meaning of clause 2, section 17, Act VIII of 1859. LUCHMEPUT DOGARE *v.* SIBNARAIN MUNDLE

[1 Hyde, 97

19. ——————— *Service on partner for co-partner.—Agent.—Act VIII of 1859, s. 17, cl. 2.*—Service of summons on one partner for his co-partner is a good service. *Luchmeput Dogare*

SERVICE OF SUMMONS.—Mode of service—*continued.*

v. *Sibnarain Mundle* (*1 Hyde, 97*) dissented from. RAMCHANDRA BOSE *v.* SNEAD [7 B. L. R., Ap., 58

20. ——————— *Service on partner for co-partner.*—Service of summons on one partner for his co-partner is not sufficient service unless the service is effected at the place where the partnership business is carried on. KUSTOOR MULL *v.* JOKEERAM . . . 11 B. L. R., Ap., 26

21. ——————— *Brothers living in the same house.*—Where an *ex parte* decree had been given against three brothers, and it was shown that there had been only one summons, and that the serving officer had merely posted the summons on the door of one of them without attempting to serve it personally on him,—*Held* that the notice had not been properly served even on the one brother, still less on the two others; and that the defendants were entitled to have the suit restored on their application. SHIBOO ROY *v.* KASHEE ROY . 25 W. R., 394

22. ——————— *Substituted service.—House.—Dwelling-house.*—A mofussil Judge stated, in his return to the Sheriff of Calcutta, that substituted service had been effected by fixing a copy of the summons to the "house" of the defendant. *Held* that the return was insufficient, and that the word "dwelling-house" must be expressly mentioned. BUDDOO BABOO *v.* LAMBODAR MULLICK [1 Hyde, 132

23. ——————— *Issue of summons.—Summons transmitted to local Court for service.—Return of local Court when sufficient evidence of service.—Form of return to be made by Civil Court.*—Where the service of summons has been effected on a defendant by affixing a copy of the summons on the door of his dwelling-house, the Court must decide whether the summons has been duly served by such affixing or not, and, if it decides in the negative, a new summons must be issued, or substituted service directed. Before the Court can decide in favour of the sufficiency of this mode of service, it must be satisfied that the defendant is keeping out of the way for the purpose of avoiding service. Where a summons has been transmitted by one Court to another for service by the latter, the transmitting Court is not bound, in every case, to satisfy itself that the law as to service has been strictly followed. The presumption in favour of the proceedings of a Court of Justice is that everything has been duly performed, and if the return made by the Court serving the summons states that the summons has been duly effected, that presumption must prevail, unless the return discloses some patent irregularity or clear divergence from the law. As a rule, on a return from a competent Court that summons has been duly effected, it may be presumed that either personal service has been effected, or substituted service under section 82, or under sections 80 and 82 combined, of the Civil Procedure Code (XLV of 1882). As proof of due service of summons, a return from the Court of Small Causes at K. was relied upon in the High Court. The return was in the following words: "Read bailiff's endorsement on the back of the process, stating that the summons has been affixed to the defendant's house on the 22nd December 1884, at 9 A.M.; and proof of the same having been duly taken by me, it is ordered that the summons be returned." *Held* that there was no sufficient service. The return itself proved the insufficiency. There was no statement, under the hand of the Judge, that the summons had been duly effected, and it did not appear that anything had been done beyond fixing the summons on the defendant's door. That affixing was not sanctioned after inquiry by the local Court, as required by section 82. All that appeared to have been done was the affixing prescribed by section 80, which was insufficient until confirmed under section 82. *Reg.* v. *Tukaya, I. L. R., 1 Bom., 214.* NUSUR MAHOMED *v.* KAZBAI . I. L. R., 10 Bom., 202

24. ——————— **Sufficiency of service.**—*Evidence of service.—Substituted service.—Evidence of serving peon.*—The evidence of the serving peon, that he endeavoured to serve the summons on the defendants, and that not being able to serve them personally, he affixed a copy of the summons on the outer door of their dwelling-house, if believed by the Judge, is perfectly legal evidence of the fact that these defendants were served. RAMCOOMAR SINGH *v.* RAMSOONDUR SINGH . . . 17 W. R., 362

25. ——————— *Evidence of service.—Peon's return of service.*—A Collectorate peon's return of service is not admissible as legal evidence. MOINOOLLAH *v.* GOLUCK MONEE CHOWDRAIN . . . . . 15 W. R., 270

26. ——————— *Military officer.*—Service of summons on a military officer was effected by transmitting a copy by post to the commanding officer at Secundrabad, where the defendant was stationed, and it was returned with the defendant's acknowledgment endorsed on it, and with a certificate that it had been duly served, but there was no affidavit of service: service was held to be sufficiently proved. HARRISON *v.* HOPE . 11 B. L. R., Ap., 43

27. ——————— *Return by Nazir.—Proof of service of notice.*—A return by the Nazir to the effect that the peon swears that a notice has been served is insufficient in law to prove the service without the deposition on oath of the serving peon taken before a competent authority. RAJ KISHORE DUTT *v.* BYDONATH SHAHA . 12 W. R., 365

28. ——————— *Nazir's report.*—A Nazir's report of service of summons or of issue of proclamation is not legal evidence on which to punish a witness failing to attend a Court of Justice when duly summoned. IN THE MATTER OF THE PETITION OF NILKANT BHUTTACHARJEE [W. R., 1864, Mis., 9

OKHOY CHUNDER DUTT *v.* ERSKINE [3 W. R., Mis., 11

SREENATH THAKOOR *v.* WATSON [4 W. R., Mis., 4

SERVICE OF SUMMONS.—Sufficiency of service—*continued.*

RAM SOONDUR CHUCKERBUTTY *v.* KALEE KOMUL DUTT . . . **6 W. R., Act X, 92**

KOONDUN LALL *v.* NOOR ALI . **10 W. R., 3**

See MEAH KHAN *v.* NARAIN CHUNDER CHOWDHRY . . . . **18 W. R., 197**

29. ——— Discretion to issue second summons.—*Absence of return to first summons.*—When there is no return of service to a summons, the law gives a Court full discretion either to issue a second summons or to take or not take stronger measures. It is not imperative on one Court to take measures to expedite the service in another Court, but it is the business of the party interested to move the Court to do what is necessary. DOWLUT MUNDUR *v.* OMRAO SINGH RANA . **14 W. R., 336**

30. ——— Irregular service.—*Ground for objecting to decree.—Joint promissory note.*—An irregular service of summons on two out of three defendants to an action brought on a joint promissory note, does not give the third defendant, who has been properly served, ground for objecting to a decree which has been passed against him under Act V of 1866. EWING *v.* GOSAI DAS GHOSE **[2 B. L. R., Ap., 7**

31. ——— *Defendant resident in another district.—Act X of 1859, ss. 47, 56.*—In a suit for rent under Act X of 1859, service of summons on a defendant, whose abode is in another district, by a peon from the Court of the Collector of the district in which the suit is brought, instead of through the Collector of the district in which the defendant resides, as required by section 47 of the Act, is not such an irregularity as vitiates the whole proceedings and renders the decree, and a sale in execution thereof, void. *Per* JACKSON, *J.*—The words in section 56, "upon proof that the summons or proclamation has been duly served according to the provisions of this Act," refer to the mode in which a summons is to be served, and not to the agency by which it is to be served. MACKINTOSH *v.* KALLY DOSS MULLICK . **11 B. L. R., 1: 19 W. R., 234**

32. ——— *Service on wrong person.—Erroneous description of defendant in plaint.—Dismissal of suit.*—In a suit brought by the plaintiffs against *A.*, the summons was by mistake served upon *B.*, who thereupon filed a written statement denying his liability and alleging that he was erroneously described in the title to the plaint. On the day of the hearing of the case the plaintiffs' agent saw *B.* for the first time, and ascertained that he was not the real defendant in the suit. *Held* that the case having come on for hearing, and there being nothing to show that the plaintiffs had been in any way deceived by *B.*, the proper order to be made was for the dismissal of the suit. LONDON, BOMBAY, AND MEDITERRANEAN BANK, *v* MAHOMED IBRAHIM PARKAR . . . **I. L. R., 4 Bom., 619**

SERVICE UNDER EAST INDIA COMPANY.

See DOMICILE . **I. L. R., 4 Calc., 106**

SERVICE TENURE.

See CASES UNDER GHATWALI TENURE.

See GRANT—CONSTRUCTION OF GRANTS. **[I. L. R., 9 Bom., 561**

See LIMITATION ACT, 1877, ART. 130 (1871, ART. 130) . **I. L. R., 1 Bom., 586**

See RIGHT OF OCCUPANCY—ACQUISITION OF RIGHT—SUBJECT OF ACQUISITION. **[I. L. R., 4 Calc., 67**

See ROAD CESS ACT (BENGAL ACT X OF 1871), S. 3 . **7 C. L. R., 373**

1. ——— Creation of service tenure.—*Long possession.—Presumption.—Chakeran lands.—Chowkidari duties.—Onus probandi.*—Long possession of lands as chowkidari chakeran affords ground for the presumption that the lands were set apart as such at the decennial settlement. The onus of proof that the lands were the private lands of the zemindar, not set apart at the decennial settlement as chowkidari chakeran, is on the zemindar. MOOKTAKESHES DEBIA CHOWDHRAIN *v.* COLLECTOR OF MOORSHEDABAD . . . . . **4 W. R., 30**

2. ——— Performance of services.—*Nature of grant.*—A grant to a man and his heirs on condition of performing service does not in general mean that the service is to be personally performed by the grantee or his heirs, but that the grantee is to be responsible for its performance. SHIB LALL SINGH *v.* MOORAD KHAN . . **9 W. R., 126**

3. ——— Deshmukh, Services of.—*Hereditary offices.—Bom. Act XI of 1843, s. 2.*—By section 2 of Act XI of 1843 hereditary officers are bound to "render the usual services of their respective offices, as far as the same may be required by the Collector or other officer under whose control they may be placed by usage or the orders of Government." *Semble,*—That the "usual services" of a deshmukh consist in making himself thoroughly acquainted with all circumstances affecting the land revenue in his district, and in communicating such information to the mamlatdar or mohalkari; and that the deshmukh is bound to perform or get performed so much writing business as is necessary for the above purposes, and no more. But if by reason of the subdivision of his talooks his duties in that respect are increased, he is bound either personally to perform such increased duties or to provide a karkun or karkuns to perform them for him. RANGOBA NAIK *v.* COLLECTOR OF RATNAGIRI **[8 Bom., A. C., 107**

4. ——— Right of female to inherit service tenure.—The law in the Bombay Presidency recognises the right of females to hold majumdari watans, males being appointed by them to perform the service. GOVERNMENT OF BOMBAY *v.* DAMODHAR PARMANANDAS . **5 Bom., A. C., 202**

5. ——— *Hereditary Offices Act, Bombay (Act XI of 1843).—Right of females to inherit.*—Since the passing of Act XI of 1843 a female can inherit a majumdari watan The Collector can assign the whole proceeds of a watan to

SERVICE TENURE.—Right of female to inherit service tenure—*continued.*

the officiating person, who is entitled to retain such proceeds as his remuneration. BAI SURAJ *v.* GOVERNMENT OF BOMBAY. BAPUBHAI KHUSHALDAS *v.* BAI SURAJ . . . **8 Bom., A. C., 83**

6. ——— Right to officiate in proportion to shares held in watan.—*Discretion of Collector.—Act XI of 1843.*—The plaintiff had two shares, and the defendant one, in a patilki watan. In an action brought by the plaintiff to establish his right to officiate twice as often as the defendant,—*Held* that the plaintiff was not necessarily entitled to such right, though the fact of his holding two shares in the watan might be a reason for the Collector to exercise his discretion under Act XI of 1843 (when it was in force) in favour of the plaintiff by assigning to him a longer period of management than to the defendant, in the event of the two sharers not agreeing as to the person to officiate. BHAVANI SADASHIV *v.* BHAVANI MANAJI . **12 Bom., 232**

7. ——— Appointment of deputy.—*Power of holder of tenure.*—The holder of an hereditary office, such as a deshpande watan, cannot create an hereditary deputy. The appointment of a deputy made by a particular incumbent cannot extend beyond the life of such incumbent. RAVJI RAGHUNATH *v.* MAHADEVRAV VISHVANATH . **2 Bom., 237**

8. ——— Death of grantee without heirs.—*Custom.—Reversion of jaghir to grantor.*—Where the custom of the country was found to be that on the death of a service tenure-holder without heirs his jaghir reverted to the grantor, the right of the grantor to the land on the death of the grantee without heirs was recognised. RAMESSURNATH SINGH *v.* HURO LAL SINGH . . **6 W. R., 87**

9. ——— Abandonment of tenure.—*Mokurraridar abandoning tenure.—Forfeiture of property for rebellion.*—A mokurraridar having fled and abandoned his tenure appertaining to a rebel's estate which was confiscated by Government, was held not entitled to recover the tenure on the ground that the mokurrari was not an absolute tenure, but one on condition of service to be rendered to the former proprietor whose estate had been confiscated for rebellion. NEPAL SINGH *v.* RAM SURUN SINGH **[W. R., 1864, 5**

10. ——— Alienation by holder.—*Crotriyam.—Power of holder to alienate.*—Each holder of a crotriyam conferred for lives can only alienate his own life-interest. SUNDARAMURTI MUDALI *v.* VALLINAYAKKI AMMAL . . . **1 Mad., 465**

See VISSAPPA *v.* RAMAJOGI . **2 Mad., 341**

11. ——— *Interest of one of coparceners in service tenure.—Nature of interest.—Act XI of 1843.—Held* that the interest enjoyed by one of a body of coparceners in possession of land attached by way of emolument to an hereditary office cannot be bequeathed to one or more of the other coparceners, as the estate held by each sharer is only a life-interest, subject to the right of the Collector, under Act XI of 1843, to assign a fit remuneration from the rent and profits for the maintenance of the person appointed to conduct the duties of the office. BHIMAPPA *v.* MARIAPPA . **[3 Bom., A. C., 128**

SERVICE TENURE.—Alienation by holder—*continued.*

12. ——— *Adverse possession against one holder how far a bar against a succeeding holder.—Judgment against one holder how far res judicata against succeeding holder.—Alienability of lands when services are abolished.—Bom. Act II of 1865.—Bom. Act VII of 1863.—Held* (1) that, in the absence of fraud and collusion, adverse possession for twelve years during the life-time of one holder of service vatan lands is a bar to succeeding holders. (2) In the absence of fraud and collusion, judgment against one holder of service vatan lands is *res judicata* as regards a succeeding holder. (3) Such lands become alienable when the services are abolished, except in cases where there is a concurrent family custom operating similarly to keep the vatan estate together. Such a custom may continue and may singly bind the hands of the successive holders of the property after the former restriction has failed or been removed. The abolition of the public duty does not alter the nature of the estate. If the family custom forbids alienation beyond the life-time of the alienor, the custom will operate equally after the patrimony has ceased to be a vatan, as before. Where, however, such a concurrent custom does not affect an estate, then when it is freed from its connection with the public office the reason arising from that connection for the preservation of the estate necessarily fails, and the lands become subject to the ordinary law of descent and disposal. *Per* WEST, *J.*—(1) Lands with respect to which a summary settlement under Bombay Acts II and VII of 1863 has been effected, are wholly exempt from official obligation. (2) Where service lands, or what were deemed service lands, have been aliened, and at a later period the service has been disclaimed or abolished, this subsequent abolition or discharge renders the title of the alienee in possession undisputable by the alienor's heirs, assuming that there is no special family custom operating apart from the law which preserves service lands for the intended uses. The alienation is, of course, subject to the terms on which family property can usually be alienated. RADHABAI *v.* ANANTRAV BHAGVANT DESHPANDE **[I. L. R., 9 Bom., 198**

See VASANJI HARIBHAI *v.* LALLU AKHU **[I. L. R., 9 Bom., 285**

13. ——— *Liability to sale in execution of decree.—Police jaghir.—Public services.*—A service tenure can be sold in execution of a decree for arrears of its own rent, provided that the service due from the holder be of a private kind, and personal to the plaintiff, but not where the service is of a public kind, as in the case of a police jaghir. NILMONEE SINGH DEO *v.* KASHEE MAHTOON **[25 W. R., 206**

14. ——— Cessation of services.—*Land held on quit-rent.—Waiver of performance.*—

SERVICE TENURE.—Cessation of services—*continued.*

Lapse of tenure.—As an ordinary rule, if land is given on a quit-rent, or no rent at all, in consideration of service to be performed, the tenure would lapse when those services ceased. *Quære,*—When no service has been required or performed for a long series of years, and the tenure has been allowed to be held at a quit-rent, or no rent at all, whether there has not been such a waiver of service as puts it out of the power of the grantor to resume the tenure, simply on the ground that he has now no need of the service for which the tenure was originally created? *Quære,*—Whether when land is given at a quit-rent, on condition that the grantee shall aid the grantor in repelling the attacks of his enemies or for any other particular purpose, while the grantee is willing to render those services, the grantor can put an end to the contract by saying that he has no enemies to repel, and therefore no need of the grantee's further services? NILMONEY SINGH DEO *v.* SHEO TEWARY **[W. R., 1864, 324**

15. ——————— *Impartible watan.*—A cessation (even though sanctioned by the Government) of the performance of the duties attached to an impartible watan does not alter the nature of the estate and make it partible. SAVITRIAVA *v.* ANANDRAV . . . . **12 Bom., 224**

16. ——————— *Impartible watan.—Discontinuance of services.*—Discontinuance of services attached to an impartible watan does not alter the nature of the estate and make it partible. RAMRAO TRIMBAK *v.* YESHVANTRAO MADHAVRAO **[I. L. R., 10 Bom., 327**

17. ——————— *Commutation of services.—Desaigiri allowance.—Right to hold as personal gratuity.—Amin sukhdi.—Suit to establish right to amin sukhdi.*—The parties, who were desais of Mahudha, in addition to their "desaigiri" allowance enjoyed an allowance called "amin sukhdi." In 1847 the plaintiff sued the defendant's father and the Collector of Kaira for a share of the allowance; but as the whole of it had been reserved by the Collector to the defendant's father as the officiating desai, the suit was rejected under Act XI of 1843. In 1866 an arrangement was come to, under which a sum of R40-2-0 was to be annually available over and above the remuneration of the officiator. On the 9th of July 1867 the defendant received this sum for the first time. In 1873 a new arrangement was effected under which the service was abolished, the Government resuming half of the allowance, and giving up the other half freed from service unconditionally to the desais. On the 4th of October 1878 the plaintiff brought this suit to establish his right to a share of the moiety of the amin sukhdi allowance given to the desais by the Government, and to recover his share of the amount received by the defendant. The defendant contended that the allowance was impartible and in the nature of a personal gratuity exclusively enjoyable by himself. *Held* that independently of its origin and the light in which it was regarded by the Government and the parties, the amin sukhdi allowance having been actually included in and dealt with as part of the desaigiri watan, and a moiety of it having been subsequently freed from the obligation of service, the desai who happened to officiate at the time the allowance was freed from service had no right to hold the moiety exclusively as a personal allowance to himself. MANEKLAL AMRATLAL *v.* SHIVLAL BHOGILAL . . . . **I. L. R., 8 Bom., 426**

18. ——————— *Long possession.—Liability for rent.*—The mere fact of a long prior possession or a service tenure on no rent at all gives the holder no exemption from the payment of rent when the service is no longer required or performed. CHUNDER NATH ROY *v.* BHEEM SIRDAR. **[W. R., 1864, Act X, 37**

19. ——————— *Commutation of services for rent.*—Where the original donee of a service tenure ceases to do any service and pays in lieu a rent which his descendants continue to pay, the condition of the tenure becomes altered from service to rent. MAHENDRA SINGH *v.* JOKHA SINGH **[19 W. R., P. C., 211**

20. ——————— **Resumption of tenure.**—*Partition where service lands are all allotted to one co-sharer.*—The joint proprietors of a talook assigned to the defendants a portion of land therein in consideration of chowkidari services rendered by him throughout the area of the talook. A butwara having been effected, the plaintiff obtained a fourth share within which fell the assigned land. Upon this the plaintiff sued the defendant to take back three-fourths of the service land on the ground that being a one-fourth shareholder he ought not to pay more than a one-fourth share of the consideration for the services rendered. *Held* that as long as the defendant's services were required and rendered, the plaintiff could not, in equity or justice, withdraw from the defendant that land which had been given him by all the shareholders, when they were joint, as a consideration for those services. BEECHOOK PASBAN *v.* KULLAR SINGH . . **20 W. R., 369**

21. ——————— *Bom. Act VII of 1863, s. 2.—Jurisdiction of Civil Courts.—Resumption of service tenures.*—Clause 4 of section 2 of Bombay Act VII of 1863 (an Act for the summary settlement of claims to exemption from the payment of Government land revenue) enacted that no suit or action between Government and the holders of . . . any lands held for service in regard to the tenure of such lands should be entertained in any Court of Civil Judicature. *Held* that the phrase "lands held for service" meant lands declared by Government under section 32 (*d*) of the Act to be so held, though the plaintiff might deny that the lands in respect of which he sues were service lands. The laying down of general rules by Government as to the resumption of service lands, under article 3, clause 3 of section 2 of the Act, was not a condition precedent to their protection from suits and actions in respect of such lands. PREMSHANKAR RAGHUNATHJI *v.* GOVERNMENT OF BOMBAY . . **8 Bom., A. C., 195**

SERVICE TENURE.—Resumption of tenure—*continued.*

22. ——————— *Bhoomear tenures.*—Bhoomears are bound to render certain customary services, but their lands are not resumable. GOPALNATH TEWAREE *v.* BHOOYAH ORANOO [6 W. R., 137

23. ——————— *Power of Government to resume majumdari watans.*—Government has no power to resume majumdari watans where it dispenses with the services in respect of them, if the holders of such watans are ready and willing to perform such services. GOVERNMENT OF BOMBAY *v.* DAMODHAR PARMANANDAS . 5 Bom., A. C., 202

24. ——————— *Services dispensed with.—Right of zemindar to resume.*—A zemindar has *primâ facie* a right to resume lands of the zemindari granted subject to a quit-rent to tenants upon condition of their rendering personal services when such services are dispensed with. SANNIYASI RAZU *v.* ZAMINDAR OF SALUR. SANNIYASI RAZU *v.* JAGANADHA NARAYANA RAMACHANDRA RAZU. PAKIR RAZU *v.* ZAMINDAR OF SALUR. PAKIR RAZU *v.* JAGANADHA NARAYANA RAMACHANDRA RAZU [I. L. R., 7 Mad., 268

25. ——————— *Suit for enhancement of rent of.—Right to resume when services not required.—Evidence.*—*R.* sued *S.* to recover instalments of kist due on the ground that *S.* held a village on service tenure (granted on condition of paying kist and performing service); that the services of *S.* were not at present required, as the Court of Wards had assumed the management of the estate of *R.*; that the assessment had, accordingly, been increased; and that defendant had declined to accept a lease at an enhanced rate and to execute a counterpart. *S.* denied that he held on service tenure, and set up a gift from one of the ancestors of *R.* *Held* that, as *S.* failed to prove the alleged gift, and had not traversed *R.'s* allegation that he was entitled to resume the grant when the services were not required, and as it was proved that the kist had been enhanced on one occasion without objection from *S.*, there was evidence to warrant the conclusion that the village was neither inam nor granted in perpetuity burdened with a certain service, and that *R.* was entitled to the enhanced rate claimed. SITARAMARAZU *v.* JAGANADA NARAYANA RAMACHENDRARAZU. PEDDA BALIYAR SIMHULU [I. L. R., 3 Mad., 367

26. ——————— *Grant of service tenure rent-free.—Assessment of rent by settlement officer when service no longer required.—Bom. Act VI of 1862.*—The talookdari settlement officer having assessed rent-free land, on the ground that it had been granted for service, and that service was no longer required,—*Held* that this was not a sufficient defence to an action by the holder of the land, it not being shown that by the terms of the grant (assuming that there had been a grant of an estate burdened with service) the estate was determined by the remission of the service. KEVAL KUBER *v.* TALOOKDARI SETTLEMENT OFFICER [I. L. R., 1 Bom., 586

SERVICE TENURE.—Resumption of tenure—*continued.*

27. ——————— *Chakeran lands.—Chowkidari duties.*—In a suit for the resumption of certain chakeran lands on the appellant's talook, Government contended that the lands were appropriated to the maintenance of a chowkidar, and that the holder of these lands was liable to the performance of none but police or chowkidari duties. The talookdar (appellant) contended that the lands were gram surinjami lands not liable to the performance of any but personal services to him, and not legally appropriated for the performance of these services, but resumable by him. *Held* by the Privy Council that the lands in question were to be considered as appropriated to the maintenance of a chowkidar in the talook; that the right of appointing such officer belonged to the talookdar; and that such officer was liable to the performance of such services to the talookdar as, by usage in the zemindari, chowkidars were accustomed to render to the zemindar. JOYKISHEN MOOKERJEE *v.* COLLECTOR OF EAST BURDWAN . 1 W. R., P. C., 26 : 10 Moore's I. A., 16

28. ——————— *Resumption of jagir.—Proof of personal services.—Grant of sanad to jagirdar.*—Where a sanad granted to the holder of a jagir was only a confirmation by the Government and the Rajah of the tenure under which the jagir was held, and authorised the jagirdar to remain in possession and in the performance of the services with his brothers, without describing the kind of service,—*Held* by the Privy Council that the Rajah could not resume the land without proof that the services to be performed by the jagirdar were personal services only to the Rajah. NILMONEY SINGH DEO *v.* GOVERNMENT . . . . 18 W. R., 321

S. C. in High Court . . . 6 W. R., 121

29. ——— **Forfeiture of tenure.**—*Alienation without grantor's consent.*—In a suit to obtain khas possession of lands which were found to have been held of plaintiff and his ancestors by defendants and their ancestors upon a service tenure, but which the grantees alienated to strangers, without any acquiescence on the part of the grantor, and then ceased to perform the services, it was held that the defendants had forfeited their right to hold the land at all. RAMGOPAL CHUCKERBUTTY *v.* CHUNDERNATH SEIN . . . . 10 W. R., 289

30. ——————— *Refusal to perform services.—Ejectment.*—A distinct refusal by a tenant to perform services incidental to his holding renders him liable to ejectment. HURROGOBIND RAHA *v.* RAMRUTNO DEY . I. L. R., 4 Calc., 67

31. ——————— *Tenure resumable at will of grantor.—Notice to surrender.*—Where land held on service tenure is resumable at the will of the grantor, the holder cannot be ejected before a reasonable notice to surrender the land has been given. LAKSHMI *v.* CHENDRI [I. L. R., 8 Mad., 72

SESSIONS CASES.

See CRIMINAL PROCEDURE CODE, 1882, ss. 436, 438 . . I. L. R., 1 All., 413
[I. L. R., 4 Calc., 16
7 C. L. R., 168
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SESSIONS JUDGE, JURISDICTION OF—

See BAIL . . I. L. R., 1 All., 151
[1 B. L. R., A. Cr., 7
24 W. R., Cr., 7, 8

See CASES UNDER CRIMINAL PROCEDURE CODE, 1882, ss. 436, 438.

See CASES UNDER DISCHARGE OF ACCUSED.

See REGISTRATION ACT, 1877, s. 83 (1866, s. 95) . 6 B. L. R., 692, 693, note

See SANCTION TO PROSECUTION — POWER TO GRANT SANCTION.
[I. L. R., 2 Bom., 384
I. L. R., 2 All., 205

1. ——— **Offence under Bom. Reg. XVII of 1827, s. 16.**—*Criminal Procedure Code, 1869.*—An offence under section 16, Regulation XVII of 1827, being punishable by imprisonment for seven years, was triable exclusively by a Court of Session under the provisions of the schedule of the Code of Criminal Procedure Amendment Act (VIII of 1869). REG. *v.* AJAM DULLA
[8 Bom., Cr., 115

2. ——— **Offence under Opium Regulation.**—*Bom. Reg. XXI of 1827, s. 7.—Criminal Procedure Code, 1861, ss. 21 and 409.*—Although the effect of section 21 of the Code of Criminal Procedure, 1861, was to give exclusive original jurisdiction to the Magistrate of the District in the trial of cases under section 7 of Regulation XXI of 1827, for abetting the smuggling of opium, that section 21 did not exclude the appellate jurisdiction vested in the Court of Session by section 409 of the Code. REG. *v.* SADU DADABHAI . . 9 Bom., 166

3. ——— **Offence under s. 26, Railway Act XVIII of 1854.**—*Order for fresh trial.*—A railway watchman was charged before a Head Assistant Magistrate with an offence under section 26 of Act XVIII of 1854. That charge was dismissed, but the Sessions Judge ordered a fresh trial *Held* that in so doing the Sessions Judge acted without jurisdiction. ANONYMOUS .. 6 Mad., Ap., 41

4. ——— **Offence under Registration Act (XX of 1866), s. 95.**—*Abetment of false personation of witness before Registrar.*—The Sessions Judge had jurisdiction to try a case of abetting false personation of a witness before a Registrar of Assurances, under section 95 of the Registration Act XX of 1866. QUEEN *v.* SHEOGOLAM DAS
[6 B. L. R., F. B., 692: 15 W. R., Cr., 58

5. ——— **Order of Magistrate attaching land.**—*Criminal Procedure Code, 1861, s. 319.*

SESSIONS JUDGE, JURISDICTION OF.

—**Order of Magistrate attaching land**—*continued.*

—A Sessions Judge had no power to interfere with an order of a Magistrate attaching disputed land under section 319 of the Code of Criminal Procedure, 1861. HURRONATH CHOWDRY *v.* RAJENDER CHUNDER ROY . . . 15 W. R., Cr., 1

6. ——— *Criminal Procedure Code, 1861, s. 319.—Appeal from Magistrate.*—*Held* that a Sessions Judge had no jurisdiction to hear an appeal from the order of a Magistrate, under section 319, Chapter XXII of the Criminal Procedure Code, 1861, and that the object of the chapter was to prevent breaches of the peace likely to be occasioned and not the adjudication of title. IN THE MATTER OF THE PETITION OF DUTT RAM MISR
[1 Agra, Cr., 29

7. ——— **Appeals from sentences of Justice of the Peace acting under Act I of 1859.**—The Sessions Court has jurisdiction to hear appeals from the sentences of a Justice of the Peace acting under the Merchant Seamen's Act (No. I of 1859). IN THE MATTER OF THE PETITION OF EVANS
[2 Mad., 473

8. ——— **Offence under Penal Code, s. 409, and under s. 29, Act V of 1861.**—*Power of Sessions Judge after acquittal on former charge.*—Where an accused was charged before the Sessions Judge under both section 409, Penal Code, and under the special law, section 29, Act V of 1861, and was acquitted under the former section, it was held that the Sessions Judge could not convict under the latter law, as the Magistrate alone had jurisdiction to convict under that law. QUEEN *v.* BHOOBUN SINGH. BHOOBUN SINGH *v.* QUEEN
[9 W. R., Cr., 36

9. ——— **Power of Sessions Judge to add charge and try it.**—*Addition of charge triable by any Magistrate.—Criminal Procedure Code, 1882, s. 28.*—Subject to the other provisions of the Criminal Procedure Code, section 28 gives power to the High Court and the Court of Sessions to try any offence under the Penal Code; and the provision it contains as to the other Courts does not cut down or limit the jurisdiction of the High Court or the Court of Session. Three persons were jointly committed for trial before the Court of Session, two of them being charged with culpable homicide not amounting to murder of *J.* and the third with abetment of the offence. At the trial the Sessions Judge added a charge against all the accused of causing hurt to *C.*, and convicted them upon both the original charges and the added charge. The assault upon *C.* took place either at the same time as or immediately after the attack which resulted in the death of *J.*—*Held*, that the Sessions Judge had power, under section 28 of the Code, to try the charge assuming that he had power to add it. QUEEN-EMPRESS *v.* KHARGA . . . I. L. R., 8 All., 665

10. ——— *Criminal Procedure Code, 1872, s. 231.—Conviction on fresh charge in support of which there was no evidence before*

SESSIONS JUDGE, JURISDICTION OF.
Power of Sessions Judge to add charge and try it—*continued.*

Magistrate.—*R.* having been committed by a Magistrate for trial by a Sessions Court on a charge, under section 202 of the Penal Code, of having intentionally omitted to give information which he was legally bound to give respecting a murder, pleaded guilty, on his trial, to the charge on which he was committed. Upon the application of the Public Prosecutor, the Sessions Judge, under protest on the part of the prisoner, added a charge, under sections 109 and 201 of the Penal Code, of abetting *C.*, a female coprisoner charged with having assisted in burying the body of the murdered person, required *R.* to plead to the charge and, having tendered a pardon to, and examined *C.* as a witness, convicted and sentenced *R.* to two years' rigorous imprisonment.—*Held* that, as there was no evidence before the Magistrate to support the charge against *R.* framed by the Sessions Judge, the action of the Judge was *ultra vires* and the conviction on the added charge illegal.—*Held*, also, that inasmuch as the Sessions Judge considered *R.* more culpable than *C.*, the proper course would have been to have adjourned the trial, sent the record to the Magistrate, and suggested an enquiry as to whether there was ground for a more serious charge against *R.* *Semble*,—The object of restricting a Sessions Court from taking cognisance of any offence (except as provided in sections 455, 472, 474 of the Criminal Procedure Code), unless the accused person has been committed by a Magistrate, is to secure to the prisoner a preliminary enquiry which affords him an opportunity of becoming acquainted with the circumstances of the offence imputed to him, and enable him to make his defence. MUTIRAKAL KOVILAGATHA RAMA VARMA RAJA *v.* QUEEN . . . **I. L. R., 3 Mad., 351**

11. ——— Trial without committal by Magistrate.—*Witness sent up with conditional pardon.—Criminal Procedure Code, 1861, ss. 359, 439.*—*Held* that a Sessions Judge acted irregularly in at once trying and convicting a person who had been granted a conditional pardon by the Magistrate, and who had been sent up to the Sessions Court as a witness for the Crown. Such a course was held to be a material irregularity under section 439 of the Code, and the Sessions Judge was directed to order the Magistrate to commit the accused to the Sessions for a fresh trial after hearing his defence and examining his witnesses. QUEEN *v.* BIPRO DASS **[19 W. R., Cr., 43**

12. ——— Order for re-trial on appeal.—*Criminal Procedure Code, 1872, s. 280, amended by s. 28, Act XI of 1874.*—It is competent to a Court of Session under section 280 of the Criminal Procedure Code as amended by section 28, Act XI of 1874, to order a re-trial of a case which is before it on appeal. IN THE MATTER OF SHER MAHOMED **[2 C. L. R., 511**

13. ——— Power to give judgment on evidence partly recorded by predecessor.—*Criminal Procedure Code, 1872, s. 328.*—The power given by the Criminal Procedure Code to a Magistrate to pronounce a judgment upon evidence partly recorded by his predecessor and partly by himself does not extend to a Sessions Judge. TARADA BALADU *v.* QUEEN . . **I. L. R., 3 Mad., 112**

QUEEN *v.* RUGOONATH DASS **[23 W. R., Cr., 59**

SESSIONS JUDGE, JURISDICTION OF.
—Power to give judgment on evidence partly recorded by predecessor—*continued.*

14. ——— Power in regular appeal.—*Insufficient evidence.—Acquittal.*—If the evidence which comes before a Sessions Judge in a regular appeal from a Magistrate's order is not sufficient to reasonably satisfy him that the prisoners have been rightly convicted, he ought to acquit them. IN THE MATTER OF THE PETITION OF KHERAJ MULLAH. KHERAJ MULLAH *v.* JANAB MULLAH **[11 B. L. R., 33; 20 W. R., Cr., 13**

15. ——— Power to suspend sentence.—A Sessions Judge has no authority to suspend his own sentence. ANONYMOUS . **4 Mad., Ap., 2**

16. ——— A Sessions Judge has no power to suspend a sentence in any case unless there is an appeal. ANONYMOUS **[5 Mad., Ap., 1**

He should state distinctly whether he agrees with the verdict of the jury or not. QUEEN *v.* CHAND BAGDEE . . . . **7 W. R., Cr., 6**

17. ——— Power to prevent prisoner from appealing.—*Right to appeal.*—It is not the province of the Sessions Judge to decide whether a prisoner has a right of appeal or not; he is bound to allow a prisoner, whose conviction he has confirmed, to execute a vakalutnama to appeal. QUEEN *v.* VAIYAPURI GAUNDAN . . . **1 Mad., 4**

18. ——— Mitigation of sentence without appeal.—*Held* that a Sessions Judge has no power to mitigate a sentence passed upon a prisoner who has not appealed to him. REG. *v.* MULIYA NANA . . . **5 Bom., Cr., 24**

19. ——— Power to sentence on appeal from decision of Magistrate.—*Commutation of sentence.*—A Sessions Judge cannot, on appeal from a Magistrate's decision, inflict a term of imprisonment in commutation of a fine longer than that which the Magistrate himself could have inflicted. REG. *v.* HARI BIN VITHOJI . **1 Bom., 139**

20. ——— Power to pass sentence of death.—*Affray with murder.—Offence before Penal Code came into operation.*—In a case of affray attended with murder, in which the offence was committed before the Penal Code came into force, it was held that a Sessions Judge had himself power, under section 4, Act XVII of 1862, to pass sentence of death, instead of referring the matter for confirmation of the High Court. QUEEN *v.* BUSTI SINGH **[14 W. R., Cr., 76**

21. ——— Amendment of sentence.—*Alteration of conviction.—Criminal Procedure Code 1861, s. 22.*—*Held* that an order of a Sessions

SESSIONS JUDGE, JURISDICTION OF. —Amendment of sentence—*continued.*

Judge, by which he altered a conviction by the Assistant Sessions Judge, of "dacoity" to one of "robbery," was illegal, not being an amendment of a sentence or order within the meaning of section 22 of the Criminal Procedure Code. *Held* further, that if the accused were, in the opinion of the Sessions Judge, improperly convicted of "dacoity," he ought to have declined to confirm the sentence, and to have left them to be charged with and tried for "robbery." REG. *v.* THOMESIT . . . **5 Bom., Cr., 22**

22. ——— Concurrent jurisdiction with Magistrate.—*Criminal Procedure Code, 1861, s. 434.—Report to High Court.*—A Full-Power Magistrate was not immediately subordinate to the Sessions Court, and therefore a Sessions Judge had no concurrent jurisdiction with the Magistrate of the district, under section 434 of the Code of Criminal Procedure. His proper course, if he thinks that an illegal sentence or order has been passed by a Full-Power Magistrate, is to make a report to the High Court, which will then, if it thinks fit, call for the proceedings. REG. *v.* SHIVBASAPA **[7 Bom., Cr., 73**

23. ——— Power to call for and refer to the High Court proceedings of Magistrate. —*Criminal Procedure Code, 1869, s. 23.—Held* that under the provisions of section 23 of the Code of Criminal Procedure, 1869, a Full-Power Magistrate was, for the purposes of section 434, immediately subordinate to the Magistrate of the district, and not to the Court of Session. The Sessions Judge therefore had no power to call for or refer to the High Court proceedings in a case before a Full-Power Magistrate. REG. *v.* KESHAVSHET . . **6 Bom., Cr., 74**

24. ——— Power to refer to High Court.—*Unnecessary reference to High Court.*—Where an appeal is preferred to a Sessions Judge from the order of a Magistrate which he considers illegal, the Sessions Judge should himself deal with the case, instead of referring it to the High Court. QUEEN *v.* NUSSUROODDEEN SHAZWAL **[11 W. R., Cr., 24**

25. ——— Power to call for report from Magistrate.—*Power to call for record and proceedings.*—A Sessions Judge ought not to call for a report from the Magistrate of the district in any case in which it is not competent to such Sessions Judge to call for the record and proceedings, *e. g.*, in the case of a person tried by a Subordinate Magistrate who has appealed to the District Magistrate. In trials by the Magistrate of the district, or Full-Power Magistrate, in which the Sessions Judge can call for the record and proceedings, he has power also to call for a report. REG. *v.* GIRDHAR DHARAMDAS **[6 Bom., Cr., 33**

26. ——— Power to call for and examine record.—*Absence of order by Magistrate.*—There was no provision in the Criminal Procedure Code, 1861, which made it lawful for a Court of Session to call for and examine the record of a case tried by a Subordinate Magistrate where no sentence or

SESSIONS JUDGE, JURISDICTION OF. —Power to call for and examine record —*continued.*

order had been passed thereon by the immediately subordinate Court of the Magistrate. REG. *v.* BHASKAR KHARKAR . . . **3 Bom., Cr., 1**

27. ——— Trial in case committed by Magistrate.—*Objection that case was tried without complaint.*—A Court of Session cannot treat as a nullity the commitment of a Full-Power Magistrate, on the ground that he investigated the case, and committed the prisoner, without a formal complaint being made to him, but should proceed with the trial in the usual course. REG. *v.* RANCHODDAS NATHUBHAI . . . . . **4 Bom., Cr., 35**

28. ——— *Objection to irregularity of proceedings.*—The fact of a commitment being made by a Joint Magistrate, who is an officer exercising the powers of a Magistrate, was sufficient, under section 359, Code of Criminal Procedure, to enable the Sessions Judge to proceed with the trial; and it lay with the party impugning the correctness of the proceedings to show that there was no jurisdiction. QUEEN *v.* KOMUROODDEE SIKHDAR **[13 W. R., Cr., 17**

29. ——— Power to quash sentence of Assistant Sessions Judge.—*Sentence submitted for confirmation.—Held* that a Sessions Judge had no power to quash a sentence passed by an Assistant Judge, and by him submitted for confirmation, and to direct a new sentence to be passed, even supposing the sentence of the Assistant Sessions Judge to be illegal. REG. *v.* MURAR TRIKAM . **5 Bom., Cr., 3**

30. ——— Power to quash commitment for illegality.—*Duty to report proceedings to High Court.*—The Criminal Procedure Code, 1861, did not authorise the Sessions Judge to quash a commitment on the ground of illegality. If the Sessions Judge is of opinion that the order of commitment should be annulled as illegal, he should move the High Court to annul the same under section 404 of the Criminal Procedure Code. QUEEN *v.* MATA DYAL **[4 N. W., 6**

31. ——— Power to annul conviction and sentence.—*Offence beyond jurisdiction of subordinate Court.*—It is only when a Court subordinate to a Court of Session convicts a person of an offence not triable by such Court, that the Court of Session can annul the conviction and sentence. If the prisoner is guilty of an offence beyond the jurisdiction of the subordinate Court, the Court of Session should refer the case to the High Court. QUEEN *v.* ICHABUR DOBEY . . . **4 W. R., Cr., 11**

32. ——— Power to quash proceedings of Magistrate.—The order of a Sessions Judge to quash proceedings held before a Full-power Magistrate annulled as having been made without jurisdiction. REG. *v.* GOVINDA BIN BABAJI **[5 Bom., Cr., 15**

REG. *v.* GOPAL LAKSHUMAN . **5 Bom., Cr., 25**

SESSIONS JUDGE, JURISDICTION OF —*continued.*

33. ——— **Power to quash illegal conviction.**—*Giving false evidence in judicial proceeding.*—The offence of giving false evidence in a stage of a judicial proceeding is not cognisable by an Assistant Magistrate. A Sessions Judge on appeal can quash an illegal conviction by an Assistant Magistrate in such a case. QUEEN *v.* HEERAMUN SINGH . . . . . 8 W. R., Cr., 30

34. ——— **Power to annul conviction and order commitment.**—*Offences triable by Magistrate.—Criminal Procedure Code (Act VIII of 1869), s. 435.*—The Sessions Judge had no jurisdiction to annul a conviction and order a commitment for an offence triable by a Magistrate. Section 435, Act VIII of 1869, related to offences triable by the Sessions Judge. IN THE CASE OF WAZIR SINGH [3 B. L. R., A. Cr., 65 : 12 W. R., Cr., 46

QUEEN *v.* JEETUN KHAN . 11 W. R., Cr., 45

35. ——— *Illegal conviction by Magistrate.—Criminal Procedure Code, 1861, s. 435.*—Where the Sessions Judge was of opinion that a subordinate Magistrate had convicted the defendant of an offence which the subordinate Magistrate had no power to try, the Sessions Judge might, under section 435 of the Code of Criminal Procedure, 1861, annul the conviction and direct the committal of the accused for trial. ANONYMOUS [5 Mad., Ap., 32

36. ——— **Order to cancel proceedings of Divisional Magistrate.**—*Proceedings reviewing the calendars of subordinate Magistrates.*—A Sessions Judge has no power to direct a Division Magistrate to cancel his proceedings reviewing the calendars of Magistrates subordinate to him. ANONYMOUS . . . . 7 Mad., Ap., 27

37. ——— **Power to direct Magistrate to commit to sessions.**—*Conviction by Magistrate without jurisdiction.*—Where a Magistrate has convicted and sentenced a prisoner of an offence which such Magistrate was competent to try, and the Sessions Judge considered the case so grievous that it should not have been disposed of summarily, —*Held* that such Sessions Judge was not competent to direct the Magistrate to commit the prisoner to the Sessions Court for trial upon the same charge. QUEEN *v.* HIDDUN KHAN . . 2 N. W., 285

38. ——— **Power to reverse order of Magistrate as to stolen property.**—A Deputy Magistrate restored to an accused money found in his house along with stolen property, the prosecutor having failed to prove that the money was his. The Sessions Judge on appeal reversed that order, and directed the money to be made over to the prosecutor. *Held* that the order of the Sessions Judge was made without jurisdiction. QUEEN *v.* SHIB CHUNDER RAI . . . 9 W. R., Cr., 57

39. ——— **Conviction on confession before Magistrate after plea of not guilty.**—A Sessions Judge, after a prisoner upon his trial has

SESSIONS JUDGE, JURISDICTION OF. —Conviction on confession before Magistrate after plea of not guilty—*continued.*

pleaded what in effect amounts to a plea of not guilty, is not justified in convicting the prisoner solely upon a confession made before the committing Magistrate. QUEEN *v.* HURSOOKH . . . 2 N. W., 479

40. ——— **Power to interfere with order of acquittal.**—*Acquittal by Magistrate.—Criminal Procedure Code, 1861, s. 435.*—After an accused person had been acquitted under section 255 of the Code of Criminal Procedure, it was not competent to the Sessions Judge to interfere under section 435 of the same Act. REG. *v.* VENKU NARSA [9 Bom., 170

41. ——— **Power to order commitment.**—*Cases exclusively triable by Court of Session.*—The Court of Session can only order the commitment of an accused person in cases exclusively triable by it. QUEEN *v.* SEETUL PERSHAD [5 N. W., 168

42. ——— *Power to commit to itself cases not triable exclusively by Court of Session.—Criminal Procedure Code (Act X of 1872), ss. 231, 471, and 472.*—A Court of Session had no power to commit to itself for trial a case not triable exclusively by such Sessions Court. The words "commit the case itself" in section 471 of the Code of Criminal Procedure cannot (when read in connection with section 231) be held to empower a Sessions Court to commit such a case to itself. IN THE MATTER OF EMPRESS *v.* FUTTEH JYA KHAN [I. L. R., 4 Calc., 570

S. C. IN RE FATA IYAH KHAN . 3 C. L. R., 599

43. ——— *Criminal Procedure Code, 1861, s. 435.*—Where a Judge, under section 435 of the Criminal Procedure Code, had directed the Magistrate to commit certain accused persons, as also to take their defence,—*Held* that, as the Magistrate could not require the accused to produce evidence nor to make a defence, the Judge should not have included such instructions in his order of commitment, but that the order was not therefore invalid. QUEEN *v.* GHASEE [4 N. W., 50

44. ——— *False evidence.*—The Sessions Judge has no power to commit a man for having given false evidence before the Magistrate, but he can commit him for having given false evidence in his own Court. QUEEN *v.* HARDYAL [3 B. L. R., A. Cr., 35

45. ——— *Criminal Procedure Code, 1872, s. 472.*—*L.* made a complaint against *S.* by petition, in which he only charged *S.* with having committed offences punishable under sections 193 and 218 of the Penal Code, but in which he also accused *S.* of acts which, if the accusation had been true, would have amounted to an offence punishable under section 466 of that Code with seven years' imprisonment. The Magistrate inquired into the charges against *S.* under sections 193 and 218 of

SESSIONS JUDGE, JURISDICTION OF. —Power to order commitment—*continued.*

the Penal Code and directed his discharge. *L.* then applied to the Court of Session to direct *S.* to be committed for trial on the ground that he had been improperly discharged, which the Court of Session did, and *S.* was committed for trial charged under section 218 of the Code, and was acquitted by the Court of Session. The Court of Session then, under section 472 of Act X of 1872, charged *L.* with offences punishable under sections 193, 195, 211, and 211 and 109 of the Penal Code, and committed him for trial. *Held* that such commitment was not bad by reason that an offence under section 193 of the Penal Code is not exclusively triable by a Court of Session. *Held*, also, *per* SPANKIE, *J.*, that the Court of Session was competent, notwithstanding that *L.* had only charged *S.* with offences under sections 193 and 218 of the Penal Code, to charge *L.* with offences under sections 195 and 211, if such offences had come under its cognisance. EMPRESS *v.* LACHMAN SINGH [I. L. R., 2 All., 398

46. ——————— *Criminal Procedure Code, 1861, s. 435 and s. 359.*—A Sessions Judge was competent, under section 435, Code of Criminal Procedure, to order the committal of a person accused of giving false evidence after the discharge of such person by the Magistrate, section 359 notwithstanding (*dissentiente*, KEMP, *J.*). QUEEN *v.* BHOHISAN MAHATOON . W. R., 1864, Cr., 3

47. ——————— *Person discharged by Magistrate.*—A Sessions Judge has discretion to order the commitment to the Court of Session of any accused person discharged by the Magistrate. The non-exercise of such discretion cannot be interfered with by the High Court. QUEEN *v.* SHEETARAM CHOWDHRY . 2 W. R., Cr., 44

48. ——————— *Discharge of accused on inquiry before Magistrate.—Further inquiry.*—When an inquiry has been made, and the accused discharged, the Sessions Court may order the commitment of the accused, but cannot merely direct further inquiry. QUEEN *v.* GHASSEERAM [3 N. W., 90

49. ——————— *"Acquittal and release" of accused by Magistrate.—Criminal Procedure Code, 1861, s. 435.*—Where a Magistrate used the words "acquittal and release," when he intended only to discharge a person accused of an offence not triable by him,—*Held* that the Court of Session was competent, under section 435, Code of Criminal Procedure, to order a commitment of such accused person. QUEEN *v.* NEETIR DULAL [8 W. R., Cr., 41

50. ——————— *Discharge by Magistrate.—Criminal Procedure Code, 1861, s. 435.*—A Sessions Judge might, under section 435 of the Code of Criminal Procedure, after a Magistrate has discharged an accused person, order the Magistrate to commit the accused person to the sessions. IN THE MATTER OF THE PETITION OF MUSMUD ALI CHOWDHRY *alias* MOOCHEE MEAN [7 W. R., Cr., 38

SESSIONS JUDGE, JURISDICTION OF. —Power to order commitment—*continued.*

51. ——————— *Conviction under Penal Code, ss. 323, 352.*—A Sessions Judge has no authority to interfere and direct a committal in the case of a conviction for assault under section 352, or of hurt under section 323 of the Penal Code, both of them being offences triable by the subordinate Court. QUEEN *v.* RAMTOHUL SINGH . 5 W. R., Cr., 12

52. ——— Power of Joint Sessions Judge.—*Criminal Procedure Codes, Act X of 1872, s. 17, and Act X of 1882, ss. 9 and 195, and ch. XXXII.—Discharge by a Magistrate.—Power of Joint Sessions Judge to direct committal.*—A Joint Sessions Judge cannot exercise the powers of the Sessions Judge under Chapter XXXII of the Criminal Procedure Code (X of 1882). Accordingly, where a Magistrate had discharged certain accused persons, and the Joint Sessions Judge had subsequently, on the application of the complainant, ordered their committal to the Sessions Court, the High Court set aside the proceedings of the Joint Sessions Judge, leaving it to the Sessions Judge of the district, if a proper case was made out, to order a committal, or dispose of the application as he might think fit. IN THE MATTER OF THE PETITION OF MUSA ASMAL [I. L. R., 9 Bom., 164

53. ——————— *Applications under Criminal Procedure Code, 1882, ch. XXXII.—Sessions Judge, Power of, to direct disposal, by Joint Sessions Judge, of such applications as cases transferred.—Criminal Procedure Code, 1882, s 193, and ch. XXXII.*—Applications under Chapter XXXII of the Code of Criminal Procedure (Act X of 1882) cannot be referred to a Joint Sessions Judge under section 193, clause 2 of the Criminal Procedure Code, so as to make it competent for a Joint Sessions Judge to dispose of them,—a Joint Sessions Judge being strictly precluded from exercising any of the powers under Chapter XXXII of the Criminal Procedure Code, and section 193, clause 2, contemplating only cases for trial. REFERENCE BY THE SESSIONS JUDGE OF SURAT [I. L. R., 9 Bom., 352

SET-OFF.

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1. MISCELLANEOUS CASES	5606
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See EVIDENCE—CIVIL CASES—SECONDARY EVIDENCE — UNSTAMPED OR UNREGISTERED DOCUMENTS. [5 B. L. R., Ap., 1

See ROAD CESS ACT. [I. L. R., 4 Calc., 576; 11 C. L. R., 140

1. MISCELLANEOUS CASES.

1. ——— Raising issue of set-off on trial.—*Procedure.*—When a defendant raises a

SET-OFF—*continued.*

1. MISCELLANEOUS CASES—*continued.*

Raising issue of set-off on trial—*continued.*

claim of set-off, on the trial of that issue he must be considered as plaintiff. JAGADAMBA DASI *v.* GROD [5 B. L. R., 639

As to how cases of set-off will be dealt with *See* RAMAGOPAL *v.* MAJETI MALLIKKARJANUDU . [1 Mad., 396

2. ——— Written statement of set-off.—*Act VIII of 1859, s. 121.*—Under section 121, Act VIII of 1859, a defendant, desirous of setting off against the claim of the plaintiff the amount of any payment made by him on plaintiff's account, was bound to tender a written statement containing the particulars of his demand. POORNO CHUNDER ROY *v.* BEHAREE LALL MOOKERJEE . . 14 W. R., 473

3. ——— Power of Revenue Court to allow set-off under Act X of 1859, s. 24.—*Suit by principal against agent.*—A Revenue Court, acting under the provisions of section 24, Act X of 1859, had jurisdiction to allow a set-off for any sums which the agent might either have paid to his principal directly, or used for the benefit of his principal with his sanction and authority. MOHIMA RUNJUN ROY CHOWDHRY *v.* NOBO COOMAR MISSER [18 W. R., 339

2. SET-OFF ALLOWED.

4. ——— Right of set-off.—*Cross-demands arising out of same transaction.—Semble,*—The right of set-off will be found to exist not only in cases of mutual debts and credits, but also where cross-demands arise out of the same transaction, or are so connected in their nature and circumstances as to make it inequitable that the plaintiff should recover, and the defendant be driven to a cross-suit. CLARK *v.* RUTHNAVALOO CHETTI . 2 Mad., 296

5. ——— *Cross-demands arising out of one transaction.—Suit to enforce contract.—Damages.*—The right of set-off exists where there are cross-demands arising out of one and the same transaction, or where these are so connected in their nature and circumstances as to make it inequitable that the plaintiff should recover and the defendant be driven to a cross-suit. In a suit to recover money due under a contract made between the plaintiff and defendants,—*Held* that the defendants were entitled to set off the amount of damages which the defendants had proved they had sustained by reason of the plaintiff's breach of the contract sued on. KISTNASAMY PILLAY *v.* MUNICIPAL COMMISSIONERS FOR THE TOWN OF MADRAS . . 4 Mad., 120

6. ——— *Right to set off a claim for unliquidated damages.—Civil Procedure Code (Act X of 1877), s. 111.—Costs.—Act XXVI of 1864, s. 9.*—The provisions of the Civil Procedure Code (X of 1877) do not give the right to set off claims for unliquidated damages, but that Code does not take away any right of set-off, whether legal or equitable, which parties to a suit would have, independently of its provisions. Where, therefore, in a suit for the price of goods sold and delivered, the defendant admitted that there was a sum of R1,159-12-0 due by him to the plaintiff, but sought to set off the sum of R972 as damages sustained by him by reason of the non-delivery of some of the goods contracted for, it was held that as the claim of the defendant against the plaintiff was connected with the same transaction, and arose out of one and the same contract, as that in respect of which the plaintiff's suit was brought, and as the amount of the defendant's claim was capable of being immediately ascertained, the defendant might set off his claim. *Clark* v. *Ruthnavaloo Chetti, 2 Mad., 296,* and *Kistnasamy Pillay* v. *Municipal Commissioner of Madras, 4 Mad., 120,* followed. Where the defendant proved a set-off against the plaintiff, and thus reduced the amount which he (plaintiff) was entitled to recover from the defendant, for breach of contract, —*Held* that, notwithstanding the provisions of section 9 of Act XXVI of 1864, the plaintiff was entitled to his costs. KISHORCHAND CHAMPA LAL *v.* MADHOWJI VISRAM . . I. L. R., 4 Bom., 407

7. ——— *Right to set off a claim for an unascertained amount.—Civil Procedure Code (Act XIV of 1882), s. 111.*—The provision of the Civil Procedure Code (Act XIV of 1882), section 111, does not take away from parties any right to set-off, whether legal or equitable, which they would have had independently of that Code. And such right exists not only in cases of material debts and credits, but also where cross-demands arise out of the same transaction, or are so connected in their nature and circumstance as to make it inequitable that the plaintiff should recover, and the defendant should be driven to a cross-suit. Where, therefore, a decree had been obtained against certain persons in respect of arrears of rent of an ijara held jointly by them, and one of them having been forced to pay the whole amount of decree sued the others for contribution, and where in such suit the defendants pleaded that, although the plaintiff had paid off the whole of the decree in question, he was not entitled to recover any portion from them, inasmuch as he was indebted to them for his share of the ijara rents, the whole of which had been paid by them to the zemindar in previous years, as well as in respect of rent due to them for the share on account of a portion of the land which he himself held in nij-jote, and for which he had paid no rent, and that on accounts being gone into, it would be found that their claim exceeded that of the plaintiff,—*Held,* following *Clark* v. *Ruthnavaloo Chetti, 2 Mad., 296,* and *Kishorchand Champalal* v. *Madhowji Visram, I. L. R., 4 Bom., 407,* that notwithstanding the provisions of section 111 of the Civil Procedure Code, the defendants' claim for the share of rents paid by them to the zemindar on account of the same ijara might properly be pleaded as a set-off, and be taken into account in determining the plaintiff's suit as arising out of the same transaction, but that their

SET-OFF—*continued.*

2. SET-OFF ALLOWED—*continued.*

Right of set-off—*continued.*

claim for rent for the portion of the lands held by the plaintiff in nij-jote could not be treated in such manner, but must form the subject-matter of a separate suit. BHAGBAT PANDA *v.* BAMDEB PANDA [I. L. R., 11 Calc., 557

8. ——————— *Right to set off damages for breach of contract.—Civil Procedure Code, 1882, s. 111.—"Ascertained" sum.*—A suit was brought by *P.* against the Elgin Mills Company for recovery of the price of wood supplied under two contracts, each of which contained a clause by which the plaintiff contracted to indemnify the defendants for loss arising by reason of failure on his part to supply the wood as contracted for. Defendants claimed a set-off as damages for loss incurred by the plaintiff's failure to supply all the wood contracted for, such loss having arisen on the 25th October 1879, and subsequently. *Held* that although, taking the word "ascertained" to mean "liquidated," the claim of the defendants for damages would not come within the meaning of a set-off under section 111 of the Civil Procedure Code, that section was one regulating procedure, and was not intended to take away any right of set-off, whether legal or equitable, which parties would have had independently of its provisions; that the right of set-off would be found to exist not only in cases of mutual debts and credits, but also where the cross-demands arose out of one and the same transaction, or were so connected in their nature and circumstances as to make it inequitable that the plaintiff should recover and the defendant be driven to a cross-suit; and that as, in the present case, the claim sprang out of the same contract which the plaintiff sought to enforce, and could readily be determined in the same suit, it was equitable that it should be so determined. *Gauri Sahai* v. *Ram Sahai, 7 N. W., 157; Kistnasamy Pillay* v. *Municipal Commissioners of Madras, 4 Mad., 120;* and *Kishor Chand Champa Lal* v. *Madhowji Visram, I. L. R., 4 Bom., 407,* followed. *Per* OLDFIELD, *J.*—That the excess of the set-off in favour of the defendants over and above the claim of the plaintiff might properly be decreed to them, and that the set-off should be allowed, if at all, to its full extent, and not merely to the extent of defeating the claim. *Per* DUTHOIT, *J.*—That although the set-off might properly be admitted as an equitable protection to the defendants against being cast in the plaintiff's suit, the defendants could not, failing the provisions of section 111 of the Civil Procedure Code, be allowed to recover a sum of money from the plaintiff, they having paid no court fees on that account. PEAGI LAL *v.* MAXWELL [I. L. R., 7 All., 284

9. ——————— *Civil Procedure Code, 1859, s. 121.—Suit or award determining several items.—Mutual liability under award.*—*G.* and *R.* referred to arbitration disputes between them regarding the partition of their paternal estate. The concluding portion of the award ran as follows: "Both parties shall jointly satisfy the debts on the creditors demanding payment, which debts are joint and have hereunder been declared payable by both parties. Should one party neglect to pay or show carelessness in the matter, and should the other be obliged to pay the whole amount of any such debts, the latter shall be competent to realise from the former portion of the debt paid on his account, together with costs and interest, by the enforcement of this award, and shall also be entitled to recover the amount by suit in Court. Both parties shall act up to this award in its entirety. The sum of R338-0-9, which has been found due and payable by *G.* to *R.* as per account showing the mutual dealings between the parties, shall be made good as follows, *i.e.*, *G.* shall pay to *R.* the whole amount of R338-0-9 by the middle of the month of Pous 1276 Fasli, either in a lump sum or by instalments, and in case of non-payment within the said period he shall be charged with interest at the rate of one per cent. up to the day of payment." *R.* sued to recover from *G.* the money found to be due and payable to him under the award. *G.* admitted the claim, but desired to set off half the amount of certain debts which were payable under the award by the parties jointly, and which he alone had satisfied. The lower Appellate Court deducted from the claim items of the demand admitted by *R.*, but refused to determine *G.'s* right to set off the items which *R.* disputed on the ground, that they could be more conveniently inquired into in a separate suit. It was held (*per* STUART, *C. J.*, SPANKIE, *J.* dissenting) that *G.* was entitled to demand a set-off, and that the lower Appellate Court should have inquired into the disputed items of the demand, and not have referred *G.* to a separate suit in respect of those items. GAURI SAHAI *v.* RAM SAHAI [7 N. W., 157

10. ——————— *Suit for redemption, Decree in.—Set off of costs against mortgage-money.—Lien of attorney.—Civil Procedure Code, 1877, ss. 111, 221.*—The decree in a redemption suit directed the plaintiff (the mortgagor) to pay the mortgage-money and interest to the defendant, and directed the defendant to pay the plaintiff the costs of the suit. *Held* that the plaintiff was entitled to set off the amount of his taxed costs against the mortgage-money which he was liable to pay under the decree, notwithstanding any claim that the defendant's attorney might have against the defendant in respect of the defendant's costs of suit. BRIJNATH DASS *v.* JUGGERNATH DASS [I. L. R., 4 Calc., 742

S. C. BRIJONATH DASS *v.* JUGGERNATH DASS [4 C. L. R., 122

11. ——————— *Insolvent Act, s. 39.—Mutual credit.—Civil Procedure Code, 1877, s. 111.*—Where there is a debt due from an insolvent prior to his insolvency to another from whom there was a debt which was in dispute due to the insolvent, in a suit brought by the Official Assignee to recover the latter debt, the defendant is entitled, under section 39 of the Insolvent Act II, and

SET-OFF—*continued.*

2. SET-OFF ALLOWED—*continued.*

Right of set-off—*continued.*

12 Victoria, Cap: 21, to set off the debt due from him to the insolvent against sums which may be claimed from him. MILLER *v.* BEER . **6 C. L. R., 294**

12. ——————— *Civil Procedure Code, 1882, s. 111.—Court fee on set-off.*—In a suit to recover a sum of money due as wages, the plaintiff alleging that the defendant had engaged him to sell cloth on his account at a monthly salary, the defendant claimed a set-off as the price of cloth which he alleged the plaintiff had sold on his account on commission. It appeared that the defendant had previously sued the plaintiff to recover the same amount as was now claimed by way of set-off, as being due for the price of cloth sold and delivered by the defendant to him; and the plaintiff (then defendant) pleaded that there had been no sale to him, but the cloth had been delivered to him on commission sale. The suit was dismissed on the ground that there was no proof of a sale of cloth, and the question whether any sum was due for cloth sold on commission sale was not gone into. The cloth now alleged to have been delivered on commission sale was the same as that alleged in the former suit to have been actually sold to the plaintiff. *Held* that the defendant was entitled, under section 111 of the Civil Procedure Code, to set off the amount claimed as due for goods sold on commission against the plaintiff's demand. *Held*, also, that the court fee payable on the claim for set-off was the same as for a plaint in a suit. AMIR ZAMA *v.* NATHU MAL . . **I. L. R., 8 All., 396**

13. ——————— *Liquidated sum due on bond.—Suit for rent.*—A liquidated sum due on a bond is capable according to law, even without an agreement to that effect, of being set-off against sums due for rent. WATSON & CO. *v.* BROJOSOONDUREE DEBIA . . . **16 W. R., 225**

14. ——————— *Debt due from deceased husband.—Debt due to widow.*—A widow is liable for a debt contracted by her husband. Such debt may be set off against a debt due to her. GRISH CHUNDER LAHOORY *v.* KOOMAREE DABEA **[1 W. R., Mis., 23**

15. ——————— *Lumbardar.—Co-sharer.—Revenue, Payment of.—Profits, Suit for share of.—Held* (SPANKIE, *J.* dissenting) that a lumbardar, who had paid an arrear of Government revenue out of the collections of subsequent years without reference to the co-sharers, was entitled, in a suit against him by a co-sharer for his share of the profits for such subsequent years, to claim in the suit a deduction on account of such payment. UDAI SINGH *v.* JAGAN NATH . **I. L. R., 1 All., 135**

16. ——————— *Purchase by putnidar of shares in zemindari.—Set-off on payment of rent.*—The four defendants obtained jointly a putni lease of R., and subsequently purchased jointly a 5 annas share in the zemindari. Defendants 1 and 2 separated from 3 and 4, each taking 8 annas of the putni and 2½ annas of the zemindari, and then

SET-OFF—*continued.*

2. SET-OFF ALLOWED—*continued.*

Right of set-off—*continued.*

defendants 3 and 4 sold their zemindari right in 2 annas and 15 gundas share to *K.*, the plaintiff, retaining 5 gundas share on their own account. The plaintiff sued to recover the rent of 2 annas and 15 gundas from the defendants 1 and 2, who denied the plaintiff's claim, while they admitted that they were liable for 8 annas rent of the putni, treating themselves as their own zemindars for 2½ annas share in the zemindari, and they alleged payment of 5½ annas of the putni rent to the 8 annas shareholder in the zemindari, and a set-off against the other 2½ annas against their own claim as zemindars. *Held* that as the defendants 1 and 2 were strangers to the transfer of the rights of defendants 3 and 4 to the plaintiff, they had, as between themselves and the plaintiff, a right still to do what they did formerly,—namely, set off their putni liability against their zemindari right. GOOROO DYAL CHUCKERBUTTY *v.* KESHUB BIBEE **[20 W. R., 409**

17. ——————— *Rent, Suit for.—Rent paid in kind.—Set-off allowed for.—Account.*—In a suit for arrears of rent, where defendant pleaded that, under an arrangement between him and plaintiff's ancestors, payment had been made by him in cash or in kind, and asked for an account to be taken, the lower Court was held to have been wrong in decreeing the suit on the ground that it could not go into evidence on a question of set-off in a rent suit, and was bound to take an account. ROY NUNDEE-PUT MOHATOON *v.* STEWART . . **23 W. R., 20**

18. ——————— *Plea of payment in suit for arrears of rent.—Indirect payment.*—In a suit by a zemindar for arrears of rent, the defendant alleged that his tenure had been placed under the management of the Collector, and had so remained for a number of years, and that the Collector, from money realised by him as manager had, in addition to satisfying all other claims of the plaintiff, paid the rents accruing, not only during the period of his management, but up to, and inclusive of, the years the arrears of rent for which were claimed in the suit. The lower Court refused to consider the defendant's plea, on the ground that it was in the nature of a set-off, and that not being a debt due from the plaintiff to the defendant, it was not such a set-off as could be allowed by the Court. *Held* that the plea was a plea of payment merely, and not in the nature of a set-off. KOONJO BEHARY SINGH *v.* NILMONEY SINGH DEO . . . . **4 C. L. R., 296**

19. ——————— *Suit for contribution against person jointly liable for rent.*—In ascertaining the amount due for contribution in a suit by one of two persons jointly liable under a decree for rent, the Court is bound to take into consideration sums paid by the defendant, on former occasions, for rent in excess of his own share of the rent, although such sums are not claimed in his written statement, the sums paid not being in the nature of

SET-OFF—*continued.*

2. SET-OFF ALLOWED—*continued.*

Right of set-off—*continued.*

a set-off. GOGUN CHAND DUT *v.* HURI MOHUN DUT . . . . . 12 C. L. R., 539

20. ——— *Civil Procedure Code, 1859. ss. 121, 195.—Claim arising out of same transaction.*—Where a defendant claims a right of set-off arising out of one and the same transaction as that in which the suit originated, it is not equitable to drive him to a cross-suit: a decree under Act VIII of 1859, section 195, and the latter portion of section 121, being of the same effect and subject to the same rules as if it had been made in a separate suit. RADHA RAM DEB *v.* JAMES . 20 W. R., 410

21. ——— *Decree for defendant on set-off where nothing found due to the plaintiff.—Held* that a defendant may deny the plaintiff's claim, and also plead a set-off and obtain a decree for it, although no sum may be found to be due to the plaintiff. HAYATKHA *v.* ABDULAKHA [6 Bom., A. C., 151

22. ——— *Civil Procedure Code, 1859, s. 195.—Counter claim.—Deductions allowed in ascertaining mesne profits.*—Section 195, Act VIII of 1859, which enabled a defendant to obtain a decree against a plaintiff in respect of a counter claim, was only applicable where defendant had been allowed to "set off" a demand against plaintiff's claim, and did not apply to a case where, in ascertaining a defendant's liability for mesne profits, deductions were allowed from the rent proved to have been received, in the nature of allowances made for costs of cultivation or collection expenses. TILUCK CHAND *v.* SOWDAMINEE DASSEE . . 25 W. R., 275

3. SET-OFF NOT ALLOWED.

23. ——— *Claim of different nature.*—It is not equitable to allow a set-off against a claim relating to a particular account stated, of a matter of another nature altogether. KALEE KOOMAR CHUCKERBUTTY *v.* HURO CHUNDER CHUCKERBUTTY . . 17 W. R., 177

24. ——— *Amount in excess of jurisdiction of Court.*—A Court cannot entertain the question of set-off if the amount claimed by the defendant exceeds the amount cognisable by it. When a defendant pleads a set-off and claims a decree, the subject-matter of the suit is no longer the mere claim of the plaintiff, but the cross-claim of both parties. RAM LAL *v.* LANCASTER [3 N. W., 114

25. ——— *Unascertained sums.*—Setting off an unascertained sum against another is a mode of settlement which, if suggested to the parties as a compromise, may, with their assent, be a fit end of a litigation, but cannot properly be made the basis of a decree between hostile litigants. BACHUN *v.* HAMID HOSSEIN. ABDOOL AZEEZ *v.* HAMID HOSSEIN [17 W. R., 113: 10 B. L. R., 45

SET-OFF—*continued.*

3. SET-OFF NOT ALLOWED—*continued.*

Right of set-off—*continued.*

26. ——— *Civil Procedure Code, 1859, ss. 121, 195.—Claim for unliquidated damages.—Suit on bill of exchange.—Cross-demands.*—Sections 121 and 195 of the Code of Civil Procedure (Act VIII of 1859) had not the effect of enlarging the right of set-off. In a suit against the acceptor to recover the amount due upon several bills of exchange, the defendant sought to set off a claim for unliquidated damages unconnected with the bills of exchange. *Held* that defendant had no right to set off his claim against the debt due to the plaintiffs. CLARK *v.* RUTHNAVALOO CHETTI . 2 Mad., 296

27. ——— *Unascertained damages.—Civil Procedure Code, 1859, s. 121.*—Under section 121, Act VIII of 1859, a defendant could not claim a set-off for damages in respect of an alleged breach of contract which had not been ascertained in a suit brought against him to recover the amount due on certain dishonoured hundis. RAM DYAL *v.* RAMDHUN DASS . 3 Agra, 43

RAM LALL *v.* KOONDUN LALL . 3 Agra, 97

28. ——— *Separate debt.—Joint and several debt.—Directors.*—A separate debt cannot be set off against a joint and several debt, and directors cannot set off money due from the company to them against sums which they may be ordered to refund to the liquidators. NEW FLEMING SPINNING AND WEAVING COMPANY *v.* KESSOWJI NAIK . . I. L. R., 9 Bom., 373

29. ——— *Joint and separate debts—Mutual dealings.*—*A.* had dealings with a firm consisting of a father and two sons, who carried on business jointly. Shortly after the father's death the two brothers separated, and *A.* dealt with each separately, having notice of the separation. *A.* could not set off, against a claim made by one of the brothers in respect of the separate dealings between himself and *A.*, a debt due to himself from the former joint concern. DHUNPUT SINGH *v.* FORBES . . 1 Ind. Jur., N. S., 354

30. ——— *Costs.—Omission to award costs.*—A set-off cannot be allowed for costs not actually awarded, as where a decree of the High Court gave the successful appellant costs of that Court and of the lower Appellate Court, but omitted to award the costs of the first Court. HURO PERSHAD ROY CHOWDHRY *v.* FOOL KISHOREE DOSSEE . . . . . 16 W. R., 308

31. ——— *Suit for carriage of goods.—Set-off for damages.*—In a suit for money claimed on account of the carriage of goods in which defendant pleaded non-indebtedness and a set-off on account of damage caused to the goods,—*Held* that defendant could not answer the claim with the set-off on account of damages; though the extent, if any, to which defendant was entitled to draw back might be put in issue, after which it would still be open to defendant to bring an action

SET-OFF—*continued.*

3. SET-OFF NOT ALLOWED—*continued.*

Right of set-off—*continued.*

against plaintiff for special damages. SCANLAN *v.* HERROLD . . . . . 10 W. R., 295

32. ——————— *Suit for mesne profits.—Civil Procedure Code, 1859, s. 121.*—A set-off is not admissible in a suit for mesne profits, which is not a suit for a debt within the meaning of section 121, Act VIII of 1859. ROTEE RUMUN OOPADHYA *v.* GREEJA NUND OOPADHYA [5 W. R., 160

33. ——————— *Unascertained mesne profits.—Debt not due at time of suit.*—An indefinite claim for damages in the nature of unascertained mesne profits cannot be pleaded as a set-off against a specific claim for rent of later years. Such damages must be sued for separately. In a suit for rent a defendant has no right to set off against the plaintiff's claim money in deposit with the plaintiff, unless such money was due and payable to the defendant at the time the suit was brought. GOCOOL COOMAR *v.* BHICHOOK SINGH [22 W. R., 1

34. ——————— *Civil Procedure Code, 1877, s. 111.—Mortgage.—Compensation for waste.*—The usufructuary mortgagee of certain land sued the mortgagor for the money due under the mortgage. The mortgagor alleged the mortgagee had committed waste and was liable to him for compensation which he claimed to set off. *Held* that under section 111 of Act X of 1877 the amount of such compensation could not be set off. RAGHU NATH DASS *v.* ASHRAF HUSAIN KHAN [I. L. R., 2 All., 252

35. ——————— *Claim against deceased father.—Right to appropriate property.*—Where a widow administering her husband's estate sued to recover certain moveable property wrongly appropriated by her son, who pleaded a set off on account of a claim against his father,—*Held* that defendant was rightly referred to a separate suit. MANLY *v.* MANLY . . . . 14 W. R., 136

36. ——————— *Civil Procedure Code, 1882, s. 111.—Suit by creditor of deceased.*—The heirs to *M.*, deceased, appointed *A.*, one of the heirs, manager of *M's* estate, with a view to the payment of the debts due by the deceased. A creditor of the deceased sued his heirs to recover his debt, and obtained a decree, in execution of which the share of *Z.*, one of the heirs, in *M.'s* landed estate was sold. The sale-proceeds exceeded *Z.'s* share of such debt, and she sued the other heirs for contribution in respect of the difference. The defendants claimed a set-off in respect of *Z.'s* share of the liabilities of *M.'s* estate which had been satisfied by *A.* as manager. *Held* that the set-off claimed could not be entertained in such suit. ABUL HASAN *v.* ZOHRA JAN . . . . . I. L. R., 5 All., 299

37. ——————— *Act VIII of 1859, s. 121.—Co-sharers.—Suit for contribution*

SET-OFF—*continued.*

3. SET-OFF NOT ALLOWED—*continued.*

Right of set-off—*continued.*

—In a suit brought against a lessee of a portion of an estate by one of the co-sharers for money alleged to be due as the plaintiff's share of arrears of rent for a certain period, where the claim was admitted, —*Held*, the defendant was not entitled to set off, under section 121, Act VIII of 1859, the plaintiff's share of the Government revenue of the whole estate which had been paid by the defendant for the period for which the arrears of rent were alleged to be due. *Held*, also, that there was no such connection between the claim of the plaintiff and the counter-claim of the defendant as would entitle the defendant, as a matter of equity apart from legislative enactment, to a set-off. HOSSEINA BIBI *v.* SMITH [13 B. L. R., 440: 22 W. R., 15

38. ——————— *Suit for contribution.—Shares in zemindari and shikmi rights.*—Plaintiffs as being entitled collectively to an 11-anna share of the jumma of a talook, and alleging that they had obtained such portion of their share as the 14-anna talookdars were liable for, sued the 2-anna sharer for what he ought to have contributed. The lower Appellate Court, finding that the defendant had a 2-anna share in the zemindari, as well as in the shikmi, considered that the one right might be set off against the other, and that the plaintiffs had consequently no claim against the defendant. *Held* that this conclusion was erroneous, for though there were in a certain sense opposing rights, still they were not mutual rights as between the parties to the present suit. The plaintiffs were entitled to get a 2-anna share of the jumma from the defendant and the 14-anna talookdars jointly, and the defendant was entitled to get a like share from these 14-anna talookdars and himself jointly, but the defendant had no right to set off the debt thus due to him against the debt due to the plaintiffs from the same persons. HURRE KISHORE ROY *v.* HUR KISHORE ADHIKAREE . . . . 23 W. R., 134

39. ——————— *Debts not mutual.—Disputed claim for rent in suit for payments made to save estate.*—*A.* and *B.* were the proprietors of a jote, of which *B.* leased half of his share to *C.* as mirasidar. The zemindar brought a suit for rent of the jote against *A.* and *B.* and got a joint decree, in execution of which he put up the jote for sale. *C.*, in order to save his miras right, paid the amount of the decrees before sale, and then sued *A.* and *B.* for the amount so paid. *Held* that *C.* was entitled to recover, and that a claim for rent by *B.* against *C.*, but which *C.* disputed, could not be admitted as an answer to *C.'s* claim in the present suit or as a set-off. It is essential to the validity of a set-off that the debts should be mutual, due from and to the same parties and in the same right. Bengal Regulation VIII of 1819, section 13, and Bengal Act VIII of 1869, section 62, discussed. BHOIRUB CHUNDER DOSS *v.* HAFEZUNISSA KHATOON . . 2 C. L. R., 414

40. ——————— *Suit for rent.—Compensation for damage done in execution of*

SET-OFF—*continued.*

3. SET-OFF NOT ALLOWED—*continued.*

Right of set-off—*continued.*

decree.—If the cultivator suffer damage in execution of a decree of the Civil Court, he may sue and claim compensation for such damage; but until such damage has been ascertained and decreed, it cannot be set off against a claim for rent. RAI GOBIND SINGH *v.* SOONDER PAL . **2 Agra, Pt. II, 177**

41. ——————— *Claim for rent.—Suit for money paid to protect lease.*—A claim for rent cannot be pleaded as a set-off in a suit for money paid by the plaintiff on account of revenue to protect a lease in the nature of a mortgage held by him. HEERA LALL *v.* BISHEN SUHAYE . **1 W. R., 297**

42. ——————— *Account, Suit for.—Cross-appeal.*—Of two appeals heard together, the first was brought on the dismissal of a suit, in which the representatives of one, now deceased, of two parties claimed for his estate an account against the other; their suit having been dismissed on failure to prove the contract between the parties; and the second appeal was from a decree between the same parties, for damages for the detention of property which had belonged to the estate of the deceased. In the first, the plaintiffs appealed; and in the second, the defendant, who also, by cross-appeal, claimed a sum which, as he alleged, would have been found due to him had accounts on both sides been taken in the first of the above suits. *Held* that as the first suit was for an account only, and not for the recovery of money, rendering it at least doubtful whether a set-off could be pleaded in defence; and as, also, no issue had been framed, or even asked for, on the question, it was not open to the defendant to raise it on this cross-appeal. NAN KARAY PHAW *v.* KO HTAW AH. KO HTAW AH *v.* NAN KARAY PHAW

[I. L. R., 13 Calc., 124: L. R., 13 I. A., 48

4. CROSS-DECREES.

43. ——————— *Decrees under Act X of 1859.—Quære,*—Whether the provisions of section 209 of the Civil Procedure Code, 1859, were applicable to decrees passed under Act X of 1859. DE SILVA *v.* AMEER SHAHA

[16 W. R., 303

There is now no distinction in this respect between rent decrees and other decrees.

44. ——————— *Award on private arbitration.*—An award of private arbitration *per se* did not come under the provisions of section 209 of Act VIII of 1859, so as to be set off against a decree of Court. DHEERAJ SINGH *v.* DEEN DYAL SINGH . . . . . **11 W. R., 144**

45. ——————— *Requisites for right.—Decrees in same Court for execution.*—Before cross-decrees can be set off the one against the other, it is necessary that they should be in the same Court for execution. EAST INDIAN RAILWAY COMPANY *v.* HALL . . . **3 N. W., 104**

DE SILVA *v.* AMEER SHAHA . **16 W. R., 303**

SET-OFF—*continued.*

4. CROSS-DECREES—*continued.*

Right of set-off—*continued.*

46. ——————— *Requisites for right.—Decrees in same Court for execution.—Civil Procedure Code, 1859, s. 209.*—The provisions of section 209, Act VIII of 1859, applied only to cross-decrees of the same Court between the same parties, or to cross-decrees between the same parties, though of different Courts, which had found their way for execution to the same Court. RAM COOMAR GHOSE *v.* GOBIND NATH SANDYAL . . **7 W. R., 480**

Reversing on review, S. C. GOBINDNATH SANDYAL *v.* RAMCOOMAR GHOSE . **6 W. R., 21**

HADOO SIRDAR *v.* JADOO MONEE DOSSEE

[17 W. R., 46

47. ——————— *Requisites for right.—Decrees in same Court for execution.*—The decrees must be under execution at the same time. JUDOO NATH ROY *v.* RAM BUKSH CHUTTANGEE

[7 W. R., 535

48. ——————— *Requisites for right.—Decrees not in same Court.—Act VIII of 1859, s. 209.*—Act VIII of 1859, section 209, which provided for the set-off of cross-decrees, applied only to decrees of the same Court or decrees sent to a Court for execution. Therefore where, on application for execution of a decree in the Court of a Principal Sudder Ameen, it was sought to set off a decree obtained in the Judge's Court, which had not been sent to the Principal Sudder Ameen for execution,—*Held* that section 209, Act VIII of 1859, did not apply. GIRISHCHANDRA LAHURY *v.* FAKIR CHAND

[B. L. R., Sup. Vol., 503: 6 W. R., Mis., 72

49. ——————— *Requisites for right.—Decrees for definite sums.—Civil Procedure Code, 1859, s. 209.*—In order to admit of a set-off being made when there are cross-decrees, the parties must be the same, and the sum due under each decree or decrees must be definite. REZAOODDEEN HOSSEIN *v.* FUZLOONISSA

[5 W. R., Mis., 12

50. ——————— *Appeal from decree.*—A judgment-debtor is entitled to set off a decree whether the judgment-creditor may or may not intend to object on appeal to the judgment-debtor's decree. HURO PERSHAD ROY CHOWDHRY *v.* SHAMA PERSHAD ROY CHOWDHRY

[5 W. R., Mis., 52

51. ——————— *Set-off of joint decree.—Civil Procedure Code (Act X of 1877), s. 246.*—A judgment-debtor may set off, against the amount of the decree against him, the amount of a decree which he has obtained against the decree-holder and other persons. HURRY DOYAL GUHO *v.* DIN DOYAL GUHO

[I. L. R., 9 Calc., 479: 13 C. L. R., 93

52. ——————— *Joint decree.—Decrees not between same parties.—Civil Pro-*

SET-OFF—*continued.*

4. CROSS-DECREES—*continued.*

Right of set-off—*continued.*

cedure Code, 1877, s. 246.—*S.* and two other persons held a decree for costs against *M.*, which did not specify the separate interests of each in the decree, and *M.* held a decree for money against *S.* alone, which he wished to treat as a cross-decree under section 246 of Act X of 1877. *Held* that the decree held by *S.* and the other persons was not a decree between the same parties as the parties to the decree held by *M.*, and *M.'s* decree could not therefore be treated as a cross-decree under that section. MURLI DHAR *v.* PARSOTAM DASS . **I. L. R., 2 All., 91**

53. ——————— *Execution by two decree-holders.*—*Act VIII of 1859, s. 209.*—Where there were cross-decrees, and one of the decree-holders was, by an order of the Court made with the consent of both parties, bound in executing his decree to set off the amount of the decree against him,—*Held* that it would be inequitable to allow the other decree-holder to obtain execution in full without setting off the amount decreed against him. HARO SANKER SANDYAL *v.* TARAK CHANDRA BHUTTACHARJEE

[8 B. L. R., A. C., 114 : 11 W. R., 488

54. ——————— *Civil Procedure Code, 1859, s. 209.*—*Attachment.*—In April 1877 *M.* sued *S.* for money, and on the 10th May 1877 *S.* sued *M.* for money, both suits being instituted in the same Court. In the meantime, on the 9th May 1877, *B.* applied for the attachment of the money claimed by *M.* in his suit, and obtained an order prohibiting *M.* from receiving, and *S.* from paying, any sum which might be found in that suit to be due by *S.* to *M.* On the 23rd June 1877 *M.* obtained a decree in his suit against *S.*, and *S.* obtained a decree in his suit against *M.*, *S.'s* decree being for the larger sum. On the same day, under the provisions of section 209 of Act VIII of 1859, satisfaction for the smaller sum was entered on both decrees, and execution taken out of *S.'s* decree for so much as remained due. At the same time *S.* objected to *B.'s* attachment, but his objection was disallowed. *Held*, in a suit by *S.* against *B.* to have the order disallowing his objection set aside and the propriety and legality of the set-off above mentioned established, regard being had to the provisions of section 209 of Act VIII of 1859, that the attaching order of the 9th May could have no operation or effect, and that even if *B.* had followed up that order and attached *M.'s* decree against *S.*, that step would not have put him in a better position, for the same section being followed, and the decrees being essentially cross-decrees, that for the smaller sum became absorbed in the one for the larger, and attachment could not affect it. BHUJHAWAN LAL *v.* SUKHRAJ RAI

[I. L. R., 2 All., 866

55. ——————— *Cross-decrees for mesne profits.*—Where there are cross-decrees for possession and mesne profits in respect to the same land, the earlier decree comprehending only a part of the land embraced in the latter, each party may take out execution and be entitled to receive wasilat separately. ANUND MOHUN HAJRAH *v.* SHIBO SOONDUREE DABEE . . . **16 W. R., 256**

56. ——————— *Cross-decrees for mesne profits.*—In 1827 *S.* commenced a suit against *B.*, and before judgment applied for and obtained, under Bengal Regulation II of 1806, an attachment of certain immoveable property belonging to the defendant. In 1828 *S.* obtained a decree, upon which he did nothing immediately; but in 1844 he sold the attached property in execution and purchased it himself. Thirteen years after *B.* commenced proceedings to set aside that sale, and in 1860 obtained a final decree reversing the sale, restoring to him the possession, and awarding him mesne profits. The mesne profits were ascertained, and a third party (*R.*) attached the decree in respect of a judgment-debt due to himself from *B.* Upon this *S.*, after trying ineffectually to stay *R.'s* proceeding, brought a suit claiming to set off the amount of the decree of 1828 against the decree of 1860. *Held* that whatever equitable right *S.* might have in consequence of the situation of the parties, it should have been urged in the suit before decree, and not in execution when rights of third parties had accrued, and that what *R.* sought was not the mesne profits attached by *S.* under the decree of 1828, but the amount decreed to be paid by *S.* to *B.* RAM COOMAR GHOSE *v.* GOBIND NATH SANDYAL

[12 W. R., 391

57. ——————— *Decree not enforceable.*—A decree which is incapable of being enforced cannot be set off against a decree which is alive. HURO PERSHAD ROY CHOWDHRY *v.* FOOL KISHOREE DOSSEE . . . **16 W. R., 308**

58. ——————— *Decree barred by lapse of time.*—A set-off is not admissible, except upon a cross-decree which the decree-holder is seeking to execute, and not upon a cross-decree incapable of execution by lapse of time. A cross-decree must be kept alive by the action of the party entitled under it. ANUND MOHUN SURMA MOJOOMDAR *v.* HURO CHUNDER BHUTTACHARJEE

[5 W. R., Mis., 16

PROSUNNO COOMAR GHOSE *v.* SHAM LAL GUNGOPADHYA . . . **5 W. R., Mis., 8**

HEMRAJ CHOWDHRY *v.* ASOODUN

[5 W. R., Mis., 43

59. ——————— *Civil Procedure Code, 1859, s. 209.*—*Decree barred by limitation.*—In a suit for resumption of land, plaintiff obtained a decree for a portion of her claim, with costs in proportion. Subsequently, on application for a review, she obtained a further decree for the rest of her claim. The latter decree was reversed on appeal by the High Court, who gave defendants all costs of the proceeding in proportion. Plaintiff allowed more than three years to elapse from the date of the former decree without applying for execution; but when defendant

SET-OFF—*continued.*

4. CROSS-DECREES—*continued.*

Right of set-off—*continued.*

applied to execute his decree for costs, she petitioned for a set-off of so much of the costs as had been decreed to her. *Held* that these two judgments and decrees must be treated as reduced to one, wherein judgment was given in part for the plaintiff and in part for the defendant; and before issuing a warrant of execution, the Court was bound to ascertain how much, on the whole case, was due to the party executing, and to issue a warrant for that sum and no more. *Held*, further, that no question of limitation could arise in respect to the execution of the first decree, which became incapable of execution as soon as the High Court's decree in appeal (which was for a larger sum) was passed; but that the latter, under section 209, Code of Civil Procedure, could only be executed to the extent of the difference between the two decrees. NUBO LALL KHAN *v.* MAHARANEE OF BURDWAN

[9 W. R., 590

60. ——————— *Act VIII of 1859, s. 121.*—*A.*, by deed of zur-i-peshgi, let certain lands to *B.*, to secure a sum advanced by him to her and interest thereon. *B.* covenanted to pay certain dues annually to *A.* On failure by *B.*, *A.* obtained a decree against him for the amount. In execution of a decree against *B.*, *C.* purchased his interest in the sum secured by the deed of zur-i-peshgi, and sued *A.* to recover the same. *Held* that *A.* was entitled in such suit to set off the amount of the decree obtained by her against *B.* BHAGAWANI KUNWAR *v.* LALA BAIJNATH PRASAD

[2 B. L. R., A. C., 84 : 10 W. R., 380

61. ——————— *Assignee of decree, Right of.*—Where execution of *A.'s* decree against *B.* was stayed pending the passing of a decree in *B.'s* cross-suit,—*Held* that no subsequent purchase of *B.'s* rights and interests in his cross-suit could be set up as a bar to *A.'s* rights to attach the whole of the decree in the cross-suit, in execution of his decree against *B.* PEELOO CHOWDHRAIN *v.* COURT OF WARDS . . . . . 7 W. R., 219

62. ——————— *Assignment of decree.*—*Act VIII of 1859, s. 209.*—*Act XXIII of 1821, s. 11.*—The plaintiffs obtained a decree against *B.* in the Subordinate Judge's Court. Some time afterwards *B.* recovered a decree in the Munsif's Court against the plaintiffs. The plaintiffs thereupon applied for the attachment of this decree in satisfaction of their own against *B.* Before attachment, however, *B.* assigned her decree to *C.* On *C.* trying to execute *B.'s* decree against the plaintiffs, they brought the present suit for a declaration of their right to have a set-off made of the two decrees. *Held* that such a suit would not lie. RUGHU NUNDUN RAIN *v.* SUMESSAR PANDAY

[13 B. L. R., 489 : 22 W. R., 235

63. ——————— *Civil Procedure Code, 1859, s. 209.*—*A.* obtained a decree in a Court of the N.-W. Provinces against *B* *C.*, taking the decree *bonâ fide* by assignment, applied to execute it in the 24-Pergunnahs. *B.*, who got a decree against *A.*, in the 24-Pergunnahs, applied to have the decree set off against the other decree in the hands of *C.* *Held* that, in such circumstances, section 209, Act VIII of 1859, did not apply. ROZEKOODDEEN *v.* JEHANGEER

[5 W. R., Mis., 22

64. ——————— *Purchaser of decree.*—*Act VIII of 1859, s. 209.*—The purchaser of a decree sought to execute the decree, but was opposed by the judgment-debtor, who sought to set off two other decrees obtained by herself and her two sisters against the judgment-creditor. These decrees were obtained about the date of the purchase, but it did not appear whether previously or subsequently. *Held*, in neither case could they be the subject of a set-off. KASIMUNISSA BIBI *v.* HILLS

[6 B. L. R., Ap., 125 : 15 W. R., 127

65. ——————— *Purchaser of decree.*—*Act VIII of 1859, s. 209.*—*A.* and *B.*, having obtained a decree for a sum of money against *C.* and *D.*, sold part of their interest therein to *E.*, who afterwards sold the same to *F.* *G.* obtained a decree against *F.*, and in execution attached and sold *F.'s* interest in the decree obtained by *A.* and *B.*, and *H.* became the purchaser of the same. He applied for execution against *C.* and *D.* *C.* claimed to have set off the amount of a decree obtained by his son *I.* against *G.*, and which *C.* alleged was held by *I.* benami for him as a cross-decree within the meaning of section 209 of Act VIII of 1859. *Held* that the decree could not be set off. TARACHAND GHOSE *v.* ANAND CHANDRA CHOWDRY

[3 B. L. R., A. C., 110 : 10 W. R., 450

66. ——————— *Purchaser of decree.*—*Act VIII of 1859, s. 209.*—The purchaser of a decree held by *A.*, against whom *B.* holds a cross-decree, takes it subject to a set-off on account of *B.'s* decree. KAIM ALI JAWARDAR *v.* LAKHIKANT CHUCKERBUTTY

[1 B. L. R., F. B., 23 : 10 W. R., F. B., 32

NUNDO COOMAR BUKSHEE *v.* KOONJO KISHORE ROY . . . 6 W. R., Mis., 73

DOORGA CHURN NUNDEE *v.* DEBNATH ROY CHOWDHRY . . . 18 W. R., 442

OOPENDRO MOHUN MOOSTAFEE *v.* POORNO CHUNDER BHUTTACHARJEE . . 19 W. R., 85

RAM CHUNDER *v.* MOHENDRO NATH BOSE . . [21 W. R., 141

67. ——————— *Civil Procedure Code, 1859, s. 209.*—*A.* got a decree against *B.*, who subsequently got a larger decree against *A.*, which he sold to *C.* After that *A.* executed his decree, and put up *B.'s* decree for sale and bought it himself. *C.* then took out execution against *A.*, who, having unsuccessfully put in a claim under Act VIII of 1859, section 246, brought a suit to have his claim established, and the sale of *B.'s* decree to *C.* declared collusive. Both the lower Courts found that the sale

SET-OFF—*continued.*

4. CROSS-DECREES—*continued.*

Right of set-off—*continued.*

was *bonâ fide*. *Held* that this finding could not be set aside on special appeal, but that when *C.* took out execution, *A.* might apply for a set-off under section 209. SHEO NARAIN SINGH *v.* CHOONEE BHUGGUT [24 W. R., 299

68. ——————— *Fraudulent assignment.—Rights of assignee.*—Where cross-decrees had been obtained and one of them had been assigned, in a suit by the other decree-holder to set aside the assignment as fraudulent,—*Held* that it was fraudulent, and the right of set-off was unaffected. *Quære,*—Whether, had the assignment been a *bonâ fide* one,—*i.e.*, for a valuable consideration,—the assignee would have taken the decree subject to the equities or liabilities of the decree-holder to the judgment-debtor. TALUB HOSSEIN *v.* WALKER [7 W. R., 470

69. ——————— *Civil Procedure Code, 1877, s. 246.—Duty of purchaser.—Sale in execution of decree.—Presumption as to validity of order for execution.*—*Held* that, according to the true construction of section 246 of Act X of 1877, a purchaser under a sale in execution is not bound to inquire whether the judgment-debtor had a cross-judgment of a higher amount such as would have rendered the order for execution incorrect. If the Court has jurisdiction, such purchaser is no more bound to inquire into the correctness of an order for execution, than he is as to the correctness of the judgment upon which execution issues. REWA MAHTON *v.* RAM KISHEN SINGH [L. R. 13 I. A., 106: I. L. R., 14 Calc., 18

70. ——————— *Civil Procedure Code, 1859, s. 209.—Stay of execution of decree.*—Where a decree for the plaintiff has been obtained in a suit, and a cross-suit is pending, the Court will not stay proceedings in execution of the first suit, or order the proceeds of that decree to be paid into Court to abide the result of the second. MOOLCHUND *v.* RAJNARAIN GHOSE . 1 Ind. Jur., N. S., 330

71. ——————— *Civil Procedure Code, 1859, s. 209, Procedure under.*—When an application to stay execution of a decree is made to a Court in which a suit is pending against a decree-holder, the Court's competency, under section 209, Act VIII of 1859, to grant the application, depended on the decree being its own decree. An application of this nature ought not to be entertained, in the absence of an affidavit or satisfactory proof of the complaints alleged in it, without the Court calling for such proof. MITTUN BIBEE *v.* BUZLOOR KHAN [8 W. R., 392

72. ——————— *Civil Procedure Code, 1859, s 209.—Execution of cross-decrees.*—*S.* had against *M.* in the Rungpore Court a decree for costs which he removed for execution to the Court of Beerbhoom. On this *M.* applied to the latter Court, under section 209, Act VIII of 1859, for stay of execution pending the decision of another suit which he had brought against *S.* *Held* that, on the decision of the other suit, it ought to have been ascertained which party had a decree for the larger sum, and that execution should have been taken out by that party only, and for so much as should remain after deducting the smaller sum, which should have been entered on the decree for the larger sum. SHIBCHUNDER SIRCAR *v.* JUGGUT INDUR BUNWAREE GOBIND [12 W. R., 212

73. ——————— *Pending suit by defendant in which he has credited sum sued for.—Stay of suit.*—In a suit brought in a Small Cause Court to recover balance of rent due, the defendant pleaded the pendency of a suit brought by him in the District Munsif's Court against the plaintiff for damages for illegal dispossession, and that he had given credit against the amount of damages for the balance of rent due. *Held* that the pendency of the suit in the District Munsif's Court was not a bar to the present suit, but that it was open to the Court, in its discretion, to postpone the hearing of the present suit until the District Munsif had given his decision. MUTTUKARUPPA KAUNDAN *v.* RAMA PILLAI . . . . . 3 Mad., 158

74. ——————— *Right to execution of decree.—Obligation to set off.*—Where two parties have to recover sums from each other under the same decree (not cross-decrees), the party entitled to the lesser sum cannot be allowed to take out execution against the party entitled to the larger sum, and the Court is bound to direct a set-off or to enter satisfaction of the smaller sum upon the decree. JUGO MOHUN BUKSHEE *v.* SOORENDRONATH ROY CHOWDHRY . . . . . 13 W. R., 106

75. ——————— *Decree in favour of one party with costs in favour of the other.—Civil Procedure Code, 1859, s. 209.*—When a decree in favour of an appellant describes a set of costs as due by the appellant to the respondent, it means not that any sum should be actually paid to the latter, but that the costs in question should be deducted from the gross amount decreed, and the remainder only recovered under the decree. Section 209, Code of Civil Procedure, had no application in such a case. ISSUR CHUNDER MOOKERJEE *v.* MUNMOHUN CHOWDHRY [12 W. R., 308

76. ——————— *Civil Procedure Code, 1882, ss. 246, 247.—Execution of decree.—Cross-decrees.—Simple money-decree.—Decree enforcing mortgage.*—Section 246 of the Civil Procedure Code is applicable to cross-decrees and not to cross-claims under one decree. To make section 247 of the Code applicable in the case of cross-claims under one decree, the parties entitled thereunder to recover from each other must hold the same character and possess identical rights of enforcing execution, and enforcement of the decree can only be refused, or satisfaction entered up, when this is the case. *Held,* therefore, where a decree for money of a Court of

SET-OFF—*continued.*

4. CROSS-DECREES—*continued.*

Right of set-off—*continued.*

first instance directed that the money should be realisable from certain specific property of the defendant, and exempted his person and other property, and the lower Appellate Court modified this decree by extending it to the person of the defendant, and in second appeal the High Court set aside the lower Appellate Court's decree and restored that of the first Court, directing that the costs of the defendant in the lower Appellate Court and in the High Court should be paid by the plaintiff, that, inasmuch as the plaintiff was only entitled to recover the judgment-debt due to him from the defendant from such specific property, whereas the defendant was entitled to recover the judgment-debt due to him from the plaintiff from his person and property, the provisions of section 247 were not applicable. KALKA PERSHAD *v.* RAM DIN . . . **I. L. R., 5 All., 272**

77. ——————— *Costs.—Two awards of costs in same decree.—Execution of decree.*—Where a Court makes two different awards of costs in one and the same decree, when it ought to have made a decree only for the difference between them,—*Held* that execution could only be taken out for the difference between the two amounts awarded. AMJUD ALI KHAN *v.* FAZUL HOSSEIN . **19 W. R., 187**

78. ——————— *Conditional decree.—Purchase-money.—Costs.—Civil Procedure Code, 1882, ss. 214, 221, 247.—Decree in suit for pre-emption.*—The decree in a suit to enforce a right of pre-emption directed, in accordance with the provisions of section 214 of the Civil Procedure Code, that the plaintiff should obtain possession of the property and recover costs of the suit from the defendants (vendor and vendee), on payment of the purchase-money within a fixed time, but that on default of such payment the suit should stand dismissed. The plaintiff deposited within time the purchase-money with the exception of a sum less than the amount of costs awarded to him. He subsequently applied for delivery of possession of the property in execution of the decree and for the recovery of the costs awarded to him, deducting from such costs the unpaid portion of the purchase-money. *Held*, applying, by analogy of sections 221 and 247 of the Civil Procedure Code, the equitable doctrine of set-off, that the plaintiff was entitled, when depositing the purchase-money under the decree, to deduct therefrom the sum the decree awarded to him as costs, and that therefore the decree did not become null and void by reason that he had not deposited the full amount of the purchase-money within time. *Degumburee Dabee* v. *Eshan Chunder Sein, B. L. R., Sup. Vol., 938: 9 W. R., 230; Jugo Mohun Bukshee* v. *Soorendro Nath Roy Chowdhry, 13 W. R., 106;* and *Brijnath Dass* v. *Juggernath Dass, I. L. R., 4 Calc., 742,* referred to. ISHRI *v.* GOPAL SARAN . . . . **I. L. R., 6 All., 351**

SETTLEMENT.

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[11 B. L. R., 144

1. CONSTRUCTION.

1. ——————— **Agreements made at time of settlement, Duration of.**—*Held*, on the construction of an "ikrarnamah" and settlement "roobkari," that it was binding on the plaintiffs only for the currency of settlement. In general, engagements made at the time of settlement ought to be considered *primâ facie* as intended to subsist only for the time of settlement. DIAL SINGH *v.* JAWAHIR SINGH . . . . . **2 Agra, 108**

IKRAM ALI KHAN *v.* LUDWA . **2 Agra, 113**

2. ——————— **Effect of settlement.**—*Duration of, and right created by, settlement.—Transfer of proprietary right.*—Where a settlement of a talook, although it ran for twenty years only, was with a person professing to be a proprietor,—*Held* that the settlement conferred a proprietary right, and not a limited interest; and that the plaintiff's vendor,

SETTLEMENT—*continued.*

1. CONSTRUCTION—*continued.*

Effect of settlement—*continued.*

having been admitted to a share in the settlement with a maliki allowance, became a co-sharer in the proprietary interest, which proprietary right had been transferred to the plaintiffs by their purchase. POGOSE *v.* AOZAN BIBEE . . **18 W. R., 274**

2. RIGHT TO SETTLEMENT.

3. ——— Claim to settlement after resumption.—*Beng. Reg. II of 1819.—Ex-lakhirajdar.—Limitation.*—Long possession gives no title to a settlement, unless the party claiming a settlement has put forward his claim when the lands were resumed, and the notice has issued to parties to assert their claims to such settlements, and has thus complied with the requirements of the law. GOLACK CHANDRA CHOWDHRY *v.* ALI MOLLAH **[8 B. L. R., 528, note**

4. ——— Claim to permanent settlement after expiration of temporary one.—*Forfeiture of right by conduct.*—When a temporary settlement expires, whether the holder thereof had been the proprietor of the land within the meaning of the old regulations, or a stranger, the proprietor is entitled to come forward and to claim as of right from the Government a permanent settlement of the land, unless he has by his own conduct forfeited that right. WATSON & CO. *v.* BROJO SOONDUREE DABEE . . . . . **10 W. R., 395**

On remand an order was made declaring the plaintiff entitled to the permanent settlement instead of the defendants, and confirmed on special appeal, subject to the proviso that such declaration would not entitle her to dispossess them if they were in possession as putnidars. WATSON & CO. *v.* BROJO SOONDUREE DEBIA . . . **17 W. R., 376**

5. ——— Purchase of zemindari rights during maafee grant.—*Rights on expiry of maafee grant.*—An auction-purchaser of the rights and interest of one of several zemindars who at the time of the purchase held only certain nankar land in lieu of their zemindari right during the continuancy of the maafee grant by Government to another party, stands in the place of the zemindar, not in respect of the nankar land only, but in respect of all the right to settlement as zemindar after the maafee grant comes to an end. GOKUL PERSHAD *v.* RUGHONATH . . . . . **3 Agra, 245**

6. ——— Right among co-sharers.—*Arrangement for collection and receipt by one co-sharer.—Effect on rights of others on expiration of settlement.*—Where at the time of settlement it was arranged that one co-sharer should make the collections and other co-sharers should receive money allowance, and such arrangement was to last for the term of settlement only,—*Held* that after the expiry of the settlement such co-sharers were, if the revenue authorities thought fit, entitled to be allowed to engage for their shares. KOONWER SINGH *v.* SHIB DYAL . . . . . **3 Agra, 297**

SETTLEMENT—*continued.*

2. RIGHT TO SETTLEMENT—*continued.*

7. ——— Right on resumption.—*Suit to set aside settlement.*—In a suit by a person claiming certain lands which have been resumed by the Government, the plaintiff is entitled, on the allegation that he is the rightful owner of the lands, and that the defendant obtained a settlement by false allegations of ownership and of possession, to an adjudication of his right to a settlement. It is not discretionary with the Collector under such circumstances to settle with any person he pleases for the land, nor is such settlement, if made, final as regards all claims. MAHOMED ISRAILE *v.* WISE **[13 B. L. R., F. B., 118: 21 W. R., 327**

8. ——— ——— *Ghatwali tenures.*—*Suit against Government for settlement.—Limitation.*—A ghatwali tenure was resumed by the Government under Bengal Regulation II of 1819. After the resumption, *H. N.*, the former holder of the tenure, claimed settlement as proprietor. The Government denied his title, but offered him a lease on his giving security. On his failure to find security, the Government in 1841 made a temporary settlement with *J. S.*, who entered into possession of the land. No malikana was reserved to or ever paid to *H. N.* In 1862 the Government settled the land permanently with *J. S.* The heir of *H. N.* then brought a suit in the Civil Court, praying that this settlement should be set aside, and for a declaration of his right to have a settlement concluded with him. *Held* that supposing *H. N.* ever to have had any legal right to a settlement as proprietor, the suit to enforce such right was barred by limitation, he having been effectually dispossessed, and the cause of action, if any, having accrued in 1841. *Note.*—The Court appeared to consider that in fact *H. N.* never had any right to maintain an action in the Civil Court to compel the Government to make a settlement with him. JOY MUNGUL SINGH *v.* POKHARUN SINGH. GOVERNMENT *v.* POKHARUN SINGH . . . . . **7 W. R., 465**

9. ——— Right to settlement of person whose tenure is not cancelled.—*Lease by Government after purchase at sale for revenue.*—*A.* was the owner of a talook in a zemindari which was purchased by the Government at an auction sale for arrears of revenue. The Government did not cancel the talook, but settled it with *A.* for twelve years. When the term was expired, the Government refused to make a new lease with *A.*, and instead leased it for a year to *B.* *Held* that the refusal of the Government to settle the land with *A.* in no way affected his right to a settlement on the expiration of the lease to *B.* AHSANOOLLAH *v.* KISTO GOBIND DASS . . . . . **2 C. L. R., 592**

10. ——— Owner of parent estate.—*Accretion to estate.—Estates separately numbered.*—Certain lands accreted to an estate, No. 667, and were temporarily settled as a separate estate, No. 3148. During the currency of this settlement, the owner sold his rights and interests in 667 to the plaintiff, and in 3148 to the defendants. On the expiry of the temporary settlement, the plaintiff, as

SETTLEMENT—*continued.*

2. RIGHT TO SETTLEMENT—*continued.*

Owner of parent estate—*continued.*

owner of the parent estate, sued to establish his right to the permanent settlement of 3148. *Held* that the suit would not lie, and that the plaintiff had no claim to have a settlement of 3148. KHUB LAL *v.* GHINA HAZARI . **2 B. L. R., A. C., 339**

11. ——— Right to pottah of waste lands.—*Alleged failure to cultivate or pay assessment.*—The plaintiffs sued, as the mirasidars of a village, to establish their right to the grant of a pottah of certain waste land of the village which had been granted to some of the defendants. The Collector, who was made a defendant, stated that the hookumnamah rules of the district directed that land should be given to mirasidars on their tendering sufficient security, and that the plaintiffs, on previous occasions had received lands for which offers had been made by others in consideration of the plaintiffs' preferential right, but that they had failed to cultivate the lands or pay the assessment in breach of their agreements. *Held* that the plaintiffs were entitled to the relief sought for. COLLECTOR OF MADRAS *v.* RAMANUJA CHARIYAR. KULLAPPA NAIK *v.* RAMANUJA CHARIYAR . **4 Mad., 429**

12. ——— Right of ex-lakhirajdar.—*Resumption by Government.—Limitation.*—An ex-lakhirajdar whose lands have been resumed by Government under Regulation II of 1819 has no absolute right to a settlement. When a party claims a right to a settlement as being an ex-proprietor, and his claim is rejected, he must, to avoid being barred by limitation, sue within three years for a declaration of his right. BHIKU SINGH *v.* GOVERNMENT **[8 B. L. R., 529, note: 13 B. L. R., 119, note, 10 W. R., 296**

See KRISHNA CHANDRA SANDYAL CHOWDHRY *v.* HARISH CHANDRA CHOWDHRY **[8 B. L. R., 524**

S. C. KRISTO CHUNDER SUNDYAL *v.* KASHEE KISHORE ROY CHOWDHRY . **17 W. R., 145**

13. ——— Right of shikmi talookdars.—*Tenants of lakhirajdars.—Resumption by Government of lakhiraj tenures.*—Shikmi talookdars under lakhirajdars, whose lands have been resumed by Government, cannot sue for a settlement: they can only claim to have their shikmi rights upheld. GRISH CHUNDER ROY *v.* BOYDONATH DEY . . . . . **W. R., 1864, 262**

3. EVIDENCE OF SETTLEMENT.

14. ——— Evidence necessary to establish creation of talooks.—*Shikmi talookdars.—Registration of tenure.*—The registration of a talook, or of the sanads creating it, is not absolutely necessary to prove the creation of the talook before the decennial settlement. The omission of any mention of such a talook in the decennial or quinquennial settlement, and the inclusion of the lands in

SETTLEMENT—*continued.*

3. EVIDENCE OF SETTLEMENT—*continued.*

Evidence necessary to establish creation of talooks—*continued.*

the decennial settlement as part of the zemindari for which the jumma is assessed, does not afford any strong inference against the evidence of the talook being only a shikmi talook paying rent to the zemindar; the talookdars were not required to mention it, nor was it necessary for the zemindar to do so. Discussion of the evidence requisite to establish the existence of an old shikmi talook. WISE *v.* BHOOBUN MOYEE DEBIA **[3 W. R., P. C., 5: 10 Moore's I. A., 165**

15. ——— Evidence of loss of proprietary right.—*Possession of sír land.*—The possession of a share in an estate on settlement may or may not be accompanied by the possession of sír land; and the fact of a sharer holding no sír land is not of itself sufficient to show that he had lost all proprietary right in the village. TOOLSEE RAM *v.* NAHAR SINGH . . . . . **3 N. W., 43**

4. MODE OF SETTLEMENT.

16. ——— Procedure on making fresh settlement.—*Beng. Reg. VII of 1822, s. 14.—Refusal to accept new settlement.—Time to remove house.*—Where the Collector had issued due notice of enhancement under section 14, Bengal Regulation VII of 1822, of the jumma of lands situate in a town and subject to that Regulation, and the tenant refused to accept a revised settlement, under such circumstances he was held to be entitled to a reasonable time within which to remove a house standing upon the lands in question. RAM CHAND BERA *v.* GOVERNMENT . . . . . **6 C. L. R., 365**

17. ——— Power of Collector to alter settlement.—*Recognition of title by settlement officer.—Beng. Reg. VII of 1822, s. 20.*—Where the plaintiff's title was recognised by the settlement officer in 1836, who assigned an allowance of 5 per cent. on the Government demand,—*Held* that the Collector had no power in subsequent years during the pendency of this completed settlement to interfere with the arrangement of the settlement officer, except to the extent allowed by section 20, Regulation VII of 1822. Section 20, Regulation VII of 1822, did not confer on the Collector the power of remodelling the arrangements completed by the settlement officer under section 10 of the Regulation; nor could the notification of Government extend to revenue officers an authority that the law did not allow to them. HIMMUT SINGH *v.* COLLECTOR OF BIJNOUR . . . . . **2 Agra, 258**

18. ——— Power of Collector to assign lands for cultivation.—*Bhagdari tenure.—Held* that any interference by the Collector to assign of his own authority lands in a bhagdari village to a tenant for cultivation is irregular and unauthorised. RAIJI NAROTTAM *v.* PURUSHOTTAM GIRDHAR **[2 Bom., 244: 2nd Ed., 233**

SETTLEMENT—*continued.*

5. SUBJECTS OF SETTLEMENT.

19. ——— What passes by settlement —*Right of julkur.—Beng. Reg XI of 1825, s. 4.*— A settlement dol includes all that ordinarily passes as assets of the settlement, but not what is exclusively reserved as the right of the State,—*e.g.*, the right to the julkur of large navigable rivers, which, according to clause 2, section 4, Regulation XI of 1825, never passes to private individuals with whom Government makes settlements. COLLECTOR OF JESSORE *v.* BECKWITH . . . . . **5 W. R., 175**

20. ——— Non-mirasi lands left waste by pottahdar.—*Claim of former occupant.*—Non-mirasi land left waste by a pottahdar may be granted by the Collector, without reference to the claim of the former occupant. GENGU REDDI *v.* ASAL REDDI . . . . . **1 Mad., 12**

21. ——— Waste lands.—*Lands held on ryotwari settlement.—Ryot's right of occupation.*— Lands held on the terms of an ordinary ryotwari settlement, with annual pottah, and left waste by the pottahdar, may be legally granted by the revenue authorities. The ryot has an indefeasible right of occupation only so long as he pays the Government assessment. KUMARADEVA MUDALI *v.* NALLATAMBI REDDI . . . . . **1 Mad., 407**

6. EFFECT OF SETTLEMENT.

22. ——— Effect on rights of third parties.—*Sanad granted by settlement officers, Effect of.—Bom. Act II of 1863.*—Sanads granted by settlement officers under the Bombay Act II of 1863 do not prejudice the rights of third persons. PUJU BIN KADAN *v.* MALHARI BIN RAMA **[1 Bom., 171**

23. ——— Effect on ex-maafidar.— *Status of maafidar after settlement of resumed maafi.* An ex-maafidar, with whom a sub-settlement has been made of the resumed maafi, is presumably not a hereditary cultivator, but his position is that of a proprietor subject to payment of Government revenue. HUMEED-OOL-LAH KHAN *v.* PRAN SOOKH **[3 Agra, 280**

24. ——— Effect on maafidar.—*Settlement with maafidar.—Payment of revenue.*—Where a plot of maafi land was on resumption settled with the ex-maafidar, who engaged for the Government revenue for the term of settlement, and the settlement was made under section 5, Regulation XIII of 1825, and paragraph 151, circular order, Sudder Board of Revenue, as provided by section 5, Regulation XXXI of 1803,—*Held* that they were in possession as owners, and on the expiry of the settlement the mere fact of its having expired would not deprive them of the right of being assessed with revenue as proprietors of maafi land; for where there has been a grant of soil, and possession taken and long continued thereunder, the ownership thereof vests in the grantee, although the grant as to exemption from

SETTLEMENT—*continued.*

6. EFFECT OF SETTLEMENT—*continued.*

Effect of maafidar—*continued.*

payment of revenue may be invalid and subject to assessment. TOOLSEE RAM *v.* NARAIN SINGH **[3 Agra, 265**

25. ——— ——— *Resumed maafi lands, Settlement of.—Adverse possession.*—Where, owing to the refusal of the original possessor of a resumed maafi land to fulfil the revenue engagements, the settlement was made with a stranger,—*Held* that such settlement could not confer upon him any right adverse to the original possessor after the expiration of that settlement, when the original possessor is entitled to claim settlement. MAHOMED ATA-OOL-LAH *v.* MAHOMED MOHIB-OOL-LAH . **1 Agra, 231**

26. ——— Liability for rent.—*Beng. Reg. VII of 1822:—Holder of resumed lakhiraj.*— The holder of resumed invalid lakhiraj land, within a Government khas mehal, was bound to pay rent according to the settlement of the revenue authorities under Regulation VII of 1822, until he sued in the Civil Court to set aside that settlement, or sued under Act X of 1859 for a mitigation or re-settlement of rent. HURO PERSHAD CHOWDHRY *v.* SHAMA PERSHAD ROY CHOWDHRY **[6 W. R., Act X, 107**

27. ——— Lakhirajdar in Assam.— *Holder of resumed grant.—Right of ejectment.*— Whatever might have been his position under former Governments, a lakhirajdar in Assam is entitled to manage his lands in any manner he pleases consistently with existing regulations, and, as holder of a resumed grant which has been settled with him, to eject a tenant who has no right of occupancy or lease of any kind. JULLOW SURMA PATWAREE *v.* MADHUB RAM ATOI BOORHA BHUKUT **[16 W. R., 202**

28. ——— Effect of resumption and settlement of lakhiraj.—*Invalid lakhiraj*— Assessment of revenue by Government upon invalid lakhiraj land after resumption does not confer a new estate on the lakhirajdar, and does not cancel or extinguish a mokurrari lease granted by the lakhirajdar previously to the settlement, and during the time he was in possession of the land as lakhiraj. PRATAB NARAYAN MOOKERJEE *v.* MADHU SUDAN MOOKERJEE . **8 B. L. R., 197 : 16 W. R., 35**

29. ——— Abadkari talookdar.— *Acceptance of farming leases.—Sale of Government right.*—A Government settlement, whether permanent or farming, so far from destroying the rights of a talookdar, always preserves them if there be really a dependent tenure. Neither the acceptance of farming leases by the talookdar *quâ* farmer, subject to the Government proprietary right, nor the sale of that Government right in any way, *ipso facto*, extinguishes any talookdari right existing in the abadkari talookdar in that capacity, if otherwise valid. HURO PERSHAD BHUTTACHARJEE *v.* BHYRUB CHUNDER MOJOOMDAR **8 W. R., 391**

SETTLEMENT—*continued.*

6. EFFECT OF SETTLEMENT—*continued.*

30 ——— **Settlement with several persons.**—*Presumption as to equality of rights.*—In the settlement of a talook, after resumption by Government with thirteen persons, it is not to be presumed that all thirteen persons had equal rights, simply because the settlement was made with all of them jointly, particularly where the settlement proceedings show that the question of the extent of the shares was in dispute, and that the settlement was made jointly with the whole without prejudice to title. GOOROO CHURN PODDAR *v.* HAFEEZA BIBEE [7 W. R., 366

31. ——— *Omission to settle boundaries and proportion of assessment which each cultivator ought to pay.—Liability to pay revenue individually.*—In a suit against a Collector for an illegal seizure and subsequent usurpation of plaintiff's shares in an Agraharam village for non-payment of trivari due from other tenants of the village, and to recover the increased trivari imposed by the Collector,—*Held* that the fact of pottahs having been issued separately to each tenant, stating the share of land occupied, without defining the holding by boundaries and the proportionate amount of assessment which the cultivator is to pay for it, though affording cogent evidence of the distinct liability of each for the amount of trivari stated in his pottah and no more, is not conclusive evidence of such individual liability. ELLAIYA *v.* COLLECTOR OF SALEM [3 Mad., 59

S. C. affirmed on appeal to Privy Council. BRETT *v.* ELLAIYA [12 W. R., P. C., 33: 13 Moore's I. A., 104

32. ——— **Settlement with talookdar after his refusal to re-settle at increased rent.**—*Waiver of refusal to pay enhanced rent.*—Where, upon a talookdar's refusal at the end of the period of his settlement to re-settle with Government at an increased rate, the jumma was put up to auction, after which the Government did re-settle with the talookdar upon the former conditions and the former description of the nature of the talook, it was held that Government renewed the contract, and placed the talookdar in exactly the position in which he would have stood had he never refused to pay the increased rent. OGNEE COOMAR ROY *v.* KUMOLA KANT ROY . . . . . 11 W. R., 38

33. ——— **Private rights.**—*Limitation.*—*Right of action as proprietor.*—Certain land having been settled by Government for a period of ten years, one *S.* bought the benefit of that settlement at an auction-sale for arrears of rent, and afterwards sold his rights to one *M.* On the expiration of the temporary settlement, Government effected a permanent zemindari settlement with *M.* In the following year (1865) the zemindari title was sold, and the purchaser now (1869) sues to recover possession of certain specified land. The lower Appellate Court, finding that none of the persons above-mentioned had possession within twelve years immediately preceding the filing of the plaint, considered the

SETTLEMENT—*continued.*

6. EFFECT OF SETTLEMENT—*continued.*

Private rights—*continued.*

suit barred,—*Held* that the question was one solely of a private right, and that the plaintiff did not stand in the position of Government in regard to the statute of limitations. *Held*, also, that the plaintiff's claim was traceable solely through *M.* from whom he bought, that at the time of settlement Government has nothing more than a right of action by virtue of its being proprietor, and not the right of action *S.* had as auction-purchaser; and only the former right passed by the settlement. RUGHOONATH SURMAH *v.* GOBIND CHUNDER ROY [14 W. R., 170

7. MISCELLANEOUS CASES.

34. ——— **Permanent lease made by proprietor pending resumption.**—Where the proprietor of resumed lakhiraj land leases it for valuable consideration, and at a stipulated jumma, while the settlement proceedings are under reference to the higher revenue authorities for confirmation, he cannot afterwards turn round upon the lessee and plead that he had no power to grant a permanent lease, on the ground that the settlement with him was temporary, and not permanent. AMEER ALI *v.* AMEEROONISSA BEGUM . . . 11 W. R., 11

35. ——— **Landlord and tenant.**—*Effect of settlement proceedings.*—A land-owner, seeking to bind his tenants by the settlement proceedings, should show distinctly that they were parties to the enquiry held by the Collector into the nature and extent of their holdings. ALI AHMED *v.* DOORGA ROY [22 W. R., 455

36. ——— **Right of tenants to deduction for cost of collection.**—*Beng. Reg. VII of 1822, s. 9.*—Where tenants who were aymadars voluntarily signed a jummabundi drawn up under Regulation VII of 1822, section 9, specifying the amounts of rent payable by them to the Government farmers with whom the settlement was made,—*Held* that the tenants were not entitled to a deduction from such specified rents on account of costs of collection. WATSON & CO. *v.* MOHENDRO NATH PAUL [23 W. R., 436

37. ——— **Powers of Revenue Boards.**—*Resumption.—Cancelment of settlement.*—A settlement of a resumed lakhiraj estate being made by the Collector with the plaintiff "subject to the orders of the Board of Revenue," the Board, or the Commissioner acting under rules laid down by them, may cancel the settlement at any time. HARLAL TEWARI *v.* COLLECTOR OF BHAUGULPORE [3 B. L. R., Ap., 82: 12 W. R., 6

8. EXPIRATION OF SETTLEMENT.

38. ——— **Revocation of sanad.**—*Bom. Act VII of 1863, s. 7.—Jurisdiction of Civil Court.*—Where a sanad by way of summary settlement of land revenue has been granted by Government under

SETTLEMENT—*continued.*

8. EXPIRATION OF SETTLEMENT—*continued.*

Revocation of sanad—*continued.*

Bombay Act VII of 1863, Government cannot reform or set it aside without the assent of all parties interested therein. To do so would be an assumption by Government of the function of a Civil Court. A Civil Court cannot, on the ground that Government has, by mistake, granted such a sanad to a person not the owner of the land, reform or set aside the sanad. Section 7 of Bombay Act VII of 1863 renders the quit-rent, fixed by the sanad, binding alike on Government and on the rightful owner of the land, but the latter may recover the land from the grantee of the sanad, subject to the quit-rent, fixed by the sanad, payable to Government; and such grantee will be declared to have taken the sanad as a trustee for the rightful owner. Where Government had granted seven sanads to certain garasis in respect of lands, part of which had been previously sold by the garasis and Government had attempted to revoke and cancel those sanads, and had subjected the lands to a full assessment on the ground that the garasis were not entitled to any of the said lands and that the sanads had been granted by mistake,—*Held*, that such attempted revocation, cancellation, and re-assessment were void and of no effect, and that the grantees were entitled to hold the lands on the terms mentioned in the sanads, but, so far as regarded the sold portion of the said lands, in trust for the vendees thereof and their heirs, representatives, and assigns. *Quære*, —Whether a Civil Court can give relief, either by reforming or cancelling such sanads, against mistakes, other than those relating to ownership, which may be found to exist in the sanads. DALSANG BHAVSANG *v.* COLLECTOR OF KAIRA **[I. L. R., 4 Bom., 367**

39. ——— Liability to ejectment.—*Dependent talookdars.*—Dependent talookdars re-admitted to temporary settlements for a certain number of years are not liable to ejectment at the close of those settlements. HUROGOBIND DOSS *v.* KALA CHAND SHAHA . . . . **6 W. R., Act X, 26**

40. ——— Dispossession.—*Dependent talookdars.—Cause of action.*—When a dependent talookdar, holding under a temporary settlement, has that settlement placed in abeyance by the Collector taking the collections into his own hands khas, the Collector's act is not one of dispossession from which limitation can count, but limitation will reckon from the date when the purchaser, at a sale after the Collector had ceased to hold khas, had himself made collections, and so created cause of action by dispossession of the former talook. MYENOODDEEN *v.* RAMMONEE CHOWDHRAIN . . . . **7 W. R., 182**

41. ——— Shikmi talookdari right.—*Payment in lieu of shikmi talookdari right.*—Where a shikmi talookdar accepted from Government a pottah, which admitted him to be a person having a right to a settlement, and gave him as a separate and distinct allowance under the head of expenses (in addition to the usual allowance for collections, &c.), the allowance which had, under the previous settlement, been made to him under the head of malikana,—*Held* that if he had notice, and accepted the payment because he knew that his right as malik of the shikmi talook was no longer recognised, then the shikmi talookdari right came to an end at that time. MAINOODDEEN *v.* NUBO COOMAREE DEBIA **[24 W. R., 247**

SETTLEMENT AWARD.

See CASES UNDER ACT XIII OF 1848.

SETTLEMENT OFFICER.

See LIMITATION ACT, 1877, ART. 130 (1871, ART. 130) . **I. L. R., 1 Bom., 586**

See SERVICE TENURE. **[I. L. R., 1 Bom., 586**

1. ——— Power of settlement officer.—*Question of payment and right to possession between mortgagor and usufructuary mortgagee.*—The duty of the settlement officer is to record the names of those whom he finds in possession of right, or whom he finds to have been wrongfully dispossessed of right within a certain period; but it is not his duty to determine the question whether the mortgagor in a usufructuary mortgage is entitled to possession by reason of the satisfaction of the debt out of the usufruct. BHYRO RAI *v.* GOLAB SINGH . **3 Agra, 303**

2. ——— *Powers of, in making entry in jummabundi.*—A settlement officer is bound to record in the jummabundi the existing rights of cultivators, and cannot impose an enhanced rent without notice on those entitled. If he enters a higher rate in spite of protest, such entry does not conclude the tenant from pleading non-liability. LEDLIE *v.* DOORGA MONEE DOSSEE. WATSON & Co. *v.* DOORGA MONEE DOSSEE . . **21 W. R., 410**

3. ——— *Act XIV of 1863.*—*Application under Act X of 1859, s. 28.*—The powers which the Government was authorised by Act XIV of 1863 to confer on settlement officers were limited to powers for the decision of suits of the nature mentioned in section 23 of Act X of 1859, or in Act XIV of 1863, and there was no authority given to Government to invest settlement officers with any other of the powers which were vested in a Collector by Act X of 1859, consequently an application under section 28 of that Act could not be entertained by a settlement officer. THAKOOREE *v.* DHULEEP SINGH **[2 N. W., 261**

4. ——— *Act XIV of 1863, s. 8.*—*Resumption and assessment.*—The powers given by section 8 of Act XIV of 1863 to a settlement officer, for the decision of suits of the nature mentioned in section 23 of Act X of 1859, or in Act XIV of 1863, did not give him power to try a right to resume and assess. JEYCHUND *v.* KADHOREE **[2 N. W., 244: Agra, F. B., Ed., 1874, 222**

SETTLEMENT OFFICER.—Power of settlement officer—*continued.*

5. ——————— *Power to refer case to another officer for trial.—Act X of 1859, s. 150.—Act XIV of 1863, ss. 8 and 10.*—An officer employed in making or revising settlements of land revenue and invested by the local Government with the powers described in section 8, Act XIV of 1863, was not thereby empowered to refer a suit, which he had jurisdiction to try by virtue of the provisions of the above mentioned section, to another officer for trial. The powers in section 8 of Act XIV of 1863 were the powers spoken of in section 150 of Act X of 1859, and were distinct from the powers given to a Collector by the second clause of section 162. Section 10 of Act XIV of 1863 enacted that if a suit for enhancement of rent be brought before any officers empowered under section 8 to hear the same, such suit should be heard and determined by such officer, and it was not provided that he might refer it for trial and decision to another. PUNCHUM SINGH *v.* HOORMUTOONNISSA . . . **5 N. W., 64**

6. ——————— *Power to increase rent.—Consent of ryots.*—Where increased rent is imposed in the course of settlement proceedings, the Collector's jummabundi must show the consent of all the ryots before they can be held to be bound by it. REAZOODDEEN MAHOMED *v.* MCALPINE **[22 W. R., 540**

7. ——————— *Power of, in Sonthal Pergunnahs.— Reg. III of 1872.—Reference in settlement cases.—Quære.*—Whether, having regard to Regulation III of 1872, and the notification by the Lieutenant-Governor, dated 7th May 1872, a valid reference can be made in a settlement case in the Sonthal Pergunnahs by a settlement officer. TARINI PROSAD MISSER *v.* MAHAMMAD CHOWDHRY **[6 C. L. R., 555**

SHARES.

See COMPANY—TRANSFER OF SHARES AND RIGHTS OF TRANSFEREES.

——— **Assignment of.**

See INSOLVENCY—ORDER AND DISPOSITION . . **I. L. R., 2 Bom., 542**

——— **Definement of—**

See CASES UNDER HINDU LAW—PARTITION—REQUISITES FOR PARTITION.

——— **Sale of—**

See CONTRACT—CONTRACTS FOR GOVERNMENT SECURITIES OR SHARES.

[2 Bom., 260, 2nd Ed., 246
2 Bom., 267, 2nd Ed., 253
2 Bom., 272, 2nd Ed., 258
3 Bom., O. C., 9, 69, 79
1 Ind. Jur., N. S., 17

——— **Suit for redistribution of, after partition.**

See JURISDICTION OF CIVIL COURT—REVENUE COURTS—PARTITION.

[I. L. R., 4 Calc., 510

SHARES—*continued.*

——— **Transfer of—**

See BANK OF BENGAL.

[I. L. R., 3 Calc., 392

See CASES UNDER COMPANY—TRANSER OF SHARES AND RIGHTS OF TRANSFEREES.

1. ——— **Transfer of shares.**—*Blank transfer.—Cause of action.*—Shares in the National Bank were sold by the allottee, and a transfer in the form required by the articles of association of the Bank was executed, but no name was inserted as transferee. The purchaser pledged them with the I. P. L. and China Bank, and deposited with them the blank transfer. This Bank applied to the National Bank without producing a letter from the pledgor to register their lien, and on its refusal sold the shares to the plaintiff and delivered to him the transfer, also in blank. The plaintiff inserted his own name in the transfer, and requested the National Bank to register the shares in his name. In an action against the National Bank to recover the price of the shares,—*Held* that they were justified in refusing to register. *Held* also, that the plaintiff having received back from his vendors the price of his shares, had no cause of action. KNOWLES *v.* NATIONAL BANK OF INDIA . **2 B. L. R., O. C., 158**

2. ——————— *Transfer by way of pledge.—Right of transferee to have transfer registered and to have dividends.*—*A.* and *B.*, proprietors of indigo factories, sold them to the *E. B. Company*, receiving in part payment 1,000 fully paid-up shares of the company, which was a company registered under Act XIX of 1857, *A.* and *B.* covenanting to indemnify the company from all loss, and to guarantee a dividend of 8 per cent. for the term of two years. *A.*, being indebted to *C.*, deposited the shares with him as a security for the debt. *C.* gave notice of this to the company before he made the advance to *A.*, and the company assented to the deposit. *A.* and *B.* afterwards became jointly indebted to the company, in respect of the covenant and guarantee. *Held* that *C.* was entitled to have the deposit of the shares registered in the books of the company, and to be paid dividends upon them. PIETSCH *v.* EASTERN BENGAL INDIGO COMPANY **[1 Ind. Jur., N. S., 278**

But where the deposit by *A.* was accompanied by a contract with a power of sale of the shares, but nothing was said about receiving the dividend,—*Held* that, under this contract of *A.*, *C.* could not receive the dividend, though he could under a contemporaneous general power of attorney from *A.* ROYAL BANK OF INDIA *v.* EASTERN BENGAL INDIGO COMPANY . . . **1 Ind. Jur., N. S., 281**

3. ——————— *Blank transfers.—Tenders.*—On the 19th April plaintiff sold to defendants sixty shares in the N. Bank, to be delivered and paid for on Thursday, April 26th. The sold note was as follows:—"Baboo Lall Mohun Mullick. Sold by your order, and on your account, to Messrs. Peary Chand Mittra and Sons (Metcalfe Hall) sixty shares

SHARES.—Transfer of shares—*continued.*

in the N. Bank at R4 premium per share. (Signed) Sree Coomar Sircar, *Broker.*" The bought note exactly corresponded. On the 23rd April plaintiff received from defendants the following:—"With reference to the sixty N. Bank shares sold by you, we shall thank you to send us three transfer deeds on Friday next, *viz.*, two for twenty-five shares each, and one for ten shares." On the 26th April plaintiff sent to defendants sixty N. Bank shares, some standing in the name of *H.*, and some in the name of *P.*, accompanied by transfers, all executed by *P.* alone. These shares were all returned by the defendants, with the following memorandum:—"The accompanying shares in the N. Bank purchased for delivery to-day are not in order." Later on the same day, the 26th, plaintiff took personally to defendants the same sixty shares with transfers, executed some by *H.* and some by *P.*, the name of the transferor corresponding number by number with the name in the shares. On this, as on the previous occasion, the name of the transferee was left blank. These shares were also rejected by the defendants as not in order. Plaintiff then, on April 27th, about 1 P.M., had the shares registered in his own name, and, within two hours afterwards, sent them to the defendants with corresponding transfers, and with the following letter:—"In compliance with request in your memorandum of the 23rd instant, I now send you the sixty shares N. Bank, with three transfer deeds, and will feel obliged by your paying the amount to the bearer." The defendants declined to receive the shares, and they were re-sold at a loss. The plaintiff never had any personal interest whatever in the shares, either on the 26th or 27th April, and was a mere benami holder for *H.* and *P.* The articles of association of the N. Bank required transfers to be in the form F. appended to Act XIX of 1857. The transfers tendered by plaintiff were on each occasion in that form. The defendants swore that the "Friday, the 27th April, mentioned in their memorandum of the 23rd April, was inserted by accident, instead of Thursday," the 26th April, and that they consequently rejected the tender on the 27th. *Held* (1) that the contract as it stood on the bought and sold notes was a contract by the vendor (as in *Stephen* v. *De Medina*) that "in consideration of such a sum, I will execute any proper conveyance which you tender me." (2) That the memorandum of April 23rd, coupled with the fact of the vendor having made tenders of transfers of the shares, was evidence enough to show that the vendor bound himself to tender a proper conveyance to his vendees. (3) That the document of conveyance must be complete at the time of tender, or capable of being then made complete. (4) The transfers, with a blank for the name of the transferee, were incomplete and insufficient, the vendor showing no authority from *H.* and *P.* (5) That the Court below must deal with the question of fact, whether or no the mention of Friday, the 27th, instead of Thursday, the 26th, was a mistake; and, *semble*, that, if the defendants had received the blank transfers, and acted upon them, the waiver would have rendered them complete. LALL MOHUN MULLICK *v.* PEARY CHAND MITTER

[1 Ind. Jur., N. S., 383

SHARES—*continued.*

4. ——— **Sale of shares for future delivery.**—*Refusal of purchaser to accept.—Readiness and willingness to deliver.—Pledge of shares to third person.*—Where a contract is made for the future delivery of shares, and the purchaser, before the delivery day, gives notice to the vendor that he (the purchaser) will not accept the shares, the vendor is thereby exonerated from giving proof of his readiness and willingness to deliver the shares. *Semble,*—The mere fact that such shares are pledged to a third person is not sufficient to show that the vendor is not ready and willing to deliver them, if there is nothing to show that the pledgee is not willing to assist the vendor in carrying out his contract, and it being apparently for the advantage of the pledgee that he should do so. DAYABHAI DIPCHAND *v.* MANIKLAL VRIJBHUKAN . . . 8 Bom., A. C., 123

5. ——— *Equitable assignment of right to sue.—Readiness and willingness to deliver.—Tender.—Constructive tender.*—A contract for the delivery of shares at a future day is a contract that can be assigned in equity, and the assignee of such a contract can, in his own name, maintain a suit to recover damages for its breach in the Civil Courts in India. In such a suit the plaintiff would be subject to any equities that might subsist between his assignor and the defendant. In order to support an allegation of readiness and willingness to deliver, an actual tender is not in all cases necessary, *e.g.*, a tender will be dispensed with where the defendant has refused to perform the contract, or where, on the day for the performance of it, he has absconded, and, having closed his place of business, has left no agent or other person to represent him. DAYABHAI DIPCHAND *v.* DULLABHRAM DAYARAM

[8 Bom., A. C., 133

SHEBAIT.

See CASES UNDER HINDU LAW—ENDOWMENT.

SHERIFF.

——— **Liability of—**

See ESCAPE FROM CUSTODY.

[4 W. R., P. C., 99
6 Moore's I. A., 467

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE — RIGHTS OF PURCHASERS — RECOVERY OF PURCHASE-MONEY . . I. L. R., 2 Bom., 258

——— **Sale by, under writ of fieri facias.**

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE — RIGHTS OF PURCHASERS — RECOVERY OF PURCHASE-MONEY . . I. L. R., 1 Calc., 55
[I. L. R., 3 Calc., 806

1. ——— **Right to poundage.**—*Satisfaction of decree after attachment, but before sale.*—Certain immoveable property of the defendant was attached in execution of a decree which had been partly satisfied by the proceeds of a previous sale in

SHERIFF.—Right to poundage—*continued.*

execution. Before any proceedings for sale were taken under the attachment, the defendant paid the balance and satisfied the plaintiff's claim in full. *Held* that the Sheriff was entitled to poundage upon the amount so paid in satisfaction of the debt, and satisfaction of the decree was ordered to be entered, and the attachment withdrawn, subject to the payment of such poundage. ROYCHURN DUTT *v.* AMEENA BIBI . . **I. L. R., 2 Calc., 385**

PEARSON *v.* MADHUB CHUNDER GHOSE **[I. L. R., 2 Calc., 387, note**

2. ——————— *"Debt levied by execution."—Ambiguity in document.—Usage.—Discharge of defendant, Effect of, on Sheriff's right.*—In a suit brought in the Bombay Court of Small Causes to recover Sheriff's poundage on the amount endorsed on a warrant of arrest in execution of a decree obtained by the defendants, and under which the plaintiff, at the request of the defendants, arrested *H.*, who applied to the High Court under section 273 of Act VIII of 1859, and was ordered to be discharged from custody, the Judge found for the defendants with costs, subject to the opinion of the High Court. *Held* (1) that the words "debt levied by execution" used in the table of fees for the Recorder's Court, and continued in the subsequent tables, being ambiguous, the rule applies that "if an instrument be an ancient one and its meaning doubtful, the acts of its author may be given in evidence, in aid of its construction;" (2) that as the Sheriff is the officer of the Court, and his fees are received under its authority, it was unnecessary to refer the case back to the Small Cause Court in order that evidence of usage might be taken; (3) that having regard as well to the usage and practice of the Supreme Court as to the liability of the Sheriff at the time the old tables of fees were settled, the words used must be construed as entitling the Sheriff to poundage upon his executing a warrant for the arrest of a defendant in execution of a decree; and (4) that if the Sheriff's right accrues upon his executing the warrant, the subsequent discharge by the Court of the defendant from custody ought not to divest him of it. VINAYAK VASUDEV *v.* RITCHIE, STEUART & CO. **[4 Bom., O. C., 139**

3. ——————— *Compromise after attachment of property and before sale.*—Where property is attached by the Sheriff after judgment, and the parties come to a compromise before the Sheriff sells any of such property, the Sheriff is only entitled to poundage on the amount received by the execution creditor in compromise of his claim. IN THE MATTER OF BOMBAY JOINT STOCK CORPORATION. IN RE SHERIFF OF BOMBAY . **6 Bom., O. C., 22**

SHIKMI TALOOKDARS.

See SETTLEMENT—RIGHT TO SETTLEMENT. **[W. R., 1864, 262**

See SETTLEMENT—EVIDENCE OF SETTLEMENT. **[3 W. R., P. C., 5 : 10 Moore's I. A., 185**

SHIP, ARREST OF—

See ARREST—CIVIL ARREST. **[J Hyde, 253**

——————— **Deposit of security with Marshal.**—*Application for arrest of deposit in another action.—Admiralty Court, Practice of.*—The ship *M.* having been arrested in an action promoted by the master of the ship *N.*, for damage caused by a collision, in which the *N.*, with her cargo, was totally lost, deposited with the Marshal of the Court certain Government paper as security to answer the alleged damage, on which the *M.* was released. The cargo of the *N.* had been insured, and on the loss thereof the Insurance Company paid the amount of the policy, and instituted proceedings against the *M.* in respect of the loss of the cargo. *Held*, the Court had no power to grant an application by the Insurance Company for the arrest of the security in the hands of the Marshal, so as to make it answerable in their action. TREFON INSURANCE COMPANY *v.* THE "MOORHILL." IN RE THE "MOORHILL" **[15 B. L. R., Ap., 3**

SHIP, REGISTERING OF—

——————— **British ship.**—*Stat. 3 and 4 Vict., c. 56.—Act X of 1841.—Ship built in foreign port.*—A ship built in a foreign port in India in 1817, within the limits of the Company's charter, by foreigners, and which sailed under foreign flags until 1838, when it was then and thereafter owned by and belonged to British subjects, resident at Bombay, held to be entitled, under the proclamation of the Governor General in Council under 3 and 4 Victoria, Cap. 56, and the Act X of 1841 of the Legislative Council of India, to be registered at Bombay as a British ship, for the purposes of trade within the limits of the Company's charter. CRAWFORD *v.* SPOONER **4 Moore's I. A., 179**

SHIP, SALE OF—

See BOTTOMRY BOND . **5 B. L. R., 258 [6 B. L. R., 323**

1. ——————— **Sale in execution of decree.** —*Form of transfer.—Merchant Shipping Act, s. 55. —Mandamus to Registrar to register transfer.—Jurisdiction of Small Cause Court.—Execution of Small Cause Court decree.*—The transfer of a ship should be in the form, or as near the form as may be, laid down by the Merchant Shipping Act; therefore, where a ship sold in execution was transferred by the Clerk of the Court, in a form usual in sales in execution, but quite irregular, having reference to the Merchant Shipping Acts, the Court refused a *mandamus* to order the Registrar to register the transfer. *Quære,*—Whether a ship can be sold in execution of a decree of the Calcutta Small Cause Court, and, *quære,* whether the Clerk of the Small Cause Court can execute a transfer of a ship, supposing she is saleable, in execution of that Court's decree. IN THE MATTER OF THE SHIP "SHAH CALLANDER" . . . **1 Ind. Jur., N. S., 263**

2. ——————— *Contract between British subject and non-British subject as to regis-*

SHIP, SALE OF.—Sale in execution of decree—*continued.*

tered ship in Calcutta.—Merchant Shipping Act, ss. 53, 55.—Jurisdiction of Small Cause Court.—Execution of Small Cause Court decree.—Form of transfer to purchaser.—*A.*, not a British subject, contracted with *B.*, a British subject, for the purchase of a ship which was registered in the port of Calcutta in the name of *C.* (also a British subject). *A.* and *B.* entered into the contract as if both had been British subjects. *Held* that, on the evidence, the parties contracted with reference to the Merchant Shipping Act, and that the intention was that a title under that Act should be given. *Held* also, that, although it turned out that *A.'s* nationality prevented the possibility of his being registered as owner, this did not affect the liability taken upon himself by *B.* to have himself put on the register as owner, or his liability to put *A.* in a position to have a change of ownership noted in the register under section 53 of the Merchant Shipping Act. *Held* further, that *B.*, not having had himself put on the register as owner, and not having put *A.* in a position to have a charge of ownership noted under section 53, and *B.* having declined to take any further steps towards attaining either of these objects, *A.* was entitled, although he had got possession of the ship, to rescind the contract, and to recover back a portion of the purchase-money which he had paid, and also to recover damages for the breach of contract. The Calcutta Court of Small Causes had power to seize and sell a vessel in execution of a decree of that Court, and the bailiff who sells the vessel is the person who ought to execute the bill of sale to the purchaser. A British ship having, in execution of a decree of the Calcutta Court of Small Causes, been sold to a person qualified to be the owner of a British ship,—*Held* that it was necessary that the transfer to the purchaser should be by bill of sale as prescribed in section 55 of the Merchant Shipping Act, and the mere sale and delivery to the purchaser did not pass a title to him. ESAU AHMED *v.* JASSIM BINSAFF

[2 Ind. Jur., N. S., 251

SHIPMENTS.

1. ——— **Consignment of goods.**—*Bills of exchange.—Presumption of payment of.—Sale of goods.*—The plaintiffs in London and the defendant in Calcutta had dealings, which consisted in the defendant shipping jute cuttings and rejections to the plaintiffs in certain quantities, and within certain limits as to price, the defendant drawing bills on the plaintiffs in respect of such goods, which the plaintiffs accepted. The plaintiffs alleged that there was an agreement between them and the defendant, that in case of shipments in excess of the limits given by the plaintiffs, they should at their option receive the goods on their own account, or treat them as consignments on account of the defendant, but the defendant denied there was any such arrangement. The defendant made several shipments in excess of the plaintiff's limits, and the plaintiffs treated them as consignments on the defendant's account, selling them on defendant's account and forwarding him account sales, and drawing bills on the defendant for any balance due to them in the transactions, which

SHIPMENTS.—Consignment of goods—*continued.*

bills the defendant refused to pay. In an action brought by the plaintiffs for the balance due to them from the defendant in respect of the shipments which had been treated by the plaintiffs as consignments in the defendant's account, the defendant admitted he had sold the bills and received the money for them; they were produced by the plaintiffs, the acceptors. *Held* that the bills being produced by the acceptors after due date, and the defendant having received a notice of dishonour, and no demand for payment of the bills, the presumption was that they had been paid by the plaintiffs. In exercising their option of treating shipments in excess of their limits as on their own account or as consignments on account of the defendant, the plaintiffs were entitled to treat each shipment separately, and were not compelled to decide on an average of the shipments taken all together. SHEARMAN *v.* FLEMING

[5 B. L. R., 629

2. ——— *Bills of lading fraudulently signed.—Title of endorsees for value against holder of mate's receipts who has not paid.*—The plaintiffs agreed with the defendant *K. M.* to purchase and ship cotton on account of *K. M.*, and to retain the mate's receipts for the cotton so shipped until the purchase-money should be paid by *K. M.* Under this agreement the plaintiffs shipped 609 bales on board the *Teresa*. Before the greater part of the 609 bales had been shipped, and before paying for the same, *K. M.*, without production of the mate's receipts, induced the master of the ship to sign bills of lading for the said 609 bales, and endorsed over the bills of lading for 310 of such bales to *J. C. & Co.*, *bonâ fide* endorsees for value without notice. In a contest between the plaintiffs, holders of the mate's receipts, and *J. C. & Co.*, endorsees for value of the bills of lading of the said 310 bales, it was held that the plaintiffs were entitled to the possession of the 310 bales to the exclusion of *J. C. & Co.* RAJARAM GOVINDRAM *v.* BROWN

[7 Bom., O. C., 97

SHIPPING LAW.

1. ——— **Certificates.**—*Suspension or cancelment of certificate.—Act I of 1859, ss. 201, 202.*—The local tribunal in India, appointed under sections 201 and 202 of Act I of 1859, can suspend or cancel the British certificate of a master or mate, and for that purpose its report need not be confirmed by the local Government. EX PARTE HURST. IN THE MATTER OF STEAMSHIP "JASON" . 1 Mad., 270

2. ——— **Collision.**—*Collision in port.—Port Rules, 1856.—Liability of ship for damage.*—The ship *T.* having got adrift in a dark night, in consequence of a collision, the harbour-master tried to anchor her, but failing to do so, as her cable jammed, finally brought her up inside the ship *A.*, which was moored off the Howrah side of the Hooghly, this being the only berth the *T.* could then secure. The next flood swung both ships, and the *T.* fouled the *A.*, damaging her, and causing her to part her cables, in consequence of which she suffered further damage

SHIPPING LAW.—Collision—*continued.*

from subsequent collisions. The owners of the *A.* sued the *T.* for the whole damage done. The defence was that the promovents, by adopting certain precautions, might have prevented the accident; that the *T.* being in charge of the port authorities was not liable, and that no care or skill on her part could have prevented the accident. The *T.* did not allege a liability of any of the vessels subsequently collided with. *Held* that liability for damages occasioned by collision rests, *primâ facie*, on the colliding vessel. That a ship in port is bound to be prepared for such exigencies only as might be expected to arise from the circumstances she knew to surround her, that is, a ship is protected by the port rules from liability for damage only when it is due to the acts or omissions of the officials in charge of her. *Held* also, that the ship is liable for all the consequences occasioned by an accident that results from any defect in her equipment, or want of care or skill of her crew, &c. IN THE MATTER OF THE "THALATTA"

[Bourke, Ad., 1

Held on appeal, that an accident to the gear of a ship does not of itself alone render her liable for damages for a collision of which it is a remote occasion; and that a ship at anchor in the port should keep a look-out, and be ready to take all reasonable means for her own safety in an emergency. THE "THALATTA" *v.* THE "ANNE"

[Bourke, A. O. C., 87

3. ——————— *Liability of ship for fault of pilot.—Port Rules, 1856.—Act XXII of 1855.*—The ship *H.*, in charge of a pilot (acting as harbour-master), when proceeding across the bow of the ship *I. S.*, which was at anchor, to take up a clear mooring, came into collision with and slightly damaged her, and this suit was for the damage so occasioned. Both sides relied on Act XXII of 1855 and the Port Rules of 1856, the plaintiff contending that the officer in charge was not such officer as the said Act and Rules referred to; and the defendant that he was. The suit was dismissed with costs. *Held* that a ship is *primâ facie* liable for damages occasioned by a collision resulting from an error in judgment of the officer in charge of her. *Held* also, that a vessel is exempted from liability for the fault of a pilot in charge of her,—first, where a master is authorised to employ a pilot, and is exempted from responsibility if he elects to do so; and, secondly, where the employment of a pilot is compulsory, and the owners of the vessel so employing him are relieved from responsibility for his misconduct: that the legislation regarding the employment of pilots and other officers in the port of Calcutta is contained in Act XXII of 1855 and the Port Rules of 1856: that where no special requisition is made by the port authorities, under Rules 2 and 7, a ship may move at her discretion in the port: and that it is unlawful, under section 12 of Act XXII of 1855, to moor a vessel in the port without having a port officer on board to take command of the ship. IN THE MATTER OF THE "HANOVER" . . **Bourke, Ad., 15**

4. ——————— *Collision from bore in the river.—Inevitable accident.*—The ship *Thames* was lying a mere hulk, waiting for repair when a bore drifted her stern foremost up the river, and she came into collision with another ship. No negligence was proved against the master, and the accident was held to be inevitable, and no costs were decreed on either side. ABDOOLA ROHOMAN MOOSAN *v.* THE "THAMES" . . **Bourke, Ad., 21**

5. ——————— *Moving vessel in harbour.—Act XXII of 1855.—Negligence of pilots.—Bombay Harbour Rules.—Lights on vessels, Duty to carry or show.*—The taking of a steam-vessel in a trial trip from Mazagon to the sea and back again is a moving of such vessel within the meaning of section 12 of Act XXII of 1855. For such a trip, therefore, the employment of a pilot is compulsory. Where the employment of a pilot is compulsory on board a vessel, and such pilot being on board, an accident happens through negligence in the management of the vessel, it lies upon the owners, in order to exempt themselves from liability, to show that the negligence causing the accident was that of the pilot. If such negligence is partly that of the master or crew and partly that of the pilot, the owners are not exempted from liability. If it be proved on the part of the owners that the pilot was in fault, and there is no sufficient proof that the master or crew were also in fault, in any particular which contributed, or may have contributed, to the accident, the owners will have relieved themselves of the burthen of proof which the law casts upon them. Rules of Bombay harbour with regard to the showing of lights by vessels in the harbour considered. Independently of special regulation or legislation, there is no general obligation by maritime law on sailing vessels, either under way or at anchor, to carry a light throughout the night, although, for the sake of avoiding a misfortune, it may under particular circumstances become their duty to carry or show a light. Although that is so, yet the Court will go some way to treat the dark boat as the wrong-doer; and if a vessel be either under way or at anchor at night in a channel, fair way, or ordinary track or path of other vessels, she is bound by general maritime law either to carry or show a light in order to indicate her position when other vessels are approaching her, and in sufficient time to enable them to avoid her. MUHAMMAD YUSUF *v.* PENINSULAR AND ORIENTAL STEAM NAVIGATION COMPANY

[6 Bom., O. C., 98

6. ——————— *Admiralty suit.—Both vessels to blame.—Suit for damages by owners of cargo.—Costs.*—The owners of cargo on board the *H.* sued the owners of the steam-ship *S.* for damages resulting from a collision which occurred between the *H.* and the *S.* The Court found that both vessels were to blame for the collision. *Held*, following the English authorities, that the plaintiffs could only recover from the defendants half of the damages which they had sustained. *Held*, also, following the *City of Manchester, 5 P. D., 221*, that in such suit each party should bear their own costs. OOKERDA POONSEY *v.* STEAM-SHIP "SAVITRI" . . **I. L. R., 10 Bom., 408**

SHIPPING LAW—*continued.*

7. ——— **Maritime lien.**—*Sale of cargo to repair ship.*—The captain of an English ship, being unable to raise funds on a bottomry-bond to repair damage caused to the ship by stress of weather, sold portion of the cargo for such purpose and repaired the ship. In a suit by the owners of the cargo against (1) the captain, who was one of the owners of the ship, (2) a mortgagee of the ship, and (3) the agent of the latter in whose name the ship was registered, to recover the value of the cargo sold, —*Held* (1) that the owners of the cargo were not entitled to a personal decree against either the mortgagee or his agent, inasmuch as the captain was not their agent to pledge their credit for moneys required for repairs; (2) that the owners of the cargo were not entitled to a maritime lien on the ship which would take precedence of the mortgage. MUTHAYA *v.* MUTHAYA . . . **I. L. R., 5 Mad., 334**

8. ——— *Authority of captain to bind owners for repairs of ship.*—The authority of the captain of a ship to bind her owners for repairs, and anything incidental thereto, can only exist by reason of his being their special agent for the purpose, which he will be presumed to be only in particular cases of necessity. BAYLEY *v.* TARUKNAUTH PORAMANIC . . **Bourke, O. C., 263**

9. ——— *Master's lien on ship for wages.—Act I of 1859, s. 58.*—The master of a ship has by Statute (Act I of 1859, section 58) a lien upon the ship for the recovery of wages due. IN THE MATTER OF THE BARQUE "ANNE" **[2 Hyde, 273**

10. ——— *Master's lien on ship for wages.—Repairs, Lien for.—Act I of 1859, ss. 55, 56.*—The *Persia,* on a return voyage from Jedda to Singapore, was driven into Bombay harbour through stress of weather. The owner, resident at Singapore, though frequently applied to, omitted to furnish funds to repair her, or to pay the wages of the mariners; and the master being unable to raise funds for these purposes on the credit of the ship or owner, on the application of the mariners the ship was, in order to levy their wages, sold by the Magistrate under the provisions of sections 55 and 56 of Act I of 1859. The master, who had been engaged at Singapore, then brought a suit on the Admiralty Side of the High Court, to recover out of the surplus proceeds of the ship his wages up to the time when he could return to Singapore, and his passage-money to that port. *Held* that he was entitled to recover such wages and passage-money. IN RE THE "PERSIA." EX PARTE GARDNER **[6 Bom., O. C., 138**

11. ——— *Lien on ship for repairs in port.—Ship in dock.*—A ship in the river cannot be said to be delivered over to the possession of those who execute repairs; consequently no lien arose for repairs done. *Secus,*—If the ship had been under repair in a dock belonging to the plaintiffs. SHIB CHUNDER DASS *v.* COCHRANE **[Bourke, O. C., 388**

SHIPPING ORDER.

1. ——— **Construction of order.**—*"Ready to receive cargo."*—The words "ready to receive cargo" inserted in a shipping order mean that the ship, on the day named in the shipping order, shall be ready to receive a full cargo by whomsoever offered, and not merely ready to receive the quantum of cargo mentioned in the shipping order. TAYLOR *v.* BROOKE . . . **1 Bom., Ap., 48**

2. ——— *Measurement.—Right to have measurement taken.*—Where a shipping order authorised the receipt of "300 bales of cotton not exceeding 52 cubic feet measurement at the screw house," the fair meaning of the contract was taken to be, considering that it was a mercantile contract, and looking at the surrounding circumstances, that the measurement by which the parties were to be bound was a measurement at the screw house; and that if the agent of the defendants was present there and passed the bales as of the proper measurement, or waived the right to measure and did not measure, the defendants could not afterwards insist upon a right to measure or go into an enquiry of what was the size of the bales. SCHILLIZI & CO. *v.* COX, STEEL & CO. . . **17 W. R., 545**

SHROFFS, USAGE OF—

See HUNDI—LIABILITY ON— **[I. L. R., 1 Bom., 23**

SIGNATURE.

——— **Acknowledgment of, by testator.**

See WILL—ATTESTATION. **[I. L. R., 1 Bom., 547**

——— **Alteration of contract after—**

See CONTRACT — ALTERATION OF CONTRACTS—ALTERATION BY PARTY.

——— **Comparison of—**

See SPECIAL APPEAL—GROUNDS OF APPEAL —EVIDENCE, MODE OF DEALING WITH— DOCUMENTARY EVIDENCE. **[22 W. R., 272**

——— **Cancellation of—**

See CONTRACT — ALTERATION OF CONTRACTS—ALTERATION BY THE COURT **[I. L. R., 3 Bom., 242**

——— **of jailor.**

See CIVIL PROCEDURE CODE, 1882, s. 87. **[4 B. L. R., O. C., 51**

——— **Proof of—**

See EVIDENCE—CIVIL CASES—MISCELLANEOUS DOCUMENTS—SIGNATURE. **[1 Mad., 164**

See EVIDENCE ACT, s. 73 . **21 W. R., 6**

——— **Sufficiency of—**

See CONTRACT—ALTERATION OF CONTRACTS —ALTERATION BY PARTY. **[8 B. L. R., 305**
11 W. R., 216

SIGNATURE.—Sufficiency of—*continued.*

See LIMITATION ACT, 1877, s. 19 (1871, s. 20)—ACKNOWLEDGMENT OF DEBTS.
[I. L. R., 1 All., 683
I. L. R., 6 Calc., 340
I. L. R., 3 All., 347

See PRACTICE—CRIMINAL CASES—SIGNATURE OF MAGISTRATE.
[I. L. R., 6 Mad., 396

See WARRANT OF COMMITMENT.
[I. L. R., 6 Mad., 396

See CASES UNDER WILL—ATTESTATION.

See WILL—EXECUTION . 21 W. R., 84

1. ——— **Signature of Rajah.**—*Title without name.*—A signature of a Rajah of the ancient Nuddea family was held to be valid, even though it did not contain the name of any particular individual. GUNEE BISWAS *v.* SREEGOPAL PAUL CHOWDHRY . . . . . 8 W. R., 395

2. ——— **Signature of Magistrate.**—*Lithographed stamp of signature.*—A Magistrate ought not to use a lithographed stamp of his signature. QUEEN *v.* DEDAR NUSHYO
[14 W. R., Cr., 81

SIR LAND.

——— **Description of.**—*Entry in revenue records, Effect of.*—The mere entry in the revenue records of land as sír will not make it sír land. Sír land is land which at some time or other has been cultivated by the zemindar himself, and which, although he may from time to time, for a season, demise to shikmas, he designs to retain as resumable for cultivation by himself or his family whenever his requirements or convenience may induce him to resume it. BUDLEY *v.* BUKHTOO . 3 N. W., 203

SLANDER.

See PARTIES—ADDING PARTIES TO SUITS—PLAINTIFFS . I. L. R., 1 Mad., 383

——— **of title—**

See DECLARATORY DECREE, SUIT FOR—DECLARATION OF TITLE.
[I. L. R., 1 Mad., 65

1. ——— **Action for slander.**—*Misjoinder.—Special damage.*—An action for slander cannot be brought jointly against several defendants: separate actions should be brought against each. *Quære,*—Whether words implying "you are a drunkard, thief, cheat, and the paramour of your sister-in-law, you bastard," applied to a Brahmin, are actionable *per se* without allegation of special damage. NILMADHUB MOOKERJEE *v.* DOOKEERAM KHOTTAH
[15 B. L. R., 161

2. ——— *Misjoinder.—Special damage.*—An action for slander may be brought jointly against several defendants where the words spoken are not actionable *per se,* but only become so by reason of the special damage, which is the result of the conjoint action of all the defendants. WOOZEERUNNISSA BIBEE *v.* MAHOMED HOSSEIN . . . . 15 B. L. R., 166, note

3. ——— *Omission to give courtesy title in petition.*—The omission of a mere courtesy cannot be taken to be equivalent to slandering or libelling a man, and is not an actionable wrong. SITARAMA KRISHNA RAYADAPPA RANGA RAZ *v.* SANYASI RAZU PEDDA BALIYARA SIMHULU
[3 Mad., 4

4. ——— *Slander and assault.—Special damage.*—Special damages are not necessary to be proved in a case of slander and assault. HOSSEIN *v.* BAKIR ALI
[W. R., 1864, 302

5. ——— *Verbal abuse.—Hindus.—Special damage.*—In a suit between Hindus in the Bombay mofussil, damages may be recovered for mere verbal abuse without proof of actual damage resulting therefrom to the plaintiff. KASHIRAM VALAD KRISHNA *v.* BHADU BAPUJI
[7 Bom., A. C., 17

6. ——— *Damages for verbal abuse.*—Damages cannot be claimed for mere verbal abuses or threatening language. PHOOLBASEE KOER *v.* PARJUN SINGH . 12 W. R., 369

7. ——— *Verbal abuse.—Special damage.*—While *C.* was giving his evidence in open Court, in a suit of *A.* against *B., A.* with the object of inducing the Judge to disbelieve *C.'s* testimony, said to the witness that he was a drunkard. *Held* that the words were actionable without proof of special damage. SRIKANT ROY *v.* SATCORI SHAHA . . . . . 3 C. L. R., 181

See Cases of SREENATH MOOKERJEE *v.* KOMUL KURMOKAR . . . . 16 W. R., 83

KALI KUMAR MITTER *v.* RAMGATI BHUTTACHARJI
[6 B. L. R., Ap., 99 : 16 W. R., 84, note

KANOO MUNDLE *v.* RAHUMOOLLAH MUNDLE
[W. R., 1864, 269

GHOLAM HOSSEIN *v.* HUR GOBIND DASS
[1 W. R., 19

TUKEE *v.* KHOSHDEL BISWAS . 6 W. R., 151

OSSEEMOODDEEN *v.* FUTTEH MAHOMED
[7 W. R., 259

GOUR CHUNDER PUTEETUNDEE *v.* CLAY
[8 W. R., 256

8. ——— *Defamation.—Action for abuse, no special damage being alleged.—Damages, Measure of.*—The rule of English law which prohibits, except in certain cases, an action for damages for oral defamation unless special damage is alleged, being founded on no reasonable basis, should not be adopted by the Courts of British India. If defamatory expressions are used under such circumstances as to induce in the plaintiff reasonable apprehension that his reputation has been injured, and to

SLANDER.—Action for slander—*continued.*

inflict on him pain consequent on such belief, the plaintiff is entitled to recover damages without actual proof of loss sustained. *Semble,*—An action will not lie for vulgar abuse or hasty expressions; but for malicious or culpable oral defamation an action will lie. Vindictive damages should not be awarded, and a distinction should be drawn in awarding damages when the defendant acts from carelessness and when he acts maliciously. In the latter case the plaintiff is entitled to full compensation for the pain suffered, and in the former to a sum sufficient to establish his innocence of the charges made. PARVATHI *v.* MANNAR . . . . **I. L. R., 8 Mad., 175**

9. ——————— *Cause of action.—Defamation.—Verbal abuse.—Special damage.*—A suit to recover damages for verbal abuse of a gross character may be maintained without proof of consequential damage. IBIN HOSEIN *v.* HAIDAR **[I. L. R., 12 Calc., 109**

10. ——————— *Defamation.—Damages.—Consequential damage.*—A suit for damages for defamation of character involving loss of special position and injury to reputation will lie without proof of special damage. *Parvathi* v. *Mannar, I. L. R., 8 Mad., 175,* and *Srikant Rai* v. *Satcori Shaha, 3 C. L. R., 181,* followed. TRAILOKYA NATH GHOSE *v.* CHUNDRA NATH DUTT. **I. L. R., 12 Calc., 424**

SLAUGHTER HOUSE.

See NUISANCE—UNDER CRIMINAL PROCEDURE CODES . **7 B. L. R., 499, 516 [25 W. R., Cr., 72**

1. ——— Offence of using unlicensed slaughter house.—*Beng. Act VII of 1865, s. 7.—Slaughter house license.—Transfer of slaughter house.*—*R.* was fined by the Deputy Magistrate for using an unlicensed slaughter house. He subsequently gave an ijara or lease to *A.* to carry on the business. *R.* was prosecuted again for evading the law by "slaughtering cattle or allowing cattle to be slaughtered" without a license. He was fined R200 by the Deputy Magistrate. On appeal to the Sessions Judge he was acquitted. On the motion of the Municipal Commissioners for a rule to set aside the order of the Sessions Judge, it was held (*per* JACKSON, *J.*) that *R.*, by giving a lease to *A.*, had parted with his interest, and had ceased to have any power to allow or disallow the slaughtering of cattle; that section 7 provides penalties only, and does not describe an offence or relate to a conviction. It is quite another question whether the act itself is an offence irrespective of section 7, and whether *R.* could be dealt with as an abettor. *Per* MITTER, *J.* (dissenting.)—The Judge has found that the lease was given by *R.* with the avowed object of continuing the slaughter house, and admittedly for the express purpose of evading the law; the case, therefore, falls within the express words of the section, "or allows cattle to be slaughtered." IN THE MATTER OF THE PETITION OF THE MUNICIPAL COMMISSIONERS FOR THE SUBURBS OF CALCUTTA **[6 B. L. R., Ap., 28: 14 W. R., Cr., 67**

SLAUGHTER HOUSE.—Offence of using unlicensed slaughter house—*continued.*

2. —————— *Beng. Act VII of 1865, s. 1.—Servant of licensee.*—No person is liable to any penalty under section 1, Bengal Act VII of 1865, except a person who, without a license, uses a place or building as a slaughter house, either by letting it out for such purpose, or by employing servants and others for the purposes of killing cattle therein; but a person who may be the mere servant of a butcher killing cattle in a particular slaughter house, or a butcher resorting accidentally or occasionally to a slaughter house for the purpose of killing, and killing an ox or sheep there, does not use the place as a slaughter house within the meaning of section 1, Bengal Act VII of 1865. MUNICIPAL COMMISSIONERS FOR THE SUBURBS OF CALCUTTA *v.* ZAMIR SHAIKH . . . **16 W. R., Cr., 4**

3. ——— Notice to licensees of slaughter house.—*Beng. Act VII of 1865.*—The length of notice to be given to persons holding licenses for carrying on slaughter houses under Bengal Act VII of 1865, must be determined in each case according to its own particular circumstances. IN RE HALDANE . . . . **6 W. R., Cr., 77**

SLAVERY.

——— Act V of 1843.—*Mahomedan law.—Succession.—Willa.—Emancipated slaves.*—Assuming that, by the willa rule of the Mahomedan law, the heirs of the master who emancipates a slave are entitled to the property of which the emancipated slave dies possessed to the exclusion of his natural heirs, the effect of section 3, Act V of 1843, which enacts "that no person who may have acquired property by inheritance shall be dispossessed or prevented from taking possession thereof on the ground that the person from whom the property may have been derived was a slave," is to abrogate the rule of the Mahomedan law, and to secure the succession of the heirs of the emancipated slave, as if he had never been a slave. The provisions of the Act apply not only where the person whose property is claimed has been emancipated after the passing of the Act, but also where he has been emancipated before its passing. The exclusion of the natural heirs of an emancipated slave in favour of the heirs of his emancipator, is a disability arising out of the status of slavery similar in its nature to the exclusion, under the Mahomedan law, of the natural heirs of an emancipated slave by a master or his heirs; and since the general scope and object of Act V of 1843 is to remove all such disabilities, the Civil Courts are bound, in construing it, to give it the widest remedial application which its language permits, and cannot, consequently, limit it to those cases only in which the person from whom property is inherited was a slave at the time of his death, when the words of the statute allow of its being applied to the property of any one who had at any time been a slave. UJMUDDIN KHAN *v.* ZIA-UL-NISSA BEGUM **[I. L. R., 3 Bom., 422: 5 C. L. R., 11 L. R., 6 I. A., 137**

In the same case, in the Court below, it was held that the effect of Act V of 1843 is to prevent the

SLAVERY.—Act V of 1843—*continued.*

enforcement of any rights which would, if that Act had not been passed, have arisen out of the status of slavery; and a suit, brought by the heir of the master of a slave girl, emancipated by and married to such master, in his lifetime, to recover, as such heir, her property in the hands of persons descended from her, is one the cognisance of which is barred by section 2 of the Act. AJMUDDIN KHAN *v.* ZIA-UN-NISSA BEGUM . . . . . **12 Bom., 156**

SLAVERY (CRIMINAL CASES).

1. ——— **Penal Code, s. 370.**—*Buying or disposing of girl as a slave.*—*R.* having obtained possession of *D.*, a girl about eleven years of age, disposed of her to a third person, for value, with intent that such person should marry her, and such person received her with that intent,—*Held* that *R.* could not be convicted of disposing of *D.* as a slave under section 370 of the Penal Code. *Queen* v. *Sikundur Bukhut, 3 N. W., 146,* remarked upon. EMPRESS OF INDIA *v.* RAM KUAR . **I. L. R., 2 All., 723**

2. ——— *Treating kidnapped girl as slave.*—If, knowing a girl has been kidnapped, a person wrongfully confines her, and subsequently detains her as a slave, he is guilty of two separate offences punishable under the Penal Code. Slavery is a condition which admits of degrees, and a person is treated as a slave if another asserts an absolute right to restrain his personal liberty, and to dispose of his labour against his will, unless that right is conferred by law, as in the case of a parent, or guardian, or a jailor. QUEEN *v.* SIKUNDUR BUHKUT . . . . . **3 N. W., 146**

3. ——— *Obligation of Judge to try charge of.*—The Sessions Judge was held bound to try the accused upon his commitment by the Deputy Magistrate on a charge, under section 370, Penal Code, of having detained a woman against her will as a slave. QUEEN *v.* FIRMAN ALI **[16 W. R., Cr., 73**

4. ——— *Meaning of term.*—*S.* transferred to *A.* for R25 his rights in the person of *B.*, a girl of thirteen years. In a document in which the transaction was recorded, *B.* was described as a vellati or slave girl purchased by *S.* from *P.*,—*Held* that *A.* was guilty of buying *B.* as a slave within the meaning of section 370 of the Penal Code. AMINA *v.* QUEEN-EMPRESS. **[I. L. R., 7 Mad., 277**

SMALL CAUSE COURT, MOFUSSIL.

	Col.
1. LAW OF SMALL CAUSE COURTS, MOFUSSIL	5655
2. JURISDICTION	5655
GENERAL CASES	5655
DWELLING OR CARRYING ON BUSINESS	5657
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12 W. R., 290

1. LAW OF SMALL CAUSE COURTS, MOFUSSIL.

1. ——— Law of Civil Courts.—*Matters of contract between Hindus.*—In all matters of contract and dealing between Hindus, the law applicable in Civil Courts of the country governs Courts of Small Causes. WOODOY CHAND HALDER *v.* GOOROO CHURN MOJOOMDAR . . . 13 W. R., 148

2. ——— Rules and orders in Military Code.—*Held* that the rules and orders in the Military Code are not binding on a Small Cause Court. RAICHAND MANGAL *v.* ABDULLA AMRUDDIN KOTVAL . . . . 5 Bom., A. C., 99

2. JURISDICTION.

3. ——— General cases.—*Act XI of 1865, s. 12.—Act XLII of 1860, s. 6.*—Small Cause Courts have sole jurisdiction within their local limits, therefore an action for cattle, or the value of cattle, cannot lie in a Civil Court having jurisdiction within the local limits of a Small Cause Court jurisdiction. ANONYMOUS . 2 W. R., S. C. C. Ref., 5

4. ——— *Suits cognisable by Village Munsif under Mad. Reg. IV of 1816, s. 5.*—A Small Cause Court had concurrent jurisdiction to try suits for a sum not exceeding R10, cognisable by a Village Munsif under section 5, Regulation IV of 1816. PARASOORAMA PILLAY *v.* RAMASAWMY *alias* COOLLA RAMASAWMY . . 5 Mad., 45

5. ——— *Suits cognisable by District Munsif in jurisdiction of Small Cause Court.*—A suit was brought in the Small Cause Courts to recover two sums of money, one cause of action being for money lent, and the other for goods sold and delivered. The amount of both claims was within the jurisdiction of the Small Cause Court, but the pecuniary claim in each case was cognisable by the District Munsif on the Small Cause Court side. *Held* that the Small Cause Court had jurisdiction to entertain the suit. ARUNACHELLAM CHETTY *v.* GANGATHARAM AIYAN . . . 5 Mad., 287

6. ——— *Suit for sum on bond the whole amount of which is beyond jurisdiction.*—A Small Cause Court can try a suit for an amount within its jurisdiction, notwithstanding that it is upon a bond the amount of which is beyond its jurisdiction. SUKEE MONEE DEBIA *v.* HUREEMOHUN MOOKERJEE . . 6 W. R., Civ. Ref., 6

7. ——— *Suit on kabuliat under which more than R500 are payable.*—The jurisdiction of a Small Cause Court, in a suit on a kabuliat for damages not exceeding R500, is not affected because damages exceeding that sum may be payable under the same kabuliat. SMITH *v.* GOKAL SHEIKH . . . 3 W. R., S. C. C. Ref., 14

8. ——— *Suit for portion of sum due under agreement.*—Where the plaintiff sued for a portion of grain in the nature of net rent which had fallen due, that amount being within its jurisdiction, although the whole amount payable from first to last under the agreement would be in excess of its jurisdiction,—*Held* that the suit was cognisable by a Court of Small Causes. NARASIDAVUR *v.* MARANA KAUNDAN . . 2 Mad., 440

9. ——— *Suit for interest on bond for more than R500.*—Where a suit was brought for interest amounting to less than R500, due upon a bond for R1,000, not then payable,—*Held* that a Court of Small Causes had jurisdiction to try the case, the plaintiff having had a separate and complete cause of action upon the bond entitling him to recover the annual interest as it accrued due. The fact that forgery of the bond is set up as a defence makes no difference. ANANTHA NARAIYANAPPAIYAN *alias* ASVATA AIYAN *v.* GANAPATY AIYAN
[2 Mad., 469

CHETU NARAYANA PILLAY *v.* AYAMPERUMAL AMBALOM . . . . . 4 Mad., 447

10. ——— *Separate causes of action each within Munsif's jurisdiction.*—Several claims, each of which separately is within the Small Cause Court jurisdiction of a District Munsif, may be joined together and form the basis of a suit in the

SMALL CAUSE COURT, MOFUSSIL—*continued.*

2. JURISDICTION—*continued.*

General cases—*continued.*

Small Cause Court. As where there was an agreement that defendant should occupy land for two years and deliver a certain quantity of paddy at four specified periods; in a suit for rent,—*Held* that though the plaintiff might have sued for each instalment of rent as it fell due, the aggregate of such unpaid instalments should be deemed to be one cause of action. CHOCKALINGA PILLAI *v.* KUMARA VIRUTHALAM . . . . . 4 Mad., 334

11. ——————— *Act XI of 1865.—Act IX of 1850, s 34.—Cause of action, Dividing.*—There is no provision in the Mofussil Small Cause Courts Act (XI of 1865), similar to section 34 of the Presidency Small Cause Court Act, IX of 1850, which forbids a plaintiff's dividing any cause of action for the sake of bringing two or more suits in the Small Cause Courts of the Presidency. UMED DHOLCHAND *v.* PIR SAHEB JIVA MIYA [I. L. R., 7 Bom., 134

12. ——— Dwelling or carrying on business.—"*Dwelling.*"—*Actual residence.*—The actual presence of the defendant within the jurisdiction of the Court is not necessary, if he was there dwelling at the commencement of the suit, and a temporary dwelling is sufficient to give jurisdiction to a Small Cause Court. ANANTHA NARAYANA *v.* PERIYANA KONE . . . . . 5 Mad., 101

13. ——————— *Dwelling.—Casual residence.—Act XLII of 1860, s. 4.*—Mere casual presence, or even residence for a temporary purpose, without the intention of remaining, is not dwelling within the jurisdiction of a Small Cause Court within the meaning of section 4 of Act XLII of 1860. A person resided at Coimbatore but had some cultivated land within the local jurisdiction of Ootacamund, to which place he came to answer another demand against him,—*Held* that he did not dwell within the jurisdiction of the Ootacamund Small Cause Court. SAMINATHA PILLAI *v.* VARISAI MAHOMED RAVATTAN . . . . 2 Mad., 304

14. ——————— *Temporary absence.—Dwelling.—Act XI of 1865, s. 8.*—Although a defendant may be temporarily absent from his dwelling-house, yet if he retains the same he will be held to dwell there within the meaning of the Small Cause Court Act XI of 1865. To dwell in a place is to have one's permanent abode there. MADHO DOSS *v.* SITA RAM . . . . . 3 N. W., 121

15. ——————— *Temporary absence from imprisonment.—Residence.*—Temporary imprisonment beyond the jurisdiction of a Small Cause Court was held not to bar the jurisdiction of that Court in respect of defendants who formerly resided within its jurisdiction and whose families continued to reside within it, the inference from the latter fact being that the defendants had an intention of returning to their former place of abode on the termination of their imprisonment. GOPAL CHUNDER SIRCAR *v.* KURNODHAR MOOCHER [7 W. R., 349

SMALL CAUSE COURT, MOFUSSIL—*continued.*

2. JURISDICTION—*continued.*

Dwelling or carrying on business—*continued.*

16. ——————— *Dwelling.—Temporary residence.—Attendance at race meeting.*—In the case of a person attached to a regiment stationed at Shajehanpore, who had been gazetted to two years' furlough in India, served with a summons issued out of the Small Cause Court at Meerut whilst attending a race meeting at the latter place in respect of a debt contracted beyond the jurisdiction of that Court,—*Held* that if he had not availed himself of furlough, but was only present on short leave at Meerut, he was not dwelling within the jurisdiction of the Meerut Court, or if having availed himself of furlough, he retained his permanent residence at Shahjehanpore, and merely visited Meerut, for a few days, he was in that case also not dwelling at Meerut, but, if having availed himself of furlough, and having retained no permanent place of residence at Shahjehanpore, nor having any permanent place of residence elsewhere, he attended the race meeting at Meerut with the intention of leaving that place after the races, and of proceeding elsewhere in the enjoyment of his furlough, in such case he must be held to have been dwelling at Meerut when the summons was served. MAYHEW *v.* TULLOCH [4 N. W., 25

17. ——————— *Residence as domestic servant.*—A suit is not maintainable at K. against a defendant who is employed as a domestic servant at M., and who is not shown to have any immediate or early intention of returning to X., where his family are continuing to reside; the word "dwell" in section 8, Act XI of 1865, it being held, must be used in the strict sense of actual residence. PORGASH PARAY *v.* HACHIM . . . 7 W. R., 417

18. ——————— *Act XI of 1865, s. 8.—Place of dwelling.*—A servant residing within the jurisdiction of one Small Cause Court who has a family house within the limits of the jurisdiction of another Small Cause Court in which his father lives, and which he himself occasionally visits, does not dwell within the local limits of the latter Court within the meaning of section 8 of Act XI of 1865, and although the cause of action may have arisen there, a suit against him will not lie in that Court. GENDU MALHARI *v.* GOVIND ATMARAM . 10 Bom., 409

19. ——————— *Suit against wife.—Husband not in jurisdiction.*—A suit against a woman living under the protection of her husband is not cognisable in a Small Cause Court, if at the time of the commencement of the suit, the husband does not dwell, nor personally or through a servant or agent carry on business, or work for gain, within the local limits of the jurisdiction of the Court. BOWMAN *v.* SHAWE . . . . 10 W. R., 240

SMALL CAUSE COURT, MOFUSSIL— *continued.*

2. JURISDICTION—*continued.*

Dwelling or carrying on business—*continued.*

20. ——————— *Commission agent.—Residence.—Carrying on business.*—A person who carries on business at a place by a commission agent, to whom he only consigns goods, cannot be said to carry on business or personally to work for gain within the local limits of a Court where the commission agent resides. GOPEE MOHUN ROY *v.* PROTAP CHUNDER ROY . . . . **11 W. R., 530**

21. ——————— *Act XI of 1865, s. 8.—Residence.—Zemindari business.*—Zemindari business is not such business as is intended by Act XI of 1865, section 8, and mooktears and karpurdazes carrying it on are not servants or agents within the meaning of section 11. Where zemindars from the mofussil come in occasionally to the head-quarters of a Small Cause Court to prosecute or defend suits, settle business with creditors or for social intercourse or medical treatment, and remain in their boat or put up at the houses of their mookhtears and kurpurdazes, they cannot be said to have a "lodging" within the limits of the Court, such as is intended by section 8, explanation A. NOBIN CHUNDER *v.* BURODA KANT SHAHA . . . . . **19 W. R., 341**

ANONYMOUS CASE. . . **23 W. R., 223**

22. ——————— *Act XI of 1865, s. 9.—Suit against Agent of Governor General.*—A suit against an Agent to the Governor General, on the part of Government, is substantially a suit against Government, and ought, under section 9, Act XI of 1865, to be brought in a Court having jurisdiction at the seat of Government. ROOPUN TEWAREE *v.* BUCKLE . . . . . **10 W. R., 142**

23. ——————— *Residence in Cantonment.—Practising in Small Cause Court jurisdiction.*—Where a pleader resides within the limits of a cantonment, and practises as a pleader within the jurisdiction of a Small Cause Court, both the Cantonment Magistrate and the Small Cause Court Judge have concurrent jurisdiction over him to the amounts respectively cognisable by them. SHAPURJI JEHANGIR *v.* MORGAN . . . **4 Bom., A. C., 187**

24. ——————— *Dwelling.—Act XI of 1865, s. 8.*—The defendant, an officer in a regiment stationed at Vellore, was sued for money due for the rent of a house occupied by him at Madras. While absent on leave on medical certificate, he rented the plaintiff's house at Madras, where he was residing at the time of the institution of the suit; but he returned to Vellore previous to the hearing of the suit. The Small Cause Court Judge of Vellore held that the defendant was dwelling at Vellore at the time of the institution of the suit within the meaning of section 8, Act XI of 1865. *Held* that there was nothing in point of law to prevent the Judge from affirming his jurisdiction. KISSUN SING *v.* STURT **[5 Mad., 471**

SMALL CAUSE COURT, MOFUSSIL— *continued.*

2. JURISDICTION—*continued.*

Dwelling or carrying on business—*continued.*

25. ——————— *Defendant residing out of jurisdiction.—Act XXIII of 1861, s. 4.*—The provisions of section 4 of Act XXIII of 1861 were applicable to Courts of Small Causes in the mofussil. ANPURNABAI *v.* SAKHARAM JAGANNATH **[6 Bom., A. C., 256**

26. ——————— *Cause of action.—Defendant residing out of jurisdiction.—Act XXIII of 1861, s. 4.*—When a cause of action had arisen within the local jurisdiction of a Small Cause Court, but one of several defendants resided out of such jurisdiction, sanction might be given, under section 4 of Act XXIII of 1861, by the High Court to the Small Cause Court to try the suit. MATHURADAS JAGJIVANDAS *v.* NATHA BAJA **[6 Bom., A. C., 131**

MOHUR RAM MOODEE *v.* KARBAREE SIRDAR **[18 W. R., 312**

27. ——————— *Suit against joint obligors.—Act XLII of 1860, s. 21.*—An order from the High Court was necessary to enable a Court of Small Causes to entertain a suit against several obligors, one of whom at the time of filing the plaint was neither resident nor personally working for gain within the limits of its jurisdiction. Such order should be applied for after the reception of the plaint, upon a statement of the circumstances of the particular case. Section 21 of Act XLII of 1860 was to have the same operation as if Act XXIII of 1861 had formed part of Act VIII of 1859 when it became law. SABHAPATI MUDALI *v.* MUTTUSVAMI MUDALI **[1 Mad., 103**

28. ——————— *Mad. Civil Courts Act III of 1873.—Act XI of 1865, s. 8.*—Since the passing of the Madras Civil Courts Act III of 1873 the general control over all the Civil Courts is vested in the District Judge to whom the application should be made. It is only in cases where the defendant is beyond the local jurisdiction of the District Court, and the Court before whom the suit is instituted has not otherwise jurisdiction under Act XI of 1865, section 8, that a reference to the High Court is necessary. ANONYMOUS **8 Mad., Ap., 10**

29. ——————— *Suit for debt against defendants with joint liability.—Act XXIII of 1861, s. 4.*—A suit for debt against two defendants whose liability was joint, but one of whom at the time of filing the plaint was neither resident nor personally working for gain within the limits of the jurisdiction, might be tried by a Small Cause Court within whose jurisdiction the other defendant was resident at the time of the commencement of the suit, provided an order was obtained from the High Court under section 4 of Act XXIII of 1861. RUNGIAH PILLAI *v.* CHINNASAMI PILLAI . . **3 Mad., 374**

30. ——————— *Joint bond.—One of parties out of jurisdiction.—Act XI of 1865,*

SMALL CAUSE COURT, MOFUSSIL—*continued.*

2. JURISDICTION—*continued.*

Dwelling or carrying on business—*continued.*

s. 12.—In a suit brought on a bond jointly executed by the defendants, one of whom resided in Calcutta, and the other within the jurisdiction of the Munsif's Court at Alipore,—*Held* that it was cognisable by the Small Cause Court, although the authority of the High Court was necessary before it was tried, and therefore, under section 12, Act XI of 1865, the Munsif had no jurisdiction to try the suit. KHODA BAKSH MISTRI *v.* BENI MANDAL [6 B. L. R., 719, note: 14 W. R., 156

31. ——— Account.—*Suit by gomashta for excess expenses.*—A suit by a gomashta for excess expenses incurred by him over and above the amount of rents collected by him, was held to be cognisable in the Small Cause Court, notwithstanding that the nature of the defence might render it necessary to investigate the accounts of the mehal. PROSUNNO CHUNDER ROY *v.* SEEENATH SEEEMANEE [7 W. R., 422

32. ——— *Suit to recover balance of account by tehsildar.*—A suit to recover the balance of nikasi papers furnished by defendant in his capacity of tehsildar, there being an allegation in the plaint that the defendant verbally promised to pay part of the sum claimed under the circumstances mentioned therein, was held not to be cognisable by a Court of Small Causes. SRISHTEEDHUR BOSE *v.* SHAMA CHURN GHOSE . . 14 W. R., 53

See GRANT *v.* RAM TONOO BHOOMICK [10 W. R., 83

33. ——— *Act XI of 1865, s. 6.—Suit for balance due on account of rents.*—A suit for a balance due on account of rents collected from the plaintiffs' zemindaris by the defendants' father acting as agent of the plaintiffs, is a suit in which money is claimed as due on a contract within the meaning of section 6, Act XI of 1865. Where the amount claimed in such a suit does not exceed R500, it is cognisable by a Small Cause Court, notwithstanding it may be necessary to go into the accounts of both parties to determine what is due. DYEBUKEE NUNDUN SEN *v.* MUDHOO MUTTY GOOPTA [I. L. R., 1 Calc., 123: 24 W. R., 478

34. ——— *Suit against guardian and manager of property for rents collected by him.—Trustee bound to account.*—In a suit to recover, from the guardian of a minor and the manager of his property who had granted to himself, benami, a farming lease of the minor's property, rents collected by him for which he did not account, —*Held* that the defendant could not be considered simply as an agent to collect plaintiff's rents, but was bound as a trustee to account for the proceeds of the property, and that the claim was therefore not cognisable in a Small Cause Court. RAM JOY MOJOOMDAR *v.* KEDAR NARAIN ROY . . 25 W. R., 75

SMALL CAUSE COURT, MOFUSSIL—*continued.*

2. JURISDICTION—*continued.*

Account *continued.*

35. ——— *Suit by principal against agent.—Question of accounts.*—A suit by a principal against an agent for adjustment and investigation of disputed items of account which could not be determined within six weeks, and which charged the agent with colluding with judgment-debtors, was held to be properly triable by the Civil Court, and not by the Small Cause Court. KRISHNA KINKUR ROY *v.* MADHUB CHUNDER CHUCKERBUTTY [21 W. R., 283

36. ——— Act XL of 1858, s. 3.—*Defending suit without certificate.*—A Court of Small Causes, constituted under Act XI of 1865, is competent, under section 3, Act XL of 1858, to allow any relative of a minor, to institute or defend a suit in his behalf without a certificate of administration, where it has jurisdiction in relation to the subject-matter of the suit. KHANTO BEWAH *v.* NUND RAM NATH [15 W. R., 369

37. ——— Alternative relief.—*Act XI of 1865, s. 6.*—In a suit by *A.*, asking that *B.* might be ordered to fill up an excavation or to pay him R25 as damages for the same, it appeared that there was no ground for the first relief sought. *Held*, the suit was cognisable by the Court of Small Causes. NANDA KUMAR BANERJEE *v.* ISHAN CHANDRA BANERJEE [1 B. L. R., A. C., 91: 10 W. R., 130

38. ——— Arbitration.—*Civil Procedure Code, s. 327.*—When a matter had been referred to arbitration without the intervention of any Court, a Small Cause Court in the mofussil had jurisdiction to entertain an application, under section 327 of Act VIII of 1859, to file the award, provided it related to a debt not exceeding the amount cognisable by such Court, and the defendant resided within its jurisdiction. ELAM PARAMANICK *v.* SOJAITULLAH [1 B. L. R., A. C., 43: 10 W. R., 85

BRIDGE *v.* EDALJI MANCHARJI. VITHAL AMBARAM *v.* DAYABHAI MURLIDHAR 10 Bom., 54

GANGAPPA *v.* KAPINAPPA . . 5 Mad., 128

39. ——— Army Act.—*Army Act (44 and 45 Vict., c. 58), s. 144.—Proviso.—Jurisdiction.—Suit against a soldier.—Execution.*—A suit for recovery of a debt will lie in a Small Cause Court as a Civil Court against a soldier in Her Majesty's service up to judgment, under proviso to section 144 of the Army Act (Statute 44 and 45 Victoria, Cap. 58), however small may be the amount of the debt. The question whether the defendant is a soldier or not, arises only when the plaintiff seeks to execute his decree. KISANDAS BUDHMAL *v.* HALPIN [I. L. R., 10 Bom., 218

40. ——— *Army Act (44 and 45 Vict., c. 58), ss. 148 and 151.—Courts of Request, their jurisdiction.—Court of Small Causes, Power of.—Construction of s. 151, cl. 1, of the Army Act.*—The Army Act (44 and 45 Victoria, Cap.

SMALL CAUSE COURT, MOFUSSIL— *continued.*

2. JURISDICTION—*continued.*

Army Act—*continued.*

58) gives jurisdiction to a Court of Small Causes in all actions of debt and personal actions against persons subject to military law (other than soldiers in the regular forces) over which such Court would ordinarily exercise jurisdiction, and provides a Court of Requests (section 148) for those cases only where an action of the value of R400 or under has to be brought against such persons at a place lying beyond the jurisdiction of any Small Cause Court. *Held*, also, that the words "within the jurisdiction" in section 151, clause 1, referred to "actions" and not to "persons." SHERE ALI *v.* PRENDERGAST **[I. L. R., 13 Calc., 143**

41. ——— **Attachment.**—*Attachment of immoveable property before judgment.*—A Court which cannot attach primarily in execution of its decree, cannot attach in anticipation of it. A Small Cause Court therefore cannot grant an attachment before judgment of immoveable property. MARTHAMMA *v.* KITTU SHEREGARA . . **6 Mad., 91**

42. ——— **Award.**—*Act XI of 1865, s. 6.—Liability arising under an award.*—A liability arising under an award is not one of such a nature as to fall within the terms used in the Small Cause Court Act to denote the claims cognisable by such Court. GUNESHEE *v.* CHOTAY LAL **[3 N. W., 117**

DURJAN SINGH *v.* SIBIA . . **7 N. W., 329**

43. ——— **Claim to property seized in execution.**—*Act XI of 1865, s. 6.—Title, Question of.*—A Small Cause Court had no jurisdiction to entertain a suit by a decree-holder to establish his judgment-debtor's title to property seized in execution which had subsequently been released to a claimant under section 246, Act VIII of 1859, and to recover the value of the property from the successful claimant. RAM DHUN BISWAS *v.* KEFAL BISWAS **[1 B. L. R., S. N., 10 : 10 W. R., 141**

44. ——— *Suit to establish right to personal property and to recover value of it.*—A suit on the part of an unsuccessful claimant to establish his right to personal property, and to recover the value of the same, is not cognisable by a Small Cause Court. MOOZDEEN GAZEE *v.* DINOBUNDHOO GOSSAMEE . . **13 W. R., 99**

This latter case is not to be taken as extending the rule laid down in *Ram Dhun Biswas* v. *Kefal Biswas, 1 B. L. R., S. N., 10*, in suits by unsuccessful claimants under section 246, Act VIII of 1859. PUNJU *v.* OODOY . . . **18 W. R., 337**

See WOOMESH CHUNDER BOSE *v.* MUDDUN MOHUN SIRCAR . . . . **2 W. R., 44**

And ANONYMOUS CASE **[2 W. R., S. C. C. Ref., 5**

45. ——— *Civil Procedure Code, 1877.—Owner to recover moveable property under R500.*—The plaintiff was owner of moveable property attached in execution of a decree, and his claim to such property having been rejected under section 246 of Act VIII of 1859, he brought this suit to recover possession. *Held* that the suit was cognisable by a Mofussil Court of Small Causes. *Quære,*—Whether the new Civil Procedure Code (Act X of 1877) prevents or allows a suit, like the present, to be brought in a Court of Small Causes. NATHU GANESH *v.* KALIDAS UMED . **I. L. R., 2 Bom., 365**

46. ——— *Suit to establish right to property attached under decree.—Jurisdiction.—Civil Procedure Code, 1877, s. 283.—Act XI of 1865, s. 12.*—A suit brought by a defeated claimant, under section 283 of Act X of 1877, to establish his right to and to recover possession of certain moveable property attached in execution of a decree of a Small Cause Court, is within the jurisdiction of, and must, therefore, under Act XI of 1865, section 12, be instituted in a Small Cause Court. GORDHAN PEMA *v.* KASANDAS BALMUKUNDAS . **I. L. R., 3 Bom., 179**

47. ——— *Attachment of moveable property.—Suit to establish right.—Civil Procedure Code, s. 283.*—A suit under section 283 of the Civil Procedure Code by a party against whom an order under section 281 has been passed to establish his right to moveable property attached in execution of a decree passed by a Civil Court, and for such property, the same being less than R500 in value, is not a suit cognisable in a Court of Small Causes. ILAHI BUKSH *v.* SITA . . **I. L. R., 5 All., 462**

48. ——— *Claim for personal property and to set aside order disallowing objection to its attachment.—Jurisdiction.—Act XI of 1885, s. 6.*—A suit to recover moveable property attached in execution of a decree and damages for its wrongful attachment, and to set aside the order disallowing an objection to its attachment, is not a suit cognisable in a Court of Small Causes. MUKAND LAL *v.* NASIRUD-DIN . **I. L. R., 4 All., 416**

49. ——— *Suit for personal property.—Suit to establish right.— Civil Procedure Code, s. 283.—Act XI of 1865, s. 6.*—A person who had claimed moveable property attached in execution of a decree as his own, and whose claim had been investigated and disallowed under sections 278 to 281 of the Civil Procedure Code, sued, the property being under attachment, the decree-holder and the judgment-debtor in a Court of Small Causes for the property or its value. *Held* that the suit could not properly be regarded as a suit "for personal property or for the value of such property," within the meaning of section 6 of Act XI of 1865, but must be regarded as a suit to establish the plaintiff's right, in the sense of section 283 of the Civil Procedure Code, inasmuch as the plaintiff could not recover the property without clearing out of his way the order of attachment, which he could only do by

SMALL CAUSE COURT, MOFUSSIL—*continued.*

2. JURISDICTION—*continued.*

Claim to property seized in execution—*continued.*

establishing his right in the sense of section 283, and therefore the suit was not one cognisable in a Court of Small Causes. *Janakiammal* v. *Vithenadien, 5 Mad., 191; Kundeme Naine Booche Naidoo* v. *Ravoo Lutchmeepaty Naidoo, 8 Mad., 36; Gordhan Pema* v. *Kasundas Balmukundas, I. L. R., 3 Bom., 179; Chhaganlal Nagardas* v. *Jeshan Rav Dalsukhram, I. L. R., 4 Bom., 503; Balkrishna* v. *Kisansingh, I. L. R., 4 Bom., 505, note;* and *Radha Kishen* v. *Chotey Lall, 3 N. W., 155,* dissented from. GODHA *v.* NAIK RAM . **I. L. R., 7 All., 152**

50. ——————— *Suit to recover moveable property wrongly attached.—Suit to set aside order of Munsif.*—A suit brought by an owner to recover moveable property of which he has been dispossessed by an attachment order, may, when the value of the property is less than R500, be maintained in a Court of Small Causes, it being a suit for personal property. A suit "to have sold by auction certain property in respect of which the plaintiff obtained a decree for a right of lien," and also "to set aside the miscellaneous order passed by the Munsif," is not cognisable by a Court of Small Causes. RADHA KISHEN *v.* CHOTEY LALL **[3 N. W., 155**

BALMOKUND *v.* LEKHRAJ . **3 N. W., 156, note**

51. ——————— *Suit to establish right to personal property seized in execution of decree.*—A suit to establish the plaintiff's right to the exclusive possession of personal property, of which the plaintiff and her husband had been dispossessed by actual seizure in execution of a decree against the plaintiff's husband, is cognisable by a Small Cause Court. JANAKIAMMAL *v.* VITHENADIEN **[5 Mad., 191**

52. ——————— *Act XI of 1865, s. 6.—Suit as to title to property taken in execution.*—A suit brought by a decree-holder to have it decided whether moveable property taken in execution is or is not the property of his judgment-debtor is not a suit cognisable by a Court of Small Causes. JETHABHAI BHAICHAND *v.* BAI LAKHU **[6 Bom., A. C., 27**

53. ——————— *Personal property.—Suit by decree-holder.*—A suit by a decree-holder to establish his right to attach and sell moveable property as belonging to his judgment-debtor, is not a suit for personal property within the meaning of section 6 of Act XI of 1865, and a mofussil Court of Small Causes has no jurisdiction to entertain it, even though the value of the property be such as to fall within its pecuniary limit. CHHAGANLAL NAGARDAS *v.* JESHAN RAV DALSUKHRAM **[I. L. R., 4 Bom., 503**

BALKRISHNA *v.* KISANSING **[I. L. R., 4 Bom., 505, note**

SMALL CAUSE COURT, MOFUSSIL—*continued.*

2. JURISDICTION—*continued.*

Claim to property seized in execution—*continued.*

54. ——————— *Suit by owner for personal property.*—The defendant, who was a farmer of revenue, attached a buffalo for arrears due from a third party. In a suit brought by the plaintiff for a declaration that the defendant was not entitled to attach the buffalo,—*Held* that the suit should be filed in the Court of Small Causes, inasmuch as it was a suit by the owner to recover personal property, and fell within the ruling in *Chhaganlal Nagardas* v. *Jeshan Rav Dalsukhram, I. L. R., 4 Bom., 503.* PAGI PARTAP HAMIR *v.* VARAJLAL MULCHAND . **I. L. R., 8 Bom., 259**

55. ——————— *Suit to declare moveable property not liable to attachment.—Civil Procedure Code, 1882, s. 283.*—Certain moveable property having been attached in execution of a Small Cause decree passed by the Court of a Subordinate Judge, a claim thereto was preferred by *M.* and rejected. *M.* then brought a suit in the District Munsif's Court for a declaration that the property was his and was not liable to be sold in execution. The suit was dismissed on the ground that it was cognisable by a Court of Small Causes,—*Held* that *M.* was not bound to sue for recovery of the property, and that the suit was not cognisable by a Small Cause Court constituted under Act XI of 1865. MAHOMED KOYA *v.* KASMI . . **I. L. R., 9 Mad., 206**

56. ——————— *Civil Procedure Code (Act X of 1877), ss. 280, 281, and 283.—Goods sold under execution.*—Section 283 of the Civil Procedure Code enables a party, against whom an order has been made in execution proceedings, to bring a suit to establish his rights, whatever they may be; but it says nothing as to the nature of the suit, or the Court in which it is to be brought. Whether the party is to sue in the Civil Court, or in the Small Cause Court, depends entirely upon the nature of the claim and the right which is sought to be enforced. Where goods have been illegally seized and sold in execution, a suit by the owner thereof against the purchaser for the goods or their value, will lie in a Small Cause Court, if the value of the goods is within the amount limited by law for the jurisdiction of such Court; but if the plaintiff makes the decree-holder and the judgment-debtor parties to the suit, and requires a declaration of his right to the property, such a suit will not lie in the Small Cause Court. SHIBOO NARAIN SINGH *v.* MUDDEN ALLY. NATABAR NANDI *v.* KALIDASS PALI **[I. L. R., 7 Calc., 608: 9 C. L. R., 8**

57. ——————— *Suit for value of sheep wrongly attached and sold in execution of decree.*—Where plaintiffs' sheep had been attached in satisfaction of a decree against a third party, and the second defendant had purchased the property at the Court sale,—*Held* that a suit merely to recover the sheep or their value is cognisable by a Small Cause Court. KUNDEME NAINE BOOCHE NAIDOO *v.* RAVOO LUTCHMEEPATY NAIDOO . . **8 Mad., 36**

SMALL CAUSE COURT, MOFUSSIL— *continued.*

2. JURISDICTION—*continued.*

58. ——— **Cess.**—*Suit to recover arrears of cess.*—A suit brought to recover arrears of a cess is not a suit of the nature cognisable by Small Cause Courts. KASIM ALI *v.* SHADEE [3 N. W., 21

59. ——— *Act XI of 1865, s. 6.—Suit for zemindari dues and cesses.*—The plaintiff claimed from the defendants, as joint decree-holders, a fourth share of the proceeds realised by auction sale through the Court of the Munsif of certain houses, situtate on land subject to a village-custom whereby a proprietary due of the above amount was recognised and payable to the zemindar of the said land. The Division Bench of the High Court having referred to the Full Bench the question whether claims for such zemindari dues or cesses were in the nature of suits cognisable by a Court of Small Causes,—*Held* by the Full Bench that the claim as brought did not fall within any of the classes of suits cognisable by the Courts of Small Causes: *aliter* if the due was payable in virtue of a contract. NANKU *v.* BOARD OF REVENUE [I. L. R., 1 All., 444

60. ——— *Suit to recover road cess.—Road Cess Act (Beng. Act X of 1871).*—A suit to recover road cess and public works cess is not a claim for money on a bond or other contract, but is a claim created and made recoverable by a special enactment of the Legislature, and does not fall within the provisions of section 6 of the mofussil Small Cause Court Act. DAVID *v.* GRISH CHUNDER GUHA [I. L. R., 9 Calc., 183: 11 C. L. R., 305

61. ——— *Act XI of 1865.—Jurisdiction.—Water-cess.—Payment by landholder.—Implied contract by tenant to recoup.*—If a landholder pays to Government water-cess which his tenant is legally bound to pay, a Small Cause Court, constituted under Act XI of 1865, has jurisdiction to decide a suit brought by the landholder against the tenant to recover the amount so paid by the landholder. VENKATRAMAYA *v.* VIRAYA [I. L. R., 8 Mad., 4

62. ——— **Contract.**—*Suit for breach of contract on failure to register.*—A suit to recover money paid as the price of land in consequence of vendor's failure to complete the bargain by registration of the deed of sale, is maintainable in a Court of Small Causes, being substantially a suit for breach of contract for sale of land. CHAROO KHAN *v.* DOORGA MONEE . . . . . 9 W. R., 498

63. ——— *Suit for value of produce not paid under contract.*—Where a cultivator is a mere servant of the landlord, a suit for damages will lie against him in the Small Cause Court. If the cultivator is a tenant to whom the landlord has sub-let the land, a suit for non-fulfilment of his contract by the tenant will not lie in the Small Cause Court but in the Revenue Courts under

SMALL CAUSE COURT, MOFUSSIL— *continued.*

2. JURISDICTION—*continued.*

Contract—*continued.*

Act X of 1859. SREENATH DUTT *v.* DWARY DHALLIE . . . . 2 W. R., S. C. C. Ref., 2

64. ——— *Suit for payment in kind.*—A suit to recover a quantity of rice (or its value R300) in return for some paddy which had been taken by the defendant under contract was held to be cognisable by the Small Cause Court within the meaning of Act XXIII of 1861, section 27. DOM KUMAR *v.* SOORJO DUTT SURMAH . 22 W. R., 259

65. ——— *Hindu son's liability for family debt.*—The manager of a Hindu family having borrowed money for a proper and necessary purpose—his son's marriage—gave a bond to secure the debt,—*Held* that a suit against the father and son to recover the money lent was cognisable by a Court of Small Causes under Act XI of 1865. PUNA KARUPPANA PILLAI *v.* VIRABADRA PILLAI . . . I. L. R., 6 Mad., 277

66. ——— *Suit against sons in undivided family to enforce debt incurred by father.*—A suit against the undivided sons of a deceased Hindu father to enforce payment of a debt incurred by the latter is within the jurisdiction of a Small Cause Court, and that jurisdiction is not ousted by a plea that the debt was contracted for immoral purposes. GOPAL KRISTNA SASTRI *v.* RAMAYYANGAR [I. L. R., 4 Mad., 236

67. ——— *Share of trees cut by tenants.—Second appeal.*—A suit by a zemindar for one-fourth of the price of trees cut by tenants is, when based upon contract, one of the nature cognisable in a Court of Small Causes, and consequently, where the amount claimed is under five hundred rupees, no second appeal lies in such a suit. The principle laid down in *Nanku* v. *Board of Revenue, I. L. R., 1 All., 444,* followed. HARI SINGH *v.* BADHO SINGH . . . I. L. R., 2 All., 905

68. ——— *Suit for share of produce of trees.—Landlord and tenant.—Wajib-ul-urz.—Jurisdiction of Revenue Court.—Second appeal.*—A suit by a landholder against a tenant for R130, being the value of a moiety of the produce of a grove of mango trees held by such tenant, such amount being claimed in virtue of an agreement recorded in the wajib-ul-urz, and not in virtue of any custom or right, is not cognisable in the Revenue Court, but is cognisable in a Court of Small Causes, and consequently no second appeal in the suit will lie. SARNAM TEWARI *v.* SAKINA BIBI . . I. L. R., 3 All., 37

69. ——— *Act X of 1859, s. 10.—Suit for share of value of crops.*—The plaintiff as burghadar, to whom the defendant had sublet his jote land, for the purpose of raising crops of kalai, under a contract to share the produce between themselves, sought to recover from the defendant R7-14 as the value of his share of the crops which he (the

SMALL CAUSE COURT, MOFUSSIL—*continued.*

2. JURISDICTION—*continued.*

Contract—*continued.*

defendant) appropriated to his own use. The defendant denied the existence of any such contract, and contended that an action of this nature would lie only in the Revenue Court, and not in the Small Cause Court. *Held* that the plaintiff's claim was not one for a sum exacted in excess of rent within the meaning of section 10 of Act X of 1859, and consequently the suit would lie in the Small Cause Court. GARIBULLA PARAMANICK *v.* FAKIR MAHOMED KOLU [1 B. L. R., S. N., 13 : 10 W. R., 203

70. ——————— *Suit on contract.*—Plaintiffs having obtained a sum from defendants on a bond, let certain land to them in ijara for a term of years on condition that the latter, after realising rents from the ryots, would give credit on account of interest on the said bond, pay rent due to plaintiffs' landlord, and pay the balance to plaintiffs. Having failed in the engagements, defendants were sued in the Small Cause Court. *Held* that the suit was a suit on a contract, and was cognisable by the Small Cause Court. NOBIN CHUNDER VODRO *v.* KEDAR NATH CHUCKERBUTTY . 16 W. R., 228

71. ——————— *Suit against co-contractor.—Suit for money due on a contract.*—Plaintiff, defendant, and another party had jointly and separately contracted with Government to do certain work, depositing security and stipulating that a percentage upon the worth of the work done should be retained in the hands of Government to meet the contingency of the Government incurring expense in case of failure on the part of the contractors. The contract was completed by one of the contractors, who received the amount which had been deducted as above, and gave a joint receipt for the same. *Held* that there was nothing in law to prevent plaintiff from recovering from defendant his share of the said amount. Such a suit was not one for money due on a contract and was not cognisable by a Small Cause Court. NARAIN DOSS *v.* RAM COOMAR MYTEE . . . . . 15 W. R., 513

72. ——————— *Act XI of 1865, s. 6.—Contract, Suit on.*—The word "contract" in section 6, Act XI of 1865, was intended to include a suit to recover money received by the defendant to a share of which the plaintiff is entitled; the foundation of the claim being that the defendant with regard to the portion of the money which belonged to the plaintiff, received it for, and on behalf of, the plaintiff, upon an implied contract to pay it over to him. SUNKUR LALL PATTUCK GYAWAL *v.* RAM KALEE DHAMIN . . . 18 W. R., 104

73. ——————— *Suit to recover share in varshasan.—Claim on implied contract.*—Suit to recover a share in a varshasan payable by the Gaekwar's Government and received by the defendant as the eldest member of the original grantee's family, is cognisable by a Court of Small Causes in the mofussil, the claim being one on an implied contract, *viz.*, a contract, by the defendant, to pay to the plaintiff money received by the defendant to the use of the plaintiff. *Sunkur Lall Pattuck Gyawal v. Ram Kalee Dhamin, 18 W. R., 104,* followed. *Keshav Bhat* v. *Bhagirthi Bai, 3 Bom., A. C., 75,* overruled. RATAN SHANKAR REVASHANKAR *v.* GULAB SHANKAR LALSHANKAR . 10 Bom., 21

See BHIMRAV JIVAJI *v.* BHIMRAV GOVIND [11 Bom., 194

74. ——————— *Suit to recover share of annual allowance.*—A suit to recover a share of arrears of a varshasan or annual allowance paid by the Gaekwar of Baroda to the defendant, in which the plaintiff alleged he was entitled to a third share is maintainable in a Court of Small Causes. RATANSHANKAR REVA SHANKAR *v.* GULABSHANKAR LALSHANKAR . . . 4 Bom., A. C., 173

75. ——————— *Act XI of 1865, s. 6.—Suit to recover arrears of annuity from endowed property.*—In a suit by a widow of one of the descendants of the grantee of a varshasan or annual allowance paid from the Government treasury for the performance of religious service in a Hindu temple to recover arrears due to her husband's branch of the family from another descendant who had received the whole stipend,—*Held* that this was not a suit for money due on a contract or "for personal property or otherwise," within the meaning of section 6 of Act XI of 1865, cognisable by a Court of Small Causes in the mofussil. KESHAVBHAT *v.* BHAGIRTHIBAI . . . . . 3 Bom., A. C., 75

76. ——————— *Act XI of 1865, s. 6.—Suit for money borrowed by servant on understanding it would be repaid by master.*—A servant borrowed on account of his master a sum of money which was partly spent in satisfaction of his master's debt, and partly taken by the latter and spent for his own private purposes. No re-payment having been made by the master, the lenders took out a decree against the servant, who then sued the master to recover the money. *Held* that there was a legal presumption that the money was advanced on account of the defendant on the understanding that it would be repaid; and that the action was one for debt within the meaning of section 6 of the Small Cause Court Act XI of 1865. RASH MONEE DEBIA *v.* RAJARAM SIRCAR . . . . . 15 W. R., 86

77. ——————— *Act XI of 1865, s. 6.—Suit for money on implied contract.*—Plaintiff took a lease from defendant, and a bakijai setting forth a certain sum (R473-10) as due from the tenants on account of rent, and on the faith of the bakijai paid that sum to the defendant. He then sued the tenants for the same, and was met with pleas either of payment to the defendant or of payments by assignment for the defendant's debts. He then sued defendant for a refund. *Held* that the claim was for money due under an implied contract for the repayment of a sum under R500, and cognisable by a

SMALL CAUSE COURT, MOFUSSIL— *continued.*

2. JURISDICTION—*continued.*

Contract—*continued.*

Small Cause Court under Act XI of 1865, section 6, clause 4. WUZEER MULLICK SIRCAR *v.* NITUMBINEE DEBEE . . . . . **18 W. R., 484**

78. ——————— *Implied contract.—Contract to indemnify against claim of superior landlord.*—If *A.* buys a tenure at a public auction benami in the name of *B.*, he impliedly contracts to indemnify *B.* against the claims of the superior landlord, and a suit by *B.* against *A.* to recover the amount of a decree obtained against him by the superior landlord will lie in a Small Cause Court. KADARESSUR MOOKERJEA *v.* GOOROO CHURN MOOKERJEA . . . . . **2 C. L. R., 388**

79. ——————— *Second appeal.—Relation resembling contract.—Contract Act, s. 70.—Act XI of 1865, s. 6.*—On the death of *K.* a dispute arose among her heirs as to the succession to the share of a village of which she was the recorded proprietor. In January 1874 *N.*, who was not one of her heirs and who was not a shareholder in such village, was recorded in the revenue register as lumbardar in respect of her share, and was so recorded until February 1878, when his name was expunged and the name of *B.*, who was one of the heirs, was recorded as proprietor. In a suit by *N.* against *B.* to recover R70, being the amount he had paid on account of revenue in respect of such share for the period between January 1874 and February 1878,—*Held* that the suit was one for damages under section 70 of Act IX of 1872, within the meaning of section 6 of Act XI of 1865, and accordingly of the nature cognisable in a Court of Small Causes, and no second appeal in the suit would lie. NATH PRASAD *v.* BAIJNATH . . . . . **I. L. R., 3 All., 66**

80. ——————— *Payment of revenue by a person for another.—Suit for reimbursement.*—A suit by the proprietor of one village who has been compelled to pay the revenue payable by the proprietor of another village for reimbursement is, where the amount of such payment does not exceed R500, a suit of the nature cognisable in a Mofussil Court of Small Causes. *Nath Prasad* v. *Baij Nath, I. L. R., 3 All., 66,* followed. QUTUB HUSAIN *v.* ABUL HASAN . **I. L. R., 4 All., 134**

81. ——————— *Relations resembling contract.—Act IX of 1872 (Contract Act), ss. 69, 70.—Payment of land revenue.—Act XI of 1865, s. 6.*—The plaintiffs purchased land belonging to the defendant at an execution sale, at which it was notified that arrears of revenue were due in respect of the land. The plaintiffs paid such arrears, and also the arrears which had accrued in the period between the sale and the date the plaintiffs obtained possession. They then sued the defendant in the Munsif's Court to recover the amount they had paid, —*Held* that, with reference to the principle laid down in *Nath Prasad* v. *Baij Nath, I. L. R., 3 Calc., 66,* the suit should have been instituted in the

SMALL CAUSE COURT, MOFUSSIL— *continued.*

2. JURISDICTION—*continued.*

Contract—*continued.*

Court of Small Causes. IN THE MATTER OF THE PETITION OF ALI MAZHAR . **I. L. R., 4 All., 152**

82. ——————— **Contribution.**—*Suit for contribution.*—A Small Cause Court has no jurisdiction to try a suit for contribution. TAMIZUDDIN MIRDHA *v.* GAFFUR KHAN . **7 B. L. R., Ap., 40**

83. ——————— *Suit for contribution where there is no contract.*—A suit for contribution, where there is no contract, express or implied, cannot be entertained by a Small Cause Court. SREEPUTTY ROY *v.* LOHARAM ROY **[B. L. R., Sup. Vol., 687 : 7 W. R., 384**

ITCHA MOYEE DOSSEE *v.* BAMA SOONDUREE DOSSEE . . . . **25 W. R., 73**

84. ——————— *Suit against co-sharer for money recovered on joint decree.*—A suit against a co-sharer for a sum of money recovered by the plaintiff upon a decree which was joint property may be brought in a Small Cause Court. HURO MOHUN ROY *v.* KHETTRO MONEE DOSSEE **[12 W. R., 372**

85. ——————— *Suit for contribution under joint decree.—Act XI of 1865, s. 6.*—A Small Cause Court has jurisdiction to entertain a suit by one of several debtors against whom a decree for rent had been enforced against his co-debtors for contribution. The meaning of the word "contract" in section 6, Act XI of 1865, considered. GOVINDA MUNEYA TIRUYAN *v.* BAPU . **5 Mad., 200**

86. ——————— *Decree against several defendants jointly.—Second appeal.*—A suit for contribution not founded upon contract, but in respect of money for which the plaintiff and the defendants in the contribution suit had been by a former decree made jointly liable, is not within the cognisance of a Court of Small Causes, which cannot deal with questions of equity. A second appeal will, therefore, lie in such a suit. *Ram Bux Chittangeo* v. *Modoosoodhun Paul Chowdhry, B. L. R., Sup. Vol., 675,* followed. *Nath Prasad* v. *Baij Nath, I. L. R., 3 All., 66,* distinguished. FUTTEH ALI *v.* GUNGANATH ROY **[I. L. R., 8 Calc., 113 : 10 C. L. R., 20**

87. ——————— *Money paid in satisfaction of joint decree.*—A suit for contribution for money paid by one judgment-debtor in satisfaction of a joint decree against him and others cannot be entertained by a Court of Small Causes. *Ram-bux Chittangeo* v. *Modoosoodhun Paul Chowdhry, B. L. R., Sup. Vol., 675 : 7 W. R., 411; Shaboo Majee* v. *Nooran Mollah, B. L. R., Sup. Vol., 691,* followed; *Nathprasad* v. *Baijnath, I. L. R., 3 All., 66,* dissented from. RAMJOY SURMA *v.* JOYNATH SURMA **[I. L. R., 9 Calc., 395 : 12 C. L. R., 314**

SMALL CAUSE COURT, MOFUSSIL—*continued.*

2. JURISDICTION—*continued.*

Contribution—*continued.*

88. ——————— *Suit to recover a share of money recovered by co-plaintiff under a decree.—Act XI of 1865 (Mofussil Small Cause Courts Act), s. 6.—Held* that a suit to recover a share of money which had been recovered by a co-plaintiff under a decree, was a claim for money due on a contract, within the meaning of section 6 of the Mofussil Small Cause Courts Act (XI of 1865), and was therefore a suit of the nature cognisable by a Court of Small Causes, in which, under section 586 of the Civil Procedure Code, no second appeal could lie. DEBI DAS *v.* LACHMAN SINGH

[I. L. R., 7 All., 896

89. ——————— *Hindu law.—Co-parceners.—Family debt.*—A decree having been passed against the plaintiff and defendant, undivided Hindu brothers, jointly for a family debt, and the decree-holder having levied the sum decreed from the plaintiff, a suit was brought by him in a Small Cause Court for contribution against the defendant. *Held* that, although that Court could entertain a suit for contribution, such suit could not be brought by the plaintiff against the defendant under the circumstances of the case. CHELLAPILLA RAU PANTULU *v.* BALARAMAKRISHNAMA PANTULU

[I. L. R., 6 Mad., 424

90. ——————— *Agency.—Recovery on joint decree.*—Plaintiff and defendant having been co-sharers in a decree in which the respective shares of the decree-holders were definitely fixed, defendant amicably received from the judgment-debtor his own share and plaintiff's share on her behalf. The latter brought the present suit to recover the same from defendant, whose plea was that the amount had been paid to the plaintiff. *Held* that if defendant acted as agent of the plaintiff, there was a contract implied between them that the former would recover what was due from the latter, and pay it over or account for it to her, and that therefore the case came within the jurisdiction of the Small Cause Court. *Held* that as the Subordinate Judge before whom the case came in appeal was also Small Cause Court Judge, he might have dealt with the case without referring the above point for the decision of the High Court. SHUMBHOONATH MOZOOMDAR *v.* KASHEESSUREE DEBEE

[13 W. R., 100

91. ——————— *Suit against co-sharer for contribution in respect of Government revenue.*—A suit by a co-sharer for contribution in respect of Government revenue paid by him in excess of his quota is not cognisable by a Small Cause Court, as the extent of the share in respect of which contribution is sought cannot be determined without deciding a question of title. KALEE NATH ROY *v.* NILA RAM PURAMANICK . . 7 W. R., 32

92. ——————— *Suit for contribution in respect of money paid as revenue to save estate from sale.*—A claim for money below R500 paid as revenue by one partner in an estate on account of another in order to save the estate from sale is due under an implied contract between them, and is therefore cognisable by a Small Cause Court. RAM MONEY DOSSIA *v.* PEARY MOHUN MOZOOMDAR

[6 W. R., 325

93. ——————— *Suit to recover arrears of revenue compulsorily paid.*—A suit to recover arrears of revenue which the plaintiff was compelled to pay by the revenue authorities, but which the defendant was liable to pay, is cognisable by a Court of Small Causes. PARASURAMA CHEDUMBRAIYAN *v.* KRISTNAIYAN . 5 Mad., 462

94. ——————— *Suit by co-sharer for contribution to Government revenue.*—A suit by a co-sharer for contribution in respect of arrears of revenue paid by him in excess of his quota to save the entire estate from sale is not cognisable by a Small Cause Court. BROMMOROOP GOSWAMEE *v.* PRANNATH CHOWDRY . . . 7 W. R., 17

95. ——————— *Suit for contribution by co-sharer who has paid whole Government revenue.*—Where one of several co-sharers in an estate paying revenue to Government has paid the revenue due upon the whole estate to prevent it from being sold, a Small Cause Court has no jurisdiction to entertain a suit brought by him against the other co-sharers for contribution. RAMBUX CHITTANGEO *v.* MODOOSOODHUN PAUL CHOWDHRY

[B. L. R., Sup. Vol., 675
2 Ind. Jur., N. S., 155 : 7 W. R., 377

MODOOSOODHUN MOZOOMDAR *v.* BINDOBASHINY DOSSEE . . 6 W. R., Civ. Ref., 15

96. ——————— *Suit for contribution.—Co-sharers.*—No suit for contribution between coparceners in a revenue-paying estate, or for contribution between coparceners in a jumma, will lie in the Small Cause Court. NOBIN KRISHNA CHAKRAVATI *v.* RAM KUMAR CHAKRAVATI. BUNNIJAN BIBI *v.* MAHAMMAD HOSSAIN

[I. L. R., 7 Calc., 605 : 9 C. L. R., 90

97. ——————— *Suit for share of revenue paid by mortgagee.*—A suit by a mortgagee to compel a mortgagor to repay him the amount of Government assessment, which he has been compelled to pay when in occupation of the mortgaged property, is an obligation in equity to repay, and is not cognisable by a Court of Small Causes. VITHOBA BIN KESHAVSHET *v.* SHABAJIRAV

[5 Bom., A. C., 122

98. ——————— *Suit to recover money paid to co-sharers as excess of rent.*—A suit to recover money alleged to have been paid in excess of plaintiff's share of rent on account of his co-tenant was held to be a suit for contribution, and as

SMALL CAUSE COURT, MOFUSSIL— *continued.*

2. JURISDICTION—*continued.*

Contribution—*continued.*

such not cognisable by the Small Cause Court. PITAMBUR CHUCKERBUTTY *v.* BHYRUBNATH PALEET [15 W. R., 52

99. ——— *Suit cognisable by Revenue Court.—Suit to recover money paid to prevent sale for arrears of rent.*—The plaintiff sued to recover money paid in order to prevent his land from being sold at the instance of the defendant for non-payment of arrears of rent under Madras Act VIII of 1865, the plaintiff's allegation being that no rent was due to the defendant. *Held* that the Small Cause Court had no jurisdiction, because the suit was cognisable before a revenue officer. SHAUNKARA SUBBIEN *v.* VELLAYAN CHETTY [5 Mad., 179

100. ——— *Suit by surety against principal for recovery of money paid on his account.—Suit for contribution.*—A suit by a surety for recovery of a sum not exceeding R500, which he had to pay on account of his principal, is cognisable by a Small Cause Court. A suit for contribution is not cognisable by a Small Cause Court, unless there is a contract, express or implied, between the parties. SHABOO MAJEE *v.* NOORAI MOLLAH. JONEEP *v.* NABOO. BHARUT CHUNDER DUTT *v.* DENGAR GOPE [B. L. R., Sup. Vol., 691: 7 W. R., 386

101. ——— *Suit by one surety against another for contribution.—Act XI of 1865, s. 6.*—A suit by one surety against another for contribution, where the sureties are bound by the same instrument, is a suit on an implied contract, and, therefore, within the jurisdiction of a Court of Small Causes. *Govinda Muneya Tiruyan v. Bapu, 5 Mad., 200,* and *Ratan Shankar* v. *Gulabshankar, 10 Bom., 21,* followed. HARI TRIMBAK *v.* ABASAHEB [I. L. R., 4 Bom., 321

102. ——— **Copyright.**—*Jurisdiction of Presidency Small Cause Courts.—Copyright Acts XX of 1847, and XII of 1876, s. 1.—District Courts.*—As the class of cases provided for by section 7 of the Copyright Act (XX of 1847) was transferred to the jurisdiction of the Calcutta Court of Small Causes by Act IX of 1850, notwithstanding the express language used in section 7 of the Copyright Act, so by analogy the jurisdiction in the same class of cases arising in the mofussil was transferred to the jurisdiction of the mofussil Courts of Small Causes by Act XLII of 1860 and Act XI of 1865. But schedule i of Act XII of 1876, amending Act XX of 1847, has now re-transferred the jurisdiction in such suits to the District Courts. IN THE MATTER OF THE PETITION OF HAMEEDOOLLAH. HAMEEDOOLLAH *v.* MAHOMED ASGHUR HOSSEIN [I. L. R., 6 Calc., 499: 7 C. L. R., 471

103. ——— **Costs.**—*Suit for costs incurred in suit to compel registration of document.*—An action lies in a Small Cause Court for the recovery of costs incurred by the plaintiff in a suit to compel registration of a document. CHENGULVA RAYA MUDALI *v.* THANGATCHI AMMAL . 6 Mad., 192

104. ——— **Customary payments.**—*Proprietary due, Suit for.*—A suit for russum (a proprietary due), not claimed as rent nor under a contract but by custom, payable by cultivators in occupation of the land either as proprietors or ryots, is not of a nature triable by a Small Cause Court. EBRAHIM SAIB *v.* NAGASAMI GURUKAL [I. L. R., 3 Mad., 9

105. ——— *Suit for inamdar for proprietary dues.*—Suits for proprietary dues, to which the inamdar as the owner of the village lays claim, are not cognisable by a Court of Small Causes. They are not paid as rent, nor are they claimed under any contract. SUBBAMANIAN CHETTI *v.* PRINCE OF ARCOT [I. L. R., 2 Mad., 146

106. ——— *Suit for share of jujmans' collections.*—A suit for a share of the collections made from "jujmans" in return for spiritual instruction is not of the nature cognisable by a Court of Small Causes under Act XI of 1865. CHOONNEE LALL *v.* GOUREE SHUNKUR [1 Agra, 84

107. ——— **Damages.**—*Act XI of 1865, s. 6.—Suit for damages for personal injury.*—By section 6 of Act XI of 1865, suits to recover damages for personal injury cannot be brought in a Mofussil Small Cause Court, unless actual pecuniary damage has resulted from the injury. That section excludes from the jurisdiction of the Mofussil Small Cause Courts suits for defamation, infringement of right, and the like, where no actual pecuniary damage has been sustained by the plaintiff, and where the measure of damages to be awarded is often a question of some nicety: but does not exclude suits for actual damages merely because, besides the actual pecuniary loss sustained, the plaint asks for something additional for loss of character, or other indefinite injury. DURGA PERSHAD *v.* ASA JOLAHA [I. L. R., 5 Calc., 925: 6 C. L. R., 487

108. ——— *Suit for damages.—Loss of reputation.*—Where actual pecuniary damages have resulted from personal injury, the suit for damages as a whole will lie in the Small Cause Court, even though it should include damages for loss of reputation or other claim for damages not cognisable in the Court. GUNGA NARAIN MOYTRO *v.* GUDADHUR CHOWDHRY . 13 W. R., 434

MANSING LALUNG *v.* THERAM DOLOYE [22 W. R., 395

109. ——— *Suit for damages for malicious prosecution.*—A suit properly alleging a malicious prosecution and special pecuniary loss resulting therefrom is cognisable in a Small Cause Court. SITARAMAN *v* SUSA PILLAI [2 Mad., 254

SMALL CAUSE COURT, MOFUSSIL—*continued.*

2. JURISDICTION—*continued.*

Damages—*continued.*

110. ——————— *Compensation for personal injury.—Actual pecuniary damage.*—The plaintiff in a suit for compensation for malicious prosecution claimed R200 as compensation for the mental annoyance caused him by such prosecution, and R25 the actual expense incurred by him in defending himself from the charge made against him. *Held,* with reference to section 6 (3) and section 12 of Act XI of 1865, that the suit being one for the recovery of damages on account of an alleged personal injury, from which actual pecuniary damage had resulted, it was cognisable and should have been instituted in the Court of Small Causes having local jurisdiction. *Gunga Narain Moytro* v. *Gudadhur Chowdhry, 13 W. R., 434;* and *Brojo Soondur* v. *Eshan Chunder Roy, 15 W. R., 179,* followed. DEBI SINGH *v.* HANUMAN UPADHYA [I. L. R., 3 All., 747

111. ——————— *Act XI of 1865, s. 6.—Suit for damage to crops.*—The term "damages" in section 6 of Act XI of 1865, includes damages to crops, and a suit to recover damages for the wrongful reaping and carrying off the produce of certain fields is cognisable by a Court of Small Causes. DAUR SINHA *v.* RUGHNUNDUN SINHA [3 N. W., 101

112. ——————— *Suit for value of produce carried off by defendant cultivating plaintiff's land without consent.*—A suit to recover the value of produce carried off without plaintiff's consent from his land, which had been forcibly retained in the cultivation of defendant No. 1, assisted by defendant No. 2, was held to be a suit not for rent, but for damages. KAROO KAHAR *v.* NAUBOO SINGH . . . 24 W. R., 380

113. ——————— *Suit for damages for value of timber washed up and taken away by Government.*—Where a landowner sued for damages for the value of timber carried away by Government after being washed on to his estate and to have his right declared as against Government to all timber that in future might be washed on to his estate,—*Held,* the suit was not one which was cognisable by a Court of Small Causes. CHUTTER LALL SINGH *v.* GOVERNMENT . . . 9 W. R., 97

114. ——————— *Suit to recover value of fishing-nets.*—The plaintiffs sued the defendants in the Small Cause Court to recover the value of certain nets, the property of the plaintiffs, of which the defendants had taken wrongful possession, and damages for the loss sustained by the plaintiffs, in that they were unable to carry on their business as fishermen by reason of the detention of their nets by the defendants,—*Held* that the Small Cause Court had jurisdiction to entertain the suit. MADUTHAN *v.* SUBBIER . . . 6 Mad., 34

115. ——————— *Suit for damages for illegal attachment.—Civil Procedure Code, 1859, ss. 81 and 88.*—Certain moveable properties, fishing nets, &c., having been attached under Act VIII of 1859, section 81, the suit was eventually dismissed and costs awarded to the defendants, who thereupon sued the plaintiffs to recover damages sustained consequent on the attachment, *viz., first,* for what could have been earned by means of the fishing nets, had they not been under attachment; and *second,* for injury suffered by the nets owing to carelessness and exposure. *Held* that the suit was properly cognisable in the Small Cause Court, and the Judge was at liberty to take into consideration both elements of damage. Such a suit would only be barred when compensation had been awarded under section 88 of the Civil Procedure Code. GOBURDHUN MAJHEE *v.* BANEE CHUNDER DOSS . . . 21 W. R., 375

116. ——————— *Suit for damages for breaking wall.*—In a suit for damages for breaking down and removing bricks from a wall, where defendant's plea was *bonâ fide* purchase for value from plaintiff's predecessor, and plaintiff replied that the sale was invalid, as one made by a Hindu widow without legal necessity,—*Held* that the suit was cognisable by a Court of Small Causes. SHUMBHOO CHUNDER MULLICK *v.* PRAN KRISTO MULLICK [13 W. R., 105

117. ——————— *Suit for damages for omission to certify payments to the Court.*—*Held* that a suit will lie in the Small Cause Court for damages sustained in consequence of decree-holder fraudulently omitting to certify to the Court the payments made by plaintiff in satisfaction of a decree out of Court, when there was a contract made that he should so certify them. BHUGOBAN TANTEE *v.* GOBIND CHUNDER ROY . . . 9 W. R., 210

But unless there is actual damage the suit should be dismissed. MOHIM MUNDUL *v.* KALA CHAND NAEK . . . . . 13 W. R., 147

118. ——————— *Suit to recover money paid to save estate from sale.*—A suit to recover money as damages, measuring the loss to which plaintiff was put by having to pay on behalf of defendant money which defendant had agreed to pay out of the purchase-money in order to save from sale in execution of a decree an estate which plaintiff had purchased from him, is a suit cognisable by a Small Cause Court, from whose decision no special appeal lies. RAMGUTTY GANGOOLY *v.* KUBALEE PERSHAD GANGOOLY . . . . 17 W. R., 446

119. ——————— *Suit to recover money paid for defendant.—Act XI of 1865, s. 6.*—A suit to recover money which plaintiff has paid for defendant is in the nature of a suit for damages, as described in section 6 of the Small Cause Court Act. GOPAL SURNOKAR *v.* GOYARAM SIRCAR [13 W. R., 273

120. ——————— *Act XI of 1865, s. 6.—Suit for damages.*—A suit to recover the price

SMALL CAUSE COURT, MOFUSSIL—*continued.*

2. JURISDICTION—*continued.*

Damages—*continued.*

of the skin and flesh of an ox, brought by a Mahar who asserted an hereditary right to carry away dead animals of the village to which he belonged, and take their skins, is a suit for damages, and cognisable by a Court of Small Causes. KHANDU VALAD KERU *v.* TATIA VALAD VITHOBA . 8 Bom., A. C., 23

121. ——— *Suit for damages.—Act XI of 1865, s. 6.*—An action to recover from the hands of defendants money collected from a landed estate which had been charged with the payment thereof under an instrument to which the defendants had not been parties was held to be a personal action for damages within the meaning of Act XI of 1865, section 6. BHUGOBUTTY CHURN RAJPAYE *v.* SHARODA PERSHAD SOOKUL [22 W. R., 298

122. ——— *Suit to recover as damages profits from service lands.—Mad. Reg. VI of 1831, s. 3.*—A Small Cause Court has no jurisdiction to entertain a suit to recover damages claimed in respect of the profits which the plaintiff would have derived from service inam lands by reason of section 3 of Regulation VI of 1831. TOPPYA PILLAY *v.* PEDDOO PILLAY . . 5 Mad., 383

123. ——— *Suit by representative for share of debt due to deceased.—Withdrawal of money on deposit by other representatives.—Wrongful act.*—The legal representatives having allotted the estate of the deceased in certain shares among themselves, a sum of money less than R500, the entire amount of a debt due to the deceased, was deposited with a banker by the debtor, and was withdrawn by certain of the legal representatives. The others thereupon sued in the ordinary Civil Court for their proportionate share. *Held* that the suit was a suit for damages caused by the wrongful act of the defendants in withdrawing the whole amount, and was therefore cognisable by a Small Cause Court. KUMRUNNESSA *v.* SUJAN . . 10 C. L. R., 31

124. ——— *Suit for damages for fraudulent concealment and misrepresentation.*—A suit to recover R300 paid by plaintiff to defendant under a fraudulent concealment of the fact that defendant was engaged as mooktear for another party who had brought a suit against plaintiff, and upon a fraudulent misrepresentation by defendant that he was conducting plaintiff's case when in fact he was acting for the opposite party, was held to be substantially a suit to recover damages for the injury sustained by plaintiff by reason of the fraudulent concealment and misrepresentation, and to be cognisable by a Small Cause Court. FATIMA BEGUM *v.* MOOSA . . . . . 18 W. R., 128

125. ——— *Suit for damages for withholding receipt for rent.*—A suit for damages for withholding a receipt for rent is not cognisable by a Court of Small Causes, and therefore was held not to come under the purview of Act XXIII of 1861, section 27. SHOYLENDRO GEER SUNNYASEE *v.* PATOO DOSS BUSANEA [23 W. R., 304

126. ——— *Suit for recovery of money paid to but misapplied by ijaradar.*—A suit for the recovery of money alleged to have been paid by the plaintiff to an ijaradar on account of arrears of rent, when the same has not been applied to the purpose for which it was given, or when a receipt for it is withheld from the plaintiff, is not cognisable by a Small Cause Court, but by a Munsif under section 11, Bengal Act VIII of 1859. BROJONATH DEY *v.* SHUMBOO CHUNDER CHATTERJEE . . 18 W. R., 25

127. ——— *Act XI of 1865, s. 6.—Suit for overpayment by mistake.—Contract Act, s. 72.*—A suit under section 72 of the Contract Act to recover from a creditor the amount of an overpayment made to him by mistake is a suit for damages, within the meaning of Act XI of 1865, section 6, and is accordingly cognisable by a Mofussil Court of Small Causes. BADRUNNISSA *v.* MUHAMMAD JAN . . . I. L. R., 2 All., 671

128. ——— Declaratory decree.—*Suit to determine coparcener's rights in moveable property.*—A Small Cause Court has no power to entertain a suit for a declaratory decree. There is nothing to prevent a Small Cause Court from determining whether a person, who has been made a co-plaintiff and claims as a coparcener of the original plaintiff, has any right to the property sued for. The decree in such a case, if given in favour of the plaintiffs, must order that the parties do recover possession of the property sued for in such shares as the Judge may consider them to be entitled. A declaratory decree of the relative rights of the parties cannot be made. AKBAR ALI *v.* JEZUDDIN [I. L. R., 8 Calc., 399

129. ——— *Suit for declaration of right to bring property to sale as liable to attachment.*—A suit in which the plaintiff sues for a declaration of his right to bring certain property to sale as the property of his judgment-debtor, cannot be entertained by a Small Cause Court. RAMESHUR KULWAR *v.* BEHAREE SETH [3 N. W., 208: Agra., F. B., Ed. 1874, 254

130. ——— *Suit for declaration of right and for consequential relief.*—A suit in which the plaintiff prays the Court to consider and declare his right as heir, and for consequential relief, is not within the cognisance of a Small Cause Court. KOLA AHEER *v.* SAJNA AHIMUR [3 N. W., 105

131. ——— *Act XI of 1865, s. 6.—Declaration that bond is satisfied.—Claim for money on bond.*—A claim for money on a bond as specified in Act XI of 1865, section 6, does not include a case for a declaration that the bond has been

SMALL CAUSE COURT, MOFUSSIL— *continued.*

2. JURISDICTION—*continued.*

Declaratory decree—*continued.*

satisfied and is inoperative. A suit of that description if maintainable, must be brought in the regular Court. AGUR MULLICK MUNDUL *v.* DEBNATH CHATTERJEE . . . **24 W. R., 190**

132. ——————— *Suit for declaration of right to moveable property wrongfully taken.*—Where a suit is brought for property wrongfully taken by the defendant praying for restoration of such property either to the plaintiff directly or to some other person wholly or partly as agent for the plaintiff, it is a "suit for property" within the meaning of the Small Cause Court Act (XI of 1865), and if the property is moveable and of less than R500 in value, the suit is then a small cause. Accordingly where the plaintiffs, who were co-members with the defendants of a division of a caste, and as such, tenants-in-common with them of certain cooking vessels of less than R500 in value, were excluded by the defendants from possession and common use of the vessels, and sought for a declaration that the plaintiffs and the defendants were equally entitled to the use of the said vessels, and for restoration of the same to some third person who should hold them to the use of the plaintiffs and defendants,—*Held* that the suit was not a suit for a declaratory decree, but for the recovery of property within the meaning of the Small Cause Court Act (XI of 1865), and as such, was exclusively triable by a Small Cause Court. The proceedings of the lower Courts were pronounced null, and the plaint directed to be returned for presentation in the proper Court. KALIAN DAYAL *v.* KALIAN NAREE . **I. L. R., 9 Bom., 259**

133. ——————— A suit for a declaration of right by a person against whom an order has been passed under section 280 of the Civil Procedure Code, 1877, will not lie in the Small Cause Court. *Ramdhan Biswas* v. *Kefal Biswas, 1 B. L. R., S. N. 10: 10 W. R., 141; Moozdeen Gazee* v. *Dinobundhoo Gossamee, 13 W. R., 99*; and *Woomesh Chunder Bose* v. *Muddun Mohun Sircar, 2 W. R., 44*, discussed and explained. SHIBOO NARAIN SINGH *v.* MUDDEN ALLY. NATABAR NANDI *v.* KALIDASS PALI . **I. L. R., 7 Calc., 608: 9 C. L. R., 8**

134. ——— Decree.—*Suits to recover certain decrees, and claim to execute them.*—In addition to a claim to recover certain decrees, amounting together in value to less than R500, the plaintiffs claimed a decree authorising them to put the same into execution. The suit was not a suit of the nature cognisable by a Court of Small Causes. BALAM DAS *v.* DWARKA DAS . . **7 N. W., 88**

135. ——————— *Suit on decree of Civil Court.*—A suit cannot be maintained in a Small Cause Court in the mofussil to enforce the decree of a Civil Court. MANCHHARAM KALLIANDAS *v.* BAKSHE SAHEB MIR MAINUDIN KHAN **[6 Bom., A. C., 231**

SMALL CAUSE COURT, MOFUSSIL— *continued.*

2. JURISDICTION—*continued.*

Decree—*continued.*

136. ——————— *Suit for balance due on decree of Small Cause Court.*—A suit cannot be maintained in a Small Cause Court in the mofussil to recover the unsatisfied balance of a decree of such Court. SANDES *v.* JOMIR SHAIKH . **9 W. R., 399**

137. ——————— *Suit for instalment of decree under Act X with stipulation for execution of decree in default.*—Where a defendant agreed to pay the amount of a decree under Act X by two instalments, and the remedy provided for the enforcement of the contract in the event of the defendant making default was the execution of the decree, and not a suit in the Civil Court,—*Held* that a suit would not lie in the Small Cause Court to recover the amount of the second instalment. AGHORE CHUNDER MOOKERJEE *v.* WOOMASOONDEREE DEBEA **[7 W. R., 216**

138. ——————— *Suit to set aside decree of Small Cause Court.*—A suit to set aside a decree of a Small Cause Court when no defect of jurisdiction is manifest on the face of the proceeding, and where there is no reason to suppose that the decree was obtained by fraud or collusion, cannot be maintained in a Court of Small Causes. BAMA SOONDUREE DEBEE *v.* KAMINEE BEWA . **10 W. R., 352**

139. ——— Deed.—*Suit for re-formation of a deed.*—A Small Cause Court has no jurisdiction to entertain a suit for the re-formation of a deed. GULABHAI MONDAS *v.* DAYABHAI GOVARDHANDAS **[10 Bom., 51**

140. ——————— *Suit as to validity of gift or deed of sale by Hindu law.*—A Small Cause Court has jurisdiction in cases involving questions as to the validity or otherwise under the Hindu law of a deed of gift or a deed of sale. GRISH CHUNDER ROY *v.* GOBIND SINGH . **17 W. R., 88**

See ROGHOORAM BISWAS *v.* RAMCHUNDER DOBEY **[W. R., F. B., 127: B. L. R., Sup. Vol., 34**

and HUREEE PERSAD MALEE *v.* KOONJO BEHARY SHAHA . . **Marsh., 99: 1 Hay, 238**

141. ——— Dower.—*Suit for dower under kabinnamah.*—A suit for the mauijjil or exigible portion of dower due to plaintiff under a kabinnamah is cognisable by a Small Cause Court, under section 6, Act XI of 1865, notwithstanding that questions of very considerable difficulty may be raised in it collaterally with regard to the validity of the marriage. The decision of the Small Cause Court on such collateral matters has not the same effect as the decision of the Court which had jurisdiction to determine them in a suit regularly brought for that purpose. HALA KHOORY BIBEE *v.* BASOO KOSHYE **[17 W. R., 512**

142. ——————— *Suit for deferred dower.—Act XI of 1865, s. 6.*—A suit for deferred dower or muwajjal, payable to the wife by

SMALL CAUSE COURT, MOFUSSIL— *continued.*

2. JURISDICTION—*continued.*

Dower—*continued.*

the husband upon her divorce, or upon the husband's death by his heirs out of his estate, is cognisable by a Small Cause Court. HAYATUNNISSA BIBEE *v.* ASIROODDEEN . . . **18 W. R., 304**

143. ——————— *Suit for property conveyed in lieu of dower.—Held* that a suit for R100 would not lie in the Small Cause Court upon a deed by which the defendant conveyed to the plaintiff, in lieu of the amount (R100), due to her as a dower, a half share in all his property, moveable and immoveable, and under which deed, therefore, the plaintiff was entitled to a moiety of all such property, but could not sue for the sum originally stipulated for. NEELOO BEBEE *v.* MISSER BISWAS **[6 W. R., Civ. Ref., 12**

144. ——— **Foreign judgment.**—*Jurisdiction.—Suit on foreign judgment.*—A suit upon a foreign judgment is not cognisable by a Court of Small Causes established under Act XI of 1865. ANAKATTIL NARAYANA KRISHNAN KARTHAVU *v.* KOCHERI PILO PILO . . **I. L. R., 6 Mad., 191**

145. ——————— *Suit on foreign judgment.—Judgment of Court of Native State.*—No suit is maintainable in a Small Cause Court in British India founded upon the judgment of a Court situate in a Native State. BHAVANISHANKAR SHEVAKRAM *v.* PURSADRI KALIDAS **[I. L. R., 6 Bom., 292**

146. ——— **Government.**—*Suit to which Government officials are parties.—Act XI of 1865, ss. 1, 6, and 9.—Local Government.*—A suit, within the pecuniary and other limits prescribed for Courts of Small Causes, in which an officer of Government is a party, in his official capacity, may be entertained by a Court of Small Causes in the mofussil. The phrase "Local Government" used in section 9, and defined in section 1 of Act XI of 1865, does not apply to the Collector of a district, but rather to the Governors or Lieutenant-Governors of Presidencies, or Commissioners of Provinces. DESALJI MANAJI *v.* HEMADALLI IMAM HAIDARBAKSHA **[10 Bom., 308**

147. ——— **Intestacy.**—*Suit for money as share under an intestacy.*—The decree of a Small Cause Court was annulled as made without jurisdiction in a suit to recover money as personal property in respect of a share under an intestacy. GRISH CHUNDER SINGH *v.* AUNA DOSSEE . **17 W. R., 46**

NOBIN CHUNDER GOSSAMEE *v.* DRIBO MOYEE DEBEE . . . . **17 W. R., 520**

148. ——————— *Suit for possession of personal property as heir under former decree.*—A suit for possession of personal property to which the plaintiff has been, by a decree in a former suit, declared entitled as heir of a third person, is not a suit coming within the second exception to section

SMALL CAUSE COURT, MOFUSSIL— *continued.*

2. JURISDICTION—*continued.*

Intestacy—*continued.*

6 of Act XI of 1865, and is therefore, where the value is not beyond the jurisdiction, cognisable by a Court of Small Causes, and consequently no appeal lies from the decree in such a suit. MOHESHUR MONDUL *v.* KOILASH NATH MONDUL **[7 C. L. R., 71**

149. ——— **Maintenance.** — *Suit for arrears of maintenance.—Right to maintenance.*—A Small Cause Court has jurisdiction only as regards arrears of fixed maintenance, but not to determine the right to receive it. BHUGWAN CHUNDER BOSE *v.* BINDOOBASHINEE DOSSEE . . **6 W. R., 286**

150. ——————— *Suit for arrears of maintenance.—Held* that a suit by a widow for arrears of maintenance fixed by a Munsif's decree, where defendant urged non-liability on the ground that the property of plaintiff's husband was exhausted, and that defendant had already brought an action in the Munsif's Court for release from his liability, was not cognisable by the Small Cause Court. KAMINEE DOSSEE *v.* BISHONATH SHAHA . . **9 W. R., 214**

HEMA KOOERE *v.* AJOODHYA PERSHAD **[24 W. R., 474**

151. ——————— *Suit by Hindu widow.—Held* that a suit for maintenance by a Hindu widow is cognisable by a Court of Small Causes in the mofussil. JUDAL KOM RANCHHOD MULJI *v.* HIRA MULJI . . **4 Bom., A. C., 75**

RAMCHANDRA DIKSHIT *v.* SAVITUBAI **[4 Bom., A. C., 73**

But *see quære* in RAMABAI *v.* TRIMBAK GANESH DESAI . . . . . **9 Bom., 283**

152. ——————— *Suit for maintenance.*—In the absence of any special bond or other contract for the payment of maintenance, a suit for maintenance is not cognisable in a Court of Small Causes in the mofussil. SIDLINGAPA *v.* SIDAVAKOM SIDLINGAPA . . **I. L. R., 2 Bom., 624**

NOBIN KALEE DEBEA *v.* BINDOBASHINEE DEBEA **[5 W. R., S. C. C. Ref., 5**

153. ——————— *Suit for maintenance.*—In a suit by a Hindu widow against her husband's brother for an allowance as maintenance and for the expenses of a pilgrimage,—*Held* (following *Sidlingapa* v. *Sidava kom Sidlingapa, I. L. R., 2 Bom., 624*) that the suit, although for a sum under R500, was not cognisable by a Court of Small Causes under Act XI of 1865, there being no allegation that the maintenance claimed was secured by bond or other special contract. *Nobin Kalee Debea* v. *Bindobashinee Debea, 5 W. R., S. C. C. Ref., 5,* followed. APAJI CHINTAMAN DEVDHAR *v.* GANGABAI **[I. L. R., 2 Bom., 632**

154. ——————— *Act XI of 1865, s. 6.—Civil Court.—Suit by the mother of a child to*

SMALL CAUSE COURT, MOFUSSIL—*continued.*

2. JURISDICTION—*continued.*

Maintenance—*continued.*

recover from the father the cost of its maintenance.—A Mahomedan wife, divorced by her husband while pregnant, subsequently gave birth to a son. The father refused to maintain the child, which was therefore maintained by the mother, who now sued the father to recover the amount expended by her in the child's maintenance. *Held* that the obligation on which the suit was based was one, if it existed at all, that was imposed on the father by the law, and did not arise out of any contract, express or implied; hence the suit was one not cognisable by a Court of Small Causes, but by the ordinary Civil Court. NURBIBI *v.* HUSEN LAL . I. L. R., 7 Bom., 537

155. ——————— *Suit for breach of agreement for payment in nature of maintenance.*—Where the defendant entered into an agreement in writing with the plaintiff (the widow of defendant's brother) to deliver to her every year a specified quantity of paddy by way of maintenance,—*Held* that the Small Cause Court had jurisdiction to entertain a suit for a breach of the agreement. PAUPAMMA *v.* CHINNA REDDY . . 5 Mad., 432

156. ——————— *Suit for maintenance fixed by decree of Court.*—A suit for maintenance fixed by a Court's decree is not cognisable by a Small Cause Court. PAHLUD SINGH *v.* AHLUD SINGH . . . . . 6 N. W., 91

157. ——————— *Suit for maintenance fixed by decree.*—A suit by a Hindu widow for arrears of maintenance, based on a decree charging immoveable property with the payment of the maintenance allowance, is not a suit of the nature cognisable in a Court of Small Causes. *Pahlud Singh* v. *Ahlud Singh, 6 N. W., 91,* followed. DHARAM CHAND *v.* JANKI . I. L. R., 5 All., 389

158. ——————— *Suit for arrears of maintenance fixed by award.*—A suit for arrears of maintenance, at a rate ascertained by an award, is not a suit of the nature cognisable by a Court of Small Causes (*Guneshee* v. *Chotay Lal, 3 N. W., 117*). The suit was bad, being based upon an award in which the arbitrators had exceeded their powers. DURJAN SINGH *v.* SIBIA . . 7 N. W., 329

159. ——— Mesne profits.—*Suit solely for mesne profits.*—A suit for mesne profits only, no other question arising, is cognisable by a Small Cause Court. SUNGRAM SINGH *v.* JUGGUN SINGH [2 N. W., 18

160. ——— Military men.—*Military officer.—Military Court of Requests.*—A Court of Small Causes has no jurisdiction to try an action brought against a military officer in a military cantonment where a Court of Requests is established. ABOO SAIT & Co. *v.* ARNOTT. ABOO SAIT & Co. *v.* DALE . . . . . 2 Mad., 439

161. ——————— *Military Courts of Requests.—Act XLII of 1860.*—Act XLII of 1860, section 6, did not alter or interfere with the jurisdiction of the Military Courts of Requests constituted by Statute 20 and 21 Victoria, Cap. 66, section 67. SHANMUGA *v.* MEDDLETON . 1 Mad., 443

162. ——————— *Liability of European soldiers and their native wives to Small Cause Court jurisdiction.*—Reference to the High Court regarding the amenability of European soldiers and their native wives to Small Cause Courts in actions for debt. KEEFE *v.* CHRISTIE [5 W. R., S. C. C. Ref., 21

163. ——————— *Non-Commissioned officer in civil employ.*—A non-commissioned officer or soldier not serving in the army but employed in the civil department and residing beyond military cantonments, is amenable to the jurisdiction of the Small Cause Court as a Civil Court, even in cases below thirty pounds. COHEN *v* MCCARTHY [14 W. R., 231

164. ——————— *European soldier acting as army schoolmaster.*—A European soldier doing duty as an army schoolmaster, not being liable to a Court of Requests, is not exempted from liability to a Cantonment Court of Small Causes. The Mutiny Acts give soldiers no privileges as to liability to jurisdiction or actions. MARWADY BEHJARAJOO *v.* HAYNES . . . 6 Mad., 83

165. ——————— *Suit against military officer.—Military Court of Requests.—Mutiny Act, 1864, s. 103.*—An action was brought in a Small Cause Court against a military officer residing at M., at which the only other military persons stationed were a staff officer and two sergeants. *Held* that the Court had jurisdiction to try the case, the suit not being one exclusively cognisable by a Court of Requests under section 103 of the Mutiny Act of 1864. BASTIAN *v.* TIREMAN . 2 Mad., 389

166. ——————— *Mutiny Act (30 and 31 Vict., c. 13), s. 99.—Camp-followers.—Jurisdiction of Civil Court.*—The defendant, a native of India, attached to the mess of a European regiment stationed at Sinchal, was held to come within the provisions of section 2 of the Mutiny Act (30 and 31 Victoria, Cap. 13) as being a "follower in or of Her Majesty's Indian forces," and therefore to be, by section 99, exempt while in that position from the jurisdiction of the Civil Court. NASIRUDDIN *v.* KHODABAKSH . . 2 B. L. R., S. N., 7

S. C. MUSSEROODDEEN *v.* KHODA BUX [10 W. R., 386

167. ——————— *Military officers.*—The 99th section of the Mutiny Act (30 and 31 Victoria, Cap. 13) exempts officers in all places in India, where any body of Her Majesty's force may be serving, from the jurisdiction of the Civil Courts in respect of personal actions. Where the defendants were residents of Sinchal and Jallapahar, and

SMALL CAUSE COURT, MOFUSSIL— *continued.*

2. JURISDICTION—*continued.*

Military men—*continued.*

attached to the troops stationed there,—*Held* that they were not amenable to the jurisdiction of the Small Cause Court at Darjeeling. HOSSEIN *v.* DICKENSON . . . . . **2 B. L. R., S. N., 3**

S. C. HOSSEINEE *v.* DICKINSON . **9 W. R., 112**

168. ——— **Money illegally exacted.**—*Suit for money illegally exacted from plaintiff.—Mamlatdar's order.—Bom. Act V of 1879, s. 87.*—A suit for an amount less than R500, which the plaintiff alleged to have been illegally exacted from him by the defendant as rent, under a Mamlatdar's order,—*Held* to be cognisable by a Court of Small Causes, and not by a Subordinate Civil Court. GANESH HATHI *v.* MEHTA VYANKATRAM HARJIVAN **[I. L. R., 8 Bom., 188**

169. ——— *Suit to recover illegal exaction of rent.*—A suit to recover an illegal exaction of rent will not lie in the Small Cause Court. SURBO CHUNDER DOSS *v.* WOOMANUND ROY **[11 W. R., 412**

170. ——— *Suit to recover assessment by Government officials levied wrongfully.—District Judge, Jurisdiction of.*—A suit to recover less than R500, levied as assessment by Government officials, is cognisable by a Court of Small Causes; and therefore, under section 27 of Act XXIII of 1861, no special appeal lay. District Judges should ordinarily try such suits when brought in the District Court, and should not delegate the trial to their assistants. RAMCHANDRA BHIKAJI *v.* COLLECTOR OF RATNAGIRI . . . **10 Bom., 305**

171. ——— **Money had and received.**—*Suit for money had and received for plaintiff's use.—Implied contract.—Zemindari due.*—A zemindar as such claimed and realised from a tenant R20, being one fourth of the price of trees cut down and sold by the tenant, basing his claim on general usage. The tenant sued to recover such money, denying that any such usage existed. *Held* that the suit was in the nature of one for money had and received by the defendant for the plaintiff's use, and therefore cognisable in the Court of Small Causes. *Lachman Prasad* v. *Chammi Lal, I. L. R., 4 All., 6,* followed. COLLECTOR OF CAWNPORE *v.* KEDARI **[I. L. R., 4 All., 19**

172. ——— *Suit by assignee of profits against lumbardar.*—The transferee of a mortgage of a share of an undivided estate sued the lumbardar of the estate for the profits of such share for a certain year, the amount claimed being R500. *Held,* regarding such suit as one for money had and received to the plaintiff's use, that it was one of the nature cognisable in a Court of Small Causes. MUHAMDI BEGAM *v.* ABBAS ALI KHAN **[I. L. R., 5 All., 531**

173. ——— *Money deposited under agreement to return mortgaged property.*—*C.,* a mortgagee, the mortgage having been foreclosed, sued *D.,* the mortgagor, for possession of the mortgaged property and obtained a decree for possession thereof. He subsequently agreed with *D.* to surrender the mortgaged property to him, if he deposited the mortgage-money in Court by a specific day. *D.* borrowed the money for this purpose by means of a conditional sale of the property to *L.* and deposited it in Court; the deposit was made after the specified day, and consequently *C.* took possession of the property. The money deposited by *D.* remained in deposit, and while there *C.* caused it to be attached in execution of a money-decree he held against *D.,* and it was paid to him. *L.* thereupon sued *C.* in the Munsif's Court to recover the money which amounted to R350. *Held* that the suit must be regarded as one for money had and received by the defendant for the use of the plaintiff, and was therefore one cognisable in a Court of Small Causes. LACHMAN PRASAD *v.* CHAMMI LAL . . **I. L. R., 4 All., 6**

174. ——— *Suit for money received for plaintiff's use.*—When one of two or more joint creditors receives full payment of the debt, he does so under the implied contract that he will deliver their shares to the other joint creditors. Such implied contract falls under the purview of section 6 of Act XI of 1865, and a suit will lie in the Small Cause Court by a creditor to recover his share. *Lachman Prasad* v. *Chammi Lal, I. L. R., 4 All., 6; Huro Mohun Roy* v. *Khettromonee Dossee, 12 W. R., 372; Sunkur Lall Pattuck Gyawal* v. *Ram Kalee Dhamin, 18 W. R., 104,* referred to. SOHAN *v.* MATHURA DAS . . **I. L. R., 6 All., 449**

175. ——— *Suit for share of compensation awarded for land acquired for public purposes.*—A suit was brought by some of the co-sharers in a patti of a mehal in which land had been taken for public purposes under the Land Acquisition Act, against the other co-sharers in the patti, for the proportion due to them out of a sum of money which had been awarded as compensation for the acquisition of the land, and which the defendants had received. *Held* that the suit was one for money had and received for the plaintiff's use, and was therefore cognisable by a Court of Small Causes. *Sohan* v. *Muthura Das, I. L. R., 6 All., 449,* followed. UMRAI *v.* RAM LAL . . . **I. L. R., 7 All., 384**

176. ——— **Mortgage.**—*Money-decree on mortgage-bond.*—A Small Cause Court has jurisdiction to give a simple money-decree in a suit upon a bond in which landed property is hypothecated. DOORHYAR ROY *v.* DULSINGAR SINGH **[12 W. R., 367**

177. ——— *Money-decree on mortgage-bond.*—The Small Cause Court has no jurisdiction in the case of a claim for money due under a bond for less than R500, where the property

SMALL CAUSE COURT, MOFUSSIL— *continued.*

2. JURISDICTION—*continued.*

Mortgage—*continued.*

pledged under the bond is made liable. TRIPOORA SOONDUREE *v.* KOYLASH CHUNDER BOSE [15 W. R., 265

178. ——— *Suit to enforce contract pledging moveable property.*—Plaintiff sued for recovery of a sum of money lent upon the pledge of personal property, and asked that the moveable property pledged might be declared liable. *Held* that a Small Cause Court had jurisdiction to entertain a suit to enforce a contract pledging moveable property. APPAVU PILLAI *v.* SUBBAYA MUPPEN [2 Mad., 474

179. ——— *Suit on bond hypothecating land.*—In a suit for money due on a bond in which the payment is secured by mortgage of immoveable property, the Judge of a Small Cause Court is competent to try whether any debt is due upon the bond or not; but he cannot declare whether or not the particular land mentioned in the bond is charged for the payment of the debt, nor can he attach the land in execution of the decree. RAM SHEWUK SAHOO *v.* FUTTO ROY . . 12 W. R., 184

WEBB *v.* RINCHIDEN . . 14 W. R., 214

180. ——— *Suit to recover money on bond and to declare lien on property mortgaged by bond.*—A suit, the object of which is not only the recovery of money due upon a bond, but also a declaration of the plaintiff's lien on the property mortgaged by the bond, is not cognisable by the Small Cause Court. RAM NARAYAN MOOKERJEE *v.* SARODA DEBI . . 6 B. L. R., Ap., 39

181. ——— *Suit for enforcement of hypothecation against moveable property.—Act XI of 1865 (Mofussil Small Cause Courts Act), s. 6.*—A suit was brought in a Small Cause Court to recover a sum of money from the defendants personally, and by enforcement of hypothecation of certain cattle by their attachment and sale. The cattle were in the hands of other persons, who had purchased them at an auction-sale in execution of a decree against the original defendants, and who were added as defendants under section 32 of the Civil Procedure Code, 1882. *Held* that the suit was not cognisable by a Small Cause Court, inasmuch as it did not fall under the category of a "suit for money due on a bond or other contract," or of a "suit for personal property, or for the value of such property," within the meaning of section 6 of the Mofussil Small Cause Courts Act (XI of 1865). *Ram Gopal Shah* v. *Ram Gopal Shah, 9 W. R., 136;* and *Godha* v. *Naik Ram, I. L. R., 7 All., 132,* referred to. SURAJPAL SINGH *v.* JAIRAMGIR . . . I. L. R., 7 All., 855

182. ——— *Suit for order to enforce mortgage decree against person and property of defendant.*—A suit to obtain an order from the Court that a decree upon a mortgage of a certain house should be enforced against the person and

SMALL CAUSE COURT, MOFUSSIL— *continued.*

2. JURISDICTION—*continued.*

Mortgage—*continued.*

property of the defendant, who had purchased the house at auction subject to the plaintiff's mortgage, but had subsequently removed the materials of the same and so deprived the plaintiff of his lien thereon, not being a claim for debt, damages, or for the recovery of property, is not cognisable by a Court of Small Causes. OMER KUBIM *v.* LALA SHEWAN LALL . . . . . 4 C. L. R., 291

183. ——— *Mortgage of moveable property.—Suit for redemption.*—Where moveable property has been pledged in a mortgage-bond as security for a loan, and the amount due on the mortgage is tendered but declined, the mortgagor's suit for possession will lie in the Small Cause Court. But if there has been tender and the suit is for possession after ascertainment of defendant's lien on the property, the Small Cause Court has no jurisdiction in the matter. BHUBOTARINEE GHOSANY *v.* JUGGERNATH TEWARY . . 16 W. R., 58

184. ——— **Moveable property.**—*Act XI of 1865, ss. 19 and 20.—Huts.*—Huts are not "moveable property" within the meaning of Act XI of 1865. RAJ CHUNDER BOSE *v.* DHARMACHANDRA BOSE [2 B. L. R., A. C., 77: 8 B. L. R., 510, note 10 W. R., 416

ROHINI KANT GHOSE *v.* MAHABHARAT NAG [8 B. L. R., 514, note: 10 W. R., 258

185. ——— *Sale in execution of decree of Small Cause Court.—Right of purchaser.*—A hut is not "moveable property" within the meaning of section 19 of Act XI of 1865. A Small Cause Court has no jurisdiction to sell a hut. A purchaser of a hut sold by a Small Cause Court in execution of a decree acquires no title to it. NATTU MIAH *v.* NANDRANI [8 B. L. R., F. B., 508: 17 W. R., 309

Contra, KASI CHANDRA DUTT *v.* JADUNATH CHUCKERBUTTY [8 B. L. R., 512, note: 10 W. R., 29

186. ——— *Immoveable property.—Act XI of 1865, s. 19.—Held* that, for the purposes of the Mofussil Small Cause Court Act, standing timber is not "moveable" property. *Nasir Khan* v. *Karamat Khan, I. L. R., 3 All., 168,* referred to. UMED RAM *v.* DAULAT RAM [I. L. R., 5 All., 564

187. ——— *Sugar mill.—Moveable property.*—A stone sugar-mill was held to be moveable or personal as distinguished from immoveable property. HURMUNGAL SINGH *v.* ATHUL SINGH . . . . . 4 N. W., 15

188. ——— *Trees.—Growing crops.—Moveable property.*—Trees and growing crops are not moveable property. TOFAIL AHMUD *v.* BANEE MADHUB MOOKERJEE . 24 W. R., 394

SMALL CAUSE COURT, MOFUSSIL—*continued.*

2. JURISDICTION—*continued.*

Moveable property—*continued.*

189. ——————— *Growing crops.*—Growing crops are "immoveable property," and execution of a decree of a Small Cause Court cannot be had against them under section 19 of Act XI of 1865. GOPAL CHANDRA BISWAS *v.* RAMJAN SIRDAR . . 5 B. L. R., 194: 13 W. R., 275

MUHAMMAD SILEMAN *v.* SATU VALAD HARJI [5 Bom., A. C., 90

190. ——————— *Suit for possession of tree or delivery of produce.—Suit for definite quantity of produce of tree.*—A Small Cause Court cannot entertain a suit for the possession of a tree, nor for the annual delivery of the produce, so long as the tree should be productive. But a suit for a definite quantity of the produce of the tree, or the value thereof, may be entertained by a Small Cause Court if the value be within the prescribed limit. SHANTI LAKSHMINARASAMMA *v.* VEPA VENKATRAMADAS [3 Mad., 237

191. ——————— *Suit for fruit upon trees.—Suit for compensation for the wrongful taking of fruit upon trees.—Immoveable property.*—When the damage or demand does not exceed in amount or value the sum of five hundred rupees, a suit for the fruit upon trees, or damages in lieu thereof, is a suit cognisable in a mofussil Court of Small Causes, the fruit upon trees not being immoveable property, but being moveable property within the meaning of section 6 of Act XI of 1865. IN THE MATTER OF THE PETITION OF NASIR KHAN *v.* KARAMAT KHAN . . . I. L. R., 3 All., 168

192. ——————— *Thatch.*—Suit to recover a thatch of a value less than R500 must be brought in the Small Cause Court. A thatch, especially when severed from the house, is moveable property. RAJKUMAR MOOKERJEE *v.* PRANNATH MOOKERJEE . 7 B. L. R., Ap., 41: 15 W. R., 499

193. ——————— *Suit to recover baluta leviable on the crops of village lands.*—A suit to recover baluta leviable on the crops of village lands is not a suit for an interest in land, but for a share of produce severed from land, and is cognisable by a mofussil Court of Small Causes. NARU PIRA *v.* NARO SHIDHESHVAR . I. L. R., 3 Bom., 28

194. ——————— *Act XI of 1865, s. 6.—Suit by vatandar mahars to recover "aya."—Immoveable property, What is.*—A suit for baluta or aya is a claim in respect of a hak belonging to, and forming the emoluments of, an hereditary office amongst Hindus, and one in respect of immoveable and not moveable or personal property. A Mofussil Small Cause Court has no jurisdiction to entertain a suit for such a claim. There is no difference, in principle, between the haks of hereditary officiating mahars of a village and the haks appendant to the hereditary office of a village joshi, or the office of an hereditary priest of a temple and its emoluments. The haks of the former are not personal property. APPANA *v.* NAGIA . . I. L. R., 6 Bom., 512

SMALL CAUSE COURT, MOFUSSIL—*continued.*

2. JURISDICTION—*continued.*

Moveable property—*continued.*

195. ——————— *Suit for share of hakwartanee allowance.*—A suit by an alleged sharer in a hakwartanee allowance to recover from the defendant, who received the whole of such allowance from Government, the plaintiff's share in it, was held not to be a suit cognisable by a Court of Small Causes. VENKAJI LAKSHMAN DESHPANDE *v.* YAMUNABAI . . . . 7 Bom., A. C., 114

196. ——————— *Suit for malikana allowance.*—A suit for a malikana allowance concerns the proprietary right in land. A dispute concerning it may be regarded in the same light for the purposes of jurisdiction as a dispute concerning the proprietary right itself. A suit therefore of this special description is not one for a Small Cause Court. MAHOMED KARAMUTOOLLAH *v.* ABDOOL MAJEED [1 N. W., 205 : Ed. 1873, 288

197. ——————— *Act XI of 1865, s. 6.—Suit to recover price of buffaloes after sale.*—*A.* obtained an ikrar from *B.* by which *B.* pledged to *A.* certain buffaloes which *B.* purchased with money borrowed from *A.* The ikrar also stipulated that *B.* would not alienate his rights in the buffaloes till the sum borrowed was repaid. *A.* obtained a decree against *B.* for the amount of the loan and attached the buffaloes in execution. This attachment was set aside at the instance of *C.*, who purchased the buffaloes from *B.* after the date of the ikrar given by *B.* to *A.* *A.* sued *C.* (making *B.* a party) in the Small Cause Court, praying for the sale of the buffaloes pledged to him by *B.*, or, in default of that, for the sum due to him. *Held* that such a suit was not a suit within section 6, Act XI of 1865, to recover personal property, or the value of personal property, and was not cognisable by the Small Cause Court. RAM GOPAL SHAH *v.* RAM GOPAL SHAH . 9 W. R., 136

198. ——— **Municipal Commissioners.**—*Act XI of 1865, s. 9.—Suit against Municipal Commissioners.*—Section 9, Act XI of 1865, is no bar to a suit against Municipal Commissioners being brought in a Court of Small Causes. HURISH CHUNDER TALAPATTUR *v.* O'BRIEN [14 W. R., 248

199. ——— **Municipal tax.**—*Suit to recover municipal tax.*—A suit to recover a municipal tax is not cognisable by a Small Cause Court constituted under Act XI of 1865. LOGAN *v.* KUNJI [I. L. R., 9 Mad., 110

200. ——— **Order of Civil Court.**—*Suit to set aside miscellaneous order of Civil Court.*—A Small Cause Court has no jurisdiction to set aside a miscellaneous order passed by a Civil Court. BUNSEEDHUR *v.* KUDDEY LALL [1 N. W., Ed. 1873, 198

SMALL CAUSE COURT, MOFUSSIL— *continued.*

2. JURISDICTION—*continued.*

201. ——— Partnership account.— *Suit for partnership account.*—A suit for an account of a partnership is not cognisable by a Small Cause Court. SHURUT CHUNDER KUR *v.* RAM SHUNKUR SURMAH . . . . . **10 W. R., 214**

202. ——— *Act XI of 1865, s. 6.*—Where defendant had been plaintiff's servant in charge of plaintiff's shop, on the understanding that he was to be remunerated by a small share of the profits in lieu of fixed wages, a suit to recover the balance after deduction of such remuneration was held to be a suit on a demand cognisable by a Small Cause Court, and not for balance of partnership account. RAM KANAYE SHAHA *v.* BYKUNTNATH SHAHA . . . . . **15 W. R., 89**

203. ——— *Suit involving question of partnership account.*—*A.*, *B.*, and *C.*, the joint owners of an estate, sued their tenant in the Munsif's Court for rent; the tenant defeated the suit by proving payment of the entire rent to *B.* *A.* then brought a suit in the Small Cause Court against *B.* for damages equal in amount to the one third of rent due to him and the costs incurred by him and awarded against him in the rent-suit in the Munsif's Court. *B.* pleaded that he had expended the share of rent due to *A.* for the benefit of the joint estate, and that *A.* had collected the rents of other mehals belonging to the joint estate, and had not accounted for such rents. *Held* that the suit being one which involved questions of partnership account between the joint proprietors of an undivided estate, could not be entertained in a Court of Small Causes. RAMTONU ACHARJEE *v.* PEARYMOHUN ACHARJEE **[I. L. R., 6 Calc., 551: 7 C. L. R., 557**

204. ——— Prisoners' Testimony Act (XV of 1869).—*Mofussil Small Cause Court, Judge of.*—*Defendant in custody.*—A Judge of a Small Cause Court in the mofussil could direct the jailor to bring up before the Court, at the hearing of the suit, a defendant committed to custody, under section 78 of Act VIII of 1859, without having recourse to the procedure under Act XV of 1869. KILARAM MAJI *v.* NARAYAN DAS **[5 B. L. R., 215: 13 W. R., 278**

205. ——— Receiver.—*Power to appoint receiver.*—*Attachment and sale of bond.*—*Civil Procedure Code, 1877, s. 268.*—A Court of Small Causes cannot appoint a receiver. Bonds, therefore, on which recovery will be time-barred before the date on which a sale can legally be made, which, by section 268 of Civil Procedure Code, 1877, is six months from the date of the attachment, cannot be made available for satisfaction of the judgment-creditor's debt. NURSINGDAS RUGHUNATHDAS *v.* TULSIRAM BIN DOULATRAM . . **I. L. R., 2 Bom., 558**

206. ——— Registration Act.—*Suit on bond under s. 52, Registration Act, 1864.*—The Court which had jurisdiction in a proceeding to enforce payment, under the provisions of the Registration Act XVI of 1864, of a registered bond, was the Court in which a suit for the amount claimed was maintainable. A Small Cause Court therefore had jurisdiction in an application under that section on a bond on which not more than R500 was due at the time of the application. KESHAB LAL MITTER *v.* MASABDY MUNDUL . **4 W. R. S. C. C. Ref., 11**

SREEMUNT SEN *v.* GORAI GAZEE **18 W. R., 199**

which was a suit under section 53 of Act XX of 1866.

207. ——— *Bond registered under Act XX of 1866, s. 53.*—A suit upon a bond specially registered under the provisions of section 53 of Act XX of 1866 for an amount less than R500 is cognisable by a mofussil Court of Small Causes, and under section 586 of the Code of Civil Procedure, 1877, no second appeal lies to the High Court against an order passed on an application for execution of a decree made in such a suit. BULLOV BHUTTACHARJEE *v.* BABURAM CHATTOPADHYA **[I. L. R., 11 Calc., 169**

208. ——— Rent.—*Suit for money for permission to tap date-trees.*—Suit for money for which plaintiff agreed to let defendant tap certain date-trees and appropriate the produce for a single season,—*Held* that such a suit was not one for rent, but for the breach of a contract in respect of which a Small Cause Court has jurisdiction. DEB NATH GHOSE *v.* PACHOO MOLLAH . **6 W. R., Civ. Ref., 8**

209. ——— *Suit by landholder against purchaser of produce of tenant's land for rent.*—*Damages.*—*B.*, who held a decree for money against *G.*, a cultivator, brought to sale in execution of his decree the produce of certain land occupied by *G.*, and such produce was purchased by *S.* The landholder, to whom *G.* owed rent for the land, sued *G.* and *S.* for the amount of the rent, on the ground that under section 56 of the N.-W. P. Rent Act the produce of the land was hypothecated for the rent. *Held* that the defendants could only be held responsible *ex delicto*, and the suit was therefore one for damages, and, the amount claimed being under R500, one cognisable in a Court of Small Causes. SHIBBA *v.* HULASI . . **I. L. R., 5 All., 518**

210. ——— *Suit for rent under agreement.*—*Failure to prove agreement.*—In a suit for rent of a holding which the plaintiff alleged to be included within certain homestead land which he owned in virtue of a sale certificate in execution of a decree, the defendant urged that the said holding was expressly excluded from the certificate. The plaintiff contended further that the defendant had agreed to pay him rent for the land in dispute, —*Held* that the material issue was as to the alleged agreement, and that if the plaintiff failed to prove it the issue would be as to whether the land belonged to him or to the defendant, and would require to be

SMALL CAUSE COURT, MOFUSSIL— *continued.*

2. JURISDICTION—*continued.*

Rent—*continued.*

settled in the Civil Court. KHUDEERAM BISWAS *v.* KORAL BUDONEE DOSSEE **21 W. R., 379**

211. ——— *Tenant and under-tenant.—Assignment of rent.—Set-off.*—The plaintiff held an under-tenure within a jote jumma held by *B.* within *D.'s* zemindari, and under an assignment from *B.* paid to the zemindar *D.* a sum of money as rent due by *B.* to *D.* Ultimately *D.*, ignoring such payment, recovered the rent from *B.* by a separate suit in which no plea of payment was raised, and the latter again recovered his due from plaintiff by a separate suit. *Held* that an action was not maintainable in the Small Cause Court against the zemindar defendant *D.* *Held* that, in the absence of any authority from *B.* to plaintiff to set off his payment to *D.* against the rent due to *B.*, the Collector had no jurisdiction to try whether *B.* owed the plaintiff a sum equal to the rent, and that the Judge of the Small Cause Court was competent to try whether the plaintiff did pay money for the use of *B.* at *B.'s* request, and, if so, to give plaintiff a decree for the same. DEANUT MUNDUL *v.* BUSSUNT MOYEE DOSSIA . . . . . **12 W. R., 190**

212. ——— *Suit for use of land.—Damages.—Rent.*—Suit for rent or hire of land which defendant used and caused to be used for passing and repassing to and from his steamer,—*Held* that, if there was no express hiring, the defendant ought to be sued for damages for trespassing upon the plaintiff's land; that if he agreed to pay for the use of a way across the land, it would not be rent, and that in either case the Small Cause Court was competent to entertain the suit. BRICE *v.* TOOGOOD . . . **5 W. R., S. C. C. Ref., 18**

213. ——— *Suit for rent of land with buildings.*—In a suit for rent of land, where the principal subject of the entire occupation is bastoo land, the residue (if any) of the holding being merely subordinate, the Small Cause Court has jurisdiction. But when the principal subject is agricultural land, the building or buildings being mere accessories thereto, the Small Cause Court will not have jurisdiction. CHUNDESSUREE *v.* GHEENAH PANDEY . . . . . **24 W. R., 152**

214. ——— *Suit for sums stipulated to be paid for use of private path.*—A suit upon a contract for the payment of a stipulated sum per mensem to the owner for the leave granted by him to the defendants to use a path across his land is cognisable by the Small Cause Court. WOOMA PERSAD SHAW *v.* SHUMSHER SIRDAR **[4 W. R., S. C. C. Ref., 10**

215. ——— *Suit on instalment-bond for nuzzur or salami.*—Plaintiff sued in a Small Cause Court on an instalment-bond for R81. The bond had been executed for nuzzur or salami contemporaneously with the execution of a pottah and

SMALL CAUSE COURT, MOFUSSIL— *continued.*

2. JURISDICTION—*continued.*

Rent—*continued.*

kabuliat, by which the defendants agreed to pay the plaintiff R335 a year for two years, as rent for certain land. The pottah and kabuliat had not been registered. A previous suit brought by the plaintiff, under Act X of 1859, had been therefore dismissed, and no oral evidence was admitted to prove the terms of the pottah and kabuliat. *Held*, the suit on the bond was properly cognisable by the Small Cause Court as a simple debt due under the bond. It was clearly not for rent, nor was it an abwab or illegal cess; whether it was nuzzur or salami was immaterial. DINANATH MOOKERJEE *v.* DEBNATH MULLICK **[5 B. L. R., Ap., 1: 13 W. R., 307**

216. ——— *Suit for rent and a sum as penalty for non-payment.*—Where a party sued for R17-8 as rent, and a like sum as penalty for non-payment thereof, it was held that he was in fact suing for a penalty equal to double the amount due, and that a Small Cause Court was competent to entertain the suit. HINGUN SOWDAGUR *v.* BOISTUM CHURN OJAH . **6 W. R., Civ. Ref., 5**

217. ——— *Suit for arrears of rent and assessment of rate.*—A suit for arrears of rent of land for which no rent has ever been paid, where the plaintiff also asks for assessment of the rate of rent is not cognisable by a Small Cause Court. GOPEE NATH GHOSE *v.* KEDAR NATH CHUCKERBUTTY. KEDAR NATH CHUCKERBUTTY *v.* GOPEE NATH GHOSE . . . . **23 W. R., 426**

218. ——— *Suit for rent.—Act XI of 1865, s. 6.*—A suit to assess rent at an increased rate upon the defendants, and for a decree for rent at such rate in respect of land situated in a town, and upon which either a house or shop stands, is not a suit for rent within the meaning of section 6, Act XI of 1865, and is maintainable in the ordinary Civil Courts, and not in the Small Cause Courts. JOY KISHORE CHOWDHRAIN *v.* NUBEE BUKSH **[17 W. R., 178**

219. ——— *Suit for rent of land use for building purposes.*—A suit for the rent of land used for building purposes is cognisable in a mofussil Court of Small Causes. PEAREE BEWAH *v.* NOKOOR KURMOKAR . . . **19 W. R., 308**

GOKHUL CHUND CHATTERJEE *v.* MOSAHROO KANDOO . . . . **21 W. R., 5**

220. ——— *Suit on instalment-bond for arrears of rent.*—A suit upon an instalment bond given for arrears of rent is cognisable in a Small Cause Court. Also a suit by a judgment-debtor to recover money paid by him to be applied in satisfaction of a decree under Act X of 1859, but not so applied by the decree-holder. SHUTT CHURN GHOSAL *v.* MAHOMED ALLY. TARINEE CHURN ROY *v.* GOPAL KISTO ROY **[2 W. R., S. C. C. Ref., 5**

221. ——— *Suit on document given for arrears of rent.—Act XI of 1865, s. 6.*

SMALL CAUSE COURT, MOFUSSIL—*continued.*

2. JURISDICTION—*continued.*

Rent—*continued.*

—A suit to recover arrears of rent on a tahood kist. bundi, under which defendant had been appointed a tahsildar to collect rents, having been filed before the Munsif, it was returned as being cognisable by the Court of Small Causes. The Judge of the latter Court, seeing that the instalment-bond on which the suit was brought was exactly in the form of a kabuliat, and that the defendant was in possession of the land for which the rent was claimed, referred the question of jurisdiction to the High Court, which held that the money which the defendant contracted to pay being rent, could not be sued for under Act XI of 1865. PEAREE MOHUN ROY CHOWDHRY *v.* ASSAD KHAN . . . **18 W. R., 444**

222. ——————— *Suit for rent where there is no contract to pay it.*—A suit was brought in the Small Cause Court by a zemindar against a ryot for arrears of rent. The plaintiff alleged that he had tendered pottahs which the defendant was bound to accept, and the defendant alleged that the rent specified was such that he was not bound to accept the pottahs. *Held* that the suit was not cognisable by a Court of Small Causes, there being no contract between the parties for the payment of rent. VENKATACHALA REDDIAR *v.* NARAYANA REDDY . . . **4 Mad., 393**

223. ——————— *Suit for arrears of phulkur.*—A suit for arrears of rent of the description known as phulkur cannot be tried by a Small Cause Court. GOBIND SOOKOOL *v.* GOKOOL BHUKUT . . . . **23 W. R., 304**

224. ——————— *Act XI of 1865, s. 6.—Jurisdiction.—Suit for refund of rent voluntarily paid to a wrong person.*—A mofussil Court of Small Causes has no jurisdiction under section 6 of Act XI of 1865 to entertain a suit for a refund of money paid as rent, in which it is found that the payment was made to a wrong person voluntarily, and under no mistake as to that person being entitled to receive it, but with the object of defrauding an intermediate tenure-holder. RAM CHAND DUTT *v.* MOSAI SANTAL . **I. L. R., 11 Calc., 738**

225. ——————— *Suit for rent.—Suit at full rates after remission for years.—Act XLII of 1860, s. 3.—"Suit."—Mad. Regs. XXVIII of 1802, and V of 1882, s. 2.*—A zemindari was attached in 1827, and the Collector, without authority from the Board of Revenue or the Government, remitted a portion of the tirvai, and continued such remission until 1842, when the zemindari was restored. The then zemindar and his successors continued the remissions, always, however, entering the faisal rates in the pottahs and setting down the remissions as munasib. In 1861 the plaintiff became lessee of the zemindari, and in 1862, pursuant to notice, he tendered pottahs for Fasli 1272 to the defendant and the ryots at the faisal rates. *Held,* first, that the plaintiff was not precluded from raising the rents to the amount of the faisal assessment; secondly, that the Act of limitations did not apply; and, thirdly, that the plaintiff might sue in a Court of Small Causes for the rent for Fasli 1272. The word "suit" in the proviso of section 3 of Act XLII of 1860 referred to regular suits before a Collector under Act X of 1859, and not to the summary proceedings under Regulation XXVIII of 1802, and section 2 of Regulation V of 1822. ADIMULAM PILLAI *v.* KOVIL CHINNA PILLAI . **2 Mad., 22**

But *see* UPPALAPATI GANAKAYA GARU *v.* BALAVI RAMUDU . . . . **2 Mad., 475**

226. ——————— *Suit for damages after notice to quit or pay rent.*—A notice was issued on defendant requiring him to quit the land or pay rent, and defendant refused to do either. Plaintiff therefore rightly brought his suit for damages, and not for rent, and the Small Cause Court had jurisdiction to entertain it. But as the Court rejected the suit as being substantially one for rent, its order was set aside, and the suit ordered to be restored to the file of that Court. BHOOBUN MOHUN BOSE *v.* CHUNDERNATH BANERJEE **[17 W. R., 69**

227. ——————— *Damages on account of rent.—Suit for use and occupation.—Trespass.—Ejectment.—Mesne profits.*—The plaintiff, alleging that the defendant, without her permission, removed a lock placed by her on her house and took possession of it, sued in a Court of Small Causes for "damages on account of rent" of which she was thus deprived. The Court, regarding the suit as one for use and occupation, made a decree in favour of the plaintiff. *Held* that the suit was not rightly regarded as one for use and occupation, for the claim was not based on any contract, express or implied: it should have been regarded as an action of trespass, brought to try a question of title,—an action in which the Court of Small Causes had no jurisdiction. The plaintiff's proper remedy was by an action of ejectment in the ordinary Civil Courts, to which, if he chose, he could add a claim for mesne profits for the period during which the defendant had been in occupation. The decree of the Court of Small Causes was, accordingly, annulled. JAMNADAS *v.* BAI SHIVKOR . **I. L. R., 5 Bom., 572**

228. ——————— *"Damages on account of rent."—Suit for use and occupation.—Trespass.—Ejectment.—Mesne profits.*—The plaintiff obtained a decree declaring him entitled to a certain house. He thereupon gave to the defendant, who was in occupation, notice to pay him rent, and on default of such payment he sued the defendant in the Court of Small Causes to recover "damages on account of rent." *Held* that the suit was not maintainable in a Court of Small Causes, which could not be used as a medium for ejecting, by indirect means, a person in possession of immoveable property. *Held,* also, that the plaintiff's suit was

SMALL CAUSE COURT, MOFUSSIL— *continued.*

2. JURISDICTION—*continued.*

Rent—*continued.*

only maintainable as a suit for damages on account of trespass, and in such a suit it would be necessary for the plaintiff to prove possession prior to the trespass, or to have obtained a decree in ejectment which would relate back to the date of the trespass. The plaintiff had obtained nothing more than a decree declaring him to be the owner of the house; but this did not necessarily import a right to immediate possession, nor could the plaintiff be allowed to derive from it all the benefits which he might derive from a decree in ejectment. KALIDAS *v.* VALLABHDAS . . . . **I. L. R., 6 Bom., 79**

229. ——— **Sale-proceeds.**—*Suit for refund of moneys paid under order of Court.*—A suit to recover a refund of moneys paid under an order of Court is not cognisable by a Court of Small Causes. GRISH CHUNDER MUNDUL *v.* DOORGA DOSS **[I. L. R., 5 Calc., 494**

230. ——— *Act XI of 1865.—Civil Procedure Code, 1882, s. 295.—Suit for refund of assets paid in execution of decree.*—A suit under section 295 of the Code of Civil Procedure to compel refund of assets paid in execution of a decree to a person not entitled thereto is cognisable by a Court of Small Causes constituted under Act XI of 1865. *Shahi Ram* v. *Shib Lal* (*I. L. R., 7 All., 378*, dissented from. HARIHARA *v.* SUBRAMANYA **[I. L. R., 9 Mad., 250**

231. ——— *Second appeal.—Sale-proceeds, Suit for share of.*—A suit by one decree-holder against another for the money received by the latter on a division between them of the proceeds of an execution sale as his share of such proceeds, under the order of the Court executing the decrees, is a suit of the nature cognisable in a Court of Small Causes, and consequently, where the amount of such money does not exceed five hundred rupees, no second appeal lies in such suit. MATA PRASAD *v.* GAURI . . **I. L. R., 3 All., 59**

232. ——— *Civil Procedure Code, 1882, s. 295.—Suit for refund of proceeds of execution sale.*—*S.* and *L.* held mortgage-bonds executed in their favour by the same person. *S.'s* bond was dated the 16th June 1882, and was registered, the registration being compulsory, *L.'s* bond was of prior date, the 30th December 1880, and was not registered, the registration being optional. Both instituted suits on their bonds against the obligor, and obtained decrees for sale of the property, the decrees being passed on the same day. The property was attached in execution of both decrees on the 14th August 1882. The sale-proceeds were divided by the Court executing the decrees equally between the parties by an order dated the 1st May 1883, notwithstanding that *S.* claimed the whole on the ground that he was an incumbrancer under a decree passed on a registered instrument, and therefore entitled to priority. *S.* being dissatisfied with this order, brought a suit to recover from *L.* the moiety of the sale-proceeds paid to him. *Held* that the suit being one to compel the defendant to refund assets of an execution sale which he was not entitled to receive, and to set aside the order of the Court executing the decree, which directed the payment of the assets to him, was expressly allowed to be brought under the provisions of the penultimate paragraph of section 295 of the Civil Procedure Code, and could not be regarded as a suit of the nature cognisable in a Court of Small Causes. SHAHI RAM *v.* SHIB LAL **[I. L. R., 7 All., 378**

233. ——— *Proceeds of immoveable property.—Jurisdiction.—Act XI of 1865, s. 6.—Money had and received.—Sale of tenure.—Co-sharers.*—The plaintiff and the defendant were co-owners of a certain talook. The zemindar brought a suit for arrears of rent of the talook against the defendant, obtained a decree, and in execution of that decree sold the tenure. The proceeds of the sale, after satisfying the zemindar's decree, were taken by the defendant, and the plaintiff instituted the present suit to recover an 8-anna share thereof. *Held* that such a suit was not cognisable by a Small Cause Court. *Mata Prasad* v. *Gauri, I. L. R., 3 All., 59*, dissented from. RAM COOMAR SEN *v.* RAM COMUL SEN . . . . **I. L. R., 10 Calc., 388**

234. ——— **Salvage.**—*Suit for salvage.—Abandonment of property saved.*—A suit for salvage even when the saved property has been abandoned by those in charge of it, is not cognisable by a Court of Small Causes. KISHORE SINGH *v.* GUNNESH MOOKERJEE . . . . **9 W. R., 252**

235. ——— **Tax.**—*Suit for amount of trade impost.—Suit for rent.*—A Court of Small Causes has no jurisdiction to entertain a suit to recover the amount of a trade impost alleged to be leviable from the defendant in common with all other persons carrying on the trade of weaving within a particular district. Such a suit cannot be considered as a claim for rent. JAGHIRDAR OF ARNEE *v.* PERIYANNA MUDELY . . . . . **5 Mad., 317**

236. ——— **Title, Question of.**—*Denial of title of plaintiff by defendant.*—Where the cause of suit, as stated by the plaintiff, appears to be within the cognisance of a Court of Small Causes, the mere denial by the defendant of the plaintiff's right of title is not sufficient to oust the jurisdiction of the Court. If it reasonably appears to the Judge that a *bonâ fide* question of right which is not within his jurisdiction to decide is fairly raised in the suit, his jurisdiction ceases. AMMALLU AMMAL *v.* SUBHU VADIYAR . . . . . **2 Mad., 184**

237. ——— *Question incidentally arising.*—If a *bonâ fide* question of title arises incidentally in a Small Cause suit, the Court should determine it. ALAGIRISAMI NAIKER *v.* INNASI UDAYAN . . . **I. L. R., 3 Mad., 127**

SMALL CAUSE COURT, MOFUSSIL— *continued.*

2. JURISDICTION—*continued.*

Title, Question of—*continued.*

238. ——————— *Right to cut trees.*—A Court of Small Causes may try incidental questions of title which are indispensable to the decision of the claim before it,—*e.g.*, a right to land on which depends a party's right to cut trees. RADHA CHURN GANGOOLY *v.* GUDADHUR BAHADOOR **[15 W. R., 166**

239. ——————— *Suit for produce of land.*—If the right of the plaintiff be a question raised in a suit brought in a Court of Small Causes for recovery of value of produce, it is quite open to the Judge of the Court of Small Causes to try it, and determine it incidentally to the main question in the suit—the right to the produce claimed. DARMA AYYAN *v.* RAJAPA AYYAN **[I. L. R., 2 Mad., 181**

240. ——————— *Suit for damages for loss of produce.*—The jurisdiction of a Small Cause Court is not ousted in a suit for damages for carrying away the produce of certain land when the defendant sets up title to the land in answer to the claim. *Per* TURNER, *C. J.*—When a suit is brought in a form in which it is cognisable by a Small Cause Court under Act XI of 1865, the Court cannot decline jurisdiction if it appears that incidentally a question of title is raised which it has not jurisdiction to determine for any other purpose than the decision of the suit before it. Under such circumstances the Court may, however, properly grant a reasonable adjournment that the question may be litigated and determined by the proper tribunal. MANAPPA MUDALI *v.* MCCARTHY **[I. L. R., 3 Mad., 192**

241. ——————— *Act XLII of 1860.*—Plaintiff sued defendant in the Small Cause Court for damages for having cut down and removed trees from plaintiff's land. Defendant pleaded that he was entitled to do so under his pottah. *Held*, the Court had jurisdiction to try the question of the genuineness of the pottah. RAGHU RAM BISWAS *v.* RAM CHANDRA DOBAY **[B. L. R., Sup. Vol., 34: W. R., F. B., 127**

SHUMBHOO CHOWDHRY *v.* COMBS . **2 W. R., 179**

RAM JEEBUN KOYEE *v.* SHAHAZADEE BEGUM **[9 W. R., 336**

SUNKUR LALL PATTUCK GYAWAL *v.* RAM KALEE DHAMIN . . . . **18 W. R., 104**

But *see* INAYAT KHAN *v.* RAHMAT BIBI **[I. L. R., 2 All., 97**

and PACHOO RABEE *v.* GOOROO CHURN DASS . . . . **15 W. R., 556**

242. ——————— *Question of amount due on bond mortgaging land.*—Where an ijara constituted a mortgage of the rents as a security for an amount due on a bond, with a stipulation that the balance, after paying the jumma payable by the mortgagor, should be applied by the mortgagee in payment of the bond,—*Held* that the Small Cause Court had jurisdiction to try what amount was due on the bond, and also to try the question of payment by means of the rent assigned. MOHIMA CHUNDER MOOKERJEE *v.* RAM CHURN ROY **[6 W. R., Civ. Ref., 16**

243. ——————— *Suit for arrears of rent.*—In a suit for arrears of rent a Small Cause Court may decide whether the renting has taken place, and pass judgment for the amount claimed, without adjudicating upon the plaintiff's title. SUBBIRAMANIYA AYYAN *v.* VELAYUDA DEVAR . **1 Mad., 212**

244. ——————— *Denial of title.*—A Small Cause Court has no jurisdiction to try a suit for rent where the defendant *bonâ fide* sets up by way of defence that the title to the land in respect of which the rent was claimed passed from the plaintiff to others since the creation of the tenancy between the plaintiff and defendant, and that the rent claimed had accrued due after the determination of the plaintiff's title as landlord. VENKATACHALAM *v.* THIMMA NAIKAN . . . **5 Mad., 64**

245. ——————— *Mahômedan law.*—The seven heirs of a deceased Mahomedan, under an agreement among themselves, took equal shares of 14 annas of his estate and allotted 2 annas to rehalallah, —*i.e.*, devoted the profits to charitable purposes under the management of one of their number. On the death of such manager three of the heirs sued his tenant for a proportion of rent equal to their shares and three sevenths on account of rehalallah. The remaining heirs opposed the claim in regard to rehalallah, which they said the plaintiffs had no right to collect, and which could only be collected by the mutwali appointed by the deceased manager, urging that if the Court did not admit the appointment of the mutwali, it would have to decide whether collections should be made by the heirs in equal shares or in shares allowed by the Mahomedan law. *Held* that the suit ought not to be entertained by the Court of Small Causes. KOREEM BUX *v.* NOMEERO **[20 W. R., 349**

246. ——— **Wages.**—*Suit for wages against European British subject.*—A suit for wages under R50, alleged to be due from a European British subject to a native, can be tried in a Small Cause Court in the mofussil. RAMJAN BEG *v.* COOK **[6 B. L. R., Ap., 91: 14 W. R., 428**

247. ——— **Wrongful distraint.**—*Suit to recover value of goods distrained for rent under Mad. Act VIII of 1865, s. 27.—Parties.—Procedure.*—A suit to recover the value of goods distrained for rent under Madras Act VIII of 1865, and forcibly carried away from the person distraining, may be maintained in a Court of Small Causes under section 27 of the Act. The suit may be brought either by the landlord or the person authorised to distrain. A petition and summons and order after hearing the

SMALL CAUSE COURT, MOFUSSIL—*continued.*

2. JURISDICTION—*continued.*

Wrongful distraint—*continued.*

parties and their evidence appear to be the fitting mode of exercising the jurisdiction. VADAMALAI THIRUVANA TEVAR *v.* CARUPPEN SERVAI. ZEMINDAR OF SAITTUR *v.* CARUPPEN SERVAI [4 Mad., 401

3. PRACTICE AND PROCEDURE.

(*a*) EXECUTION OF DECREE.

248. ——— **Power of execution.**—*Change of jurisdiction.*—A Small Cause Court in which a decree is passed is competent to entertain an application for its execution, even if the debtor's residence and moveable property are situate in a place which has since the decree been excluded from that Court's jurisdiction. In such execution the course to be pursued was that prescribed by sections 285 and 286, Code of Civil Procedure, 1859. KODOO MUNDUL *v.* SHUSHEE SHIKHUR SIRCAR. . 16 W. R., 227

See ANONYMOUS CASE [B. L. R., Sup. Vol., 886: 9 W. R., 175

Contra, MUNSUK MOSUNDAS *v.* SHIVRAM DEVISING . . . I. L. R., 2 Bom., 532

GRISH CHUNDER KUR *v.* KRISTO CHUNDER GHOSE . . . . . 18 W. R., 123

ANONYMOUS . . 3 W. R., S. C. C. Ref., 7

249. ——— **Mode of execution.**—*Interest in moveable property, Power to sell.—Act XI of 1865, ss. 6 and 20.*—A Small Cause Court can sell the undivided right, title, and interest of a deceased debtor, to which the defendants succeeded, in the moveable property in satisfaction of a decree obtained against the defendants without infringing the 2nd proviso of section 6 of Act XI of 1865. Until the judgment-creditor has exhausted that mode of proceeding he is not entitled to proceed against the debtor's immoveable property under section 20 of the Act. AHOBALASOO CHETTY *v.* VENKATA KRISTNAMMA . . . . . 5 Mad., 275

250. ——— *Execution of decree.—Suit against member of undivided family.*—A Court of Small Causes has not power to do more in execution of a decree against an undivided member of a Hindu family than issue process for the attachment and sale of the defendant's undivided right, title, and interest in the family moveable property. It would be for the purchaser at such a sale to obtain a partition. IYAHVIEN *v.* CHITHAMBARIEN [5 Mad., 312

251. ——— *Act XI of 1865, ss. 19 and 20.—Rights and interests of judgment-debtor under bond pledging immoveable property.*—The rights and interests of a judgment-debtor under a mortgage bond hypothecating to him immoveable property are not saleable by a Court of Small Causes. A sale of such rights by a Court of Civil Judicature, by virtue of a certificate issued under the provisions of section 20 of Act XI of 1865, is the proper mode of execution. BUDDOO MULL *v.* MAHAROOP [6 N. W., 129

252. ——— *Power of Court to attach salary.—Civil Procedure Code, 1882, ss. 223, 268.*—A mofussil Court of Small Causes must adopt the machinery of section 223 of the Civil Procedure Code in all cases where execution is sought against persons or property outside its local jurisdiction. Such a Court, therefore, cannot attach the salary of a public officer where the same is disbursed outside its local jurisdiction. *Hossein Ally* v. *Ashotosh Gangooly, 3 C. L. R., 30,* followed. PARBATI CHARAN *v.* PANCHANAND . I. L. R., 6 All., 243

253. ——— **Transfer for execution.**—*Act XI of 1865, s. 20.—Transfer to, and execution by, Munsif's Court.—Sale of land.—Certificate not filed.—Title of purchaser.*—A decree passed by a Subordinate Judge's Court on the Small Cause side was, after the abolition of the said Court, transferred by the District Court for execution to a District Munsif's Court. The District Munsif, on the application of the creditor, attached and sold certain land. No application was made by the creditor for a certificate as provided by section 20 of Act XI of 1865, nor was any objection taken to the execution proceedings by the debtor. The creditor having purchased the land, sold it to *N.*, who, in attempting to take possession, was resisted by the debtor. In a suit to obtain possession of the land,—*Held* that *N.* was entitled to recover. NAGIREDDI *v.* RAMANNA [I. L. R., 7 Mad., 592

254. ——— *Act XI of 1865, s. 20.—Civil Procedure Code, 1882, s. 223.—Small Cause decree of Subordinate Judge.—Execution against immoveable property.—Co-ordinate jurisdiction of Subordinate Judge and District Munsif.—Execution by District Munsif.*—The Court of a Subordinate Judge and that of a District Munsif had jurisdiction over certain immoveable property. A Small Cause decree of the former Court having been sent by the Subordinate Judge to the Court of the District Munsif for execution against the said property under the provisions of section 20 of Act XI of 1865, the application for execution was rejected by the Munsif on the ground that this procedure was illegal. *Held* that section 20 of Act XI of 1865 was not modified by section 223 of the Code of Civil Procedure, and that the Munsif's Court was, therefore, bound to execute the decree. KAHANARAMA *v.* RANGA . . . . I. L. R., 8 Mad., 8

(*b*) NEW TRIALS.

255. ——— **Act XI of 1865, s. 21.**—*Review.—Limitation Act, 1877, art. 173.*—Section 21 of Act XI of 1865 held to be in force, notwithstanding the right of review given to Small Cause

SMALL CAUSE COURT, MOFUSSIL—*continued.*

3. PRACTICE AND PROCEDURE—*continued.*

(*b*) NEW TRIALS—*continued.*

Act XI of 1865, s. 21—*continued.*

Courts in the mofussil by section 623 of the Code of Civil Procedure, 1882. Where the circumstances of a case admit of a new trial, an application for such new trial is governed by section 21 of Act XI of 1865; but where the circumstances of a case do not admit of a new trial, but do admit of a review, then the time within which an application for review should be made is to be governed by article 173, schedule II of Act XV of 1877. MADON MOHON PODDAR *v.* PURNO CHUNDRA PURBOT . **I. L. R., 10 Calc., 297**

256. ——————— *Civil Procedure Code, 1877, s. 624.—Power to grant new trial of case tried by predecessor.*—A Judge of a mofussil Small Cause Court was held to have jurisdiction to direct a new trial of a case tried by his predecessor, section 21 of Act XI of 1865 not having been repealed by the Civil Procedure Code, 1877. *Per* GARTH, *C. J.*—The Judge, however, in dealing with applications for new trial under section 21, should have regard to the rule laid down in section 624 of the Code of Civil Procedure. SHUMSHER ALLY *v.* KURKUT SHAH . **[I. L. R., 6 Calc., 236: 6 C. L. R., 549**

257. ——————— *New trial of ex parte case.—Reopening of case against all the defendants.*—It may be competent to the Judge of a Small Cause Court on hearing one of the defendants to set aside an *ex parte* decree as to all, if justice requires it,—*e.g.*, if the objection is one which is common to the case of all; but he is not bound, because the decree is set aside as to one defendant, to interfere with the decision against others who do not object. DOOKHEE KHAN *v.* RAJESSUREE RANEE **[15 W. R., 371**

258. ——————— *Fraudulent confession of judgment.—New trial.*—A Small Cause Court Judge may on the ground of fraud and false personation grant a new trial where judgment has been passed on a confession of judgment. IN THE MATTER OF HURO MONEE DOSSEE . **17 W. R., 48**

259. ——————— *Application for new trial, Ground for.—Computation of time prescribed for application.*—An error as to date in the summons to plaintiff's witnesses is sufficient ground for setting aside an order dismissing his suit. The time prescribed by Act XI of 1865, section 21, for an application for a re-trial, is exclusive of the date on which the suit was dismissed. BIJOY GOBIND DEB *v.* MUDDUN RAM PAL . **18 W. R., 454**

260. ——————— *Third application for new trial.*—A third application for a new trial in a Court of Small Causes is not admissible under section 21, Act XI of 1865. DHUNNOO CHOWDHRY *v.* BUKSHUN . . . . . **12 W. R., 266**

261. ——————— *Non-appearance of defendant.—Application to set aside ex parte decree.*—There is nothing in the first part of section 21 of Act XI of 1865 showing that an application in accordance with that portion of the section is limited to the first occasion on which a defendant puts in an appearance to a suit. Where, therefore, a case is adjourned from the date fixed in the summons to any later date, and on such later date a defendant is prevented by sufficient cause from appearing, and in default of such appearance an *ex parte* decree is given against him, he may apply under the first part of section 21 for an order to set aside such decree. IN THE MATTER OF DOYAL MISTREE *v.* KUPOOR CHUND **[I. L. R., 4 Calc., 318: 3 C. L. R., 482**

262. ——————— *Procedure.—Deposit of amount of decree and costs.*—A defendant desiring a new trial of a case decreed against him in a Small Cause Court must deposit in Court the amount of the decree passed against him and costs, at the time of giving notice of his intention to apply for the new trial. A subsequent deposit, though made within seven days from the date of the decision, will not entitle the party to ask for a new trial. *Semble,*—The "next sitting of the Court" mentioned in section 21, Act XI of 1865, refers to the next sitting after the decision complained of; and the words "within the period of seven days from the date of the decision" apply to cases in which the sittings of the Small Cause Court are not held consecutively by reason of the same Judge being the Judge of more than one Court. KAILAS CHANDRA SANNEL *v.* DOWLAT SHEIKH **[5 B. L. R., Ap., 57: 14 W. R., 42**

263. ——————— *Deposit of amount of decree and costs.*—If an application for a review of judgment made by a defendant in a Small Cause Court be in the nature of an application for a new trial, the amount of the decree, though made payable by instalments, must be deposited in Court, under section 21 of Act XI of 1865. NAVROJI PESTANJI *v.* MANSUKH JAYACHAND . **5 Bom., A. C., 70**

264. ——————— *Deposit of costs.*—Act XI of 1865, section 21, does not require a plaintiff applying for a new trial to deposit the costs of the defendants. MOHIMA CHUNDER ROY *v.* HURNATH CHUNGO . . . . . **18 W. R., 446**

265. ——————— *Notice of application.*—Where one of the provisions of section 21, Act XI of 1865, is not complied with,—*e.g.*, where no notice of an intention to apply at the next sitting of the Court for a new trial is given,—an application for a new trial cannot be entertained. IN RE PITAMBAR SADHU KHAN . . **6 B. L. R., 390, note**

S. C. PETUMBER SHADOO KHAN *v.* DOYA MOYEE DOSSEE . . . . . **12 W. R., 17**

266. ——————— *Practice.—Notice of application.—Review.—Civil Procedure Code (Act X of 1877), s. 623.*—The notice clause in section

SMALL CAUSE COURT, MOFUSSIL— *continued.*

3. PRACTICE AND PROCEDURE—*continued.*

(*b*) NEW TRIALS—*continued.*

Act XI of 1865, s. 21—*continued.*

21, Act XI of 1865, is applicable only to those cases where a new trial cannot be applied for within seven days after the judgment, in consequence of there being no sitting of the Court. Where the application is made within seven days, the notice is unnecessary. If the grounds upon which the new trial is moved are proper grounds for granting a review, the applicant is entitled to proceed under section 623 of the Code of Civil Procedure without resorting to Act XI of 1865. RATAN KRISHEN PODDAR *v.* RAGHOO NATH SHAHA . **I. L. R., 8 Calc., 287 : 10 C. L. R., 275**

See ISAN CHUNDER BANERJEE *v.* LUCHUN GOPE. KEMP *v.* PREMNARAIN SINGH. **[I. L. R., 5 Calc., 699 : 5 C. L. R., 539**

267. ——————— *"Next sitting of the Court."—Judge holding two offices.*—Where the same person holds the office of Judge in two Small Cause Courts, and sits for the first half of the month in one Court and for the remaining half in the other, the next sitting of either Court after the close of its half-monthly term would be on the first day on which the Judge sat again in that Court. MADHUB CHUNDER BISWAS *v.* OKHOY CHUNDER BISWAS. GOPEE MOHUN BANERJEE *v.* SREEKANTO BOSE **[13 W. R., 103**

268. ——————— *Application before execution of decree had been taken out for new trial.*—An application presented to a Small Cause Court on the 25th May to set aside an *ex parte* decree obtained, on the 14th March, where no process had been executed for enforcing the decree, was held to fall within the first of the two provisions in section 21, Act XI of 1865. SHOJONEE DOSSIA *v.* DHURONEE DHUR GHOSE . . **16 W. R., 226**

269. ——————— *Notice of application.—Next sitting of Court.*—A judgment-debtor in a Small Cause Court on the day (28th July) of her arrest in execution of an *ex parte* decree deposited the amount claimed, and gave notice, under section 21 of Act XI of 1865, that on the next day of the sitting of the Court she would file her grounds for a new trial. The Court next sat on the 1st August, and she filed her application on the 2nd. *Held* that the Judge of the Small Cause Court was right in proceeding to hear the application, instead of going through the formality of telling her to first give notice and apply again. VAUGHAN *v.* LALL CHAND GHOSE . . . . . **15 W. R., 281**

270. ——————— *Ex parte decree obtained on forged bond.*—Petitioner specially registered a bond, brought it into a Small Cause Court, and, without serving the obligors with any summons, got an *ex parte* decree against them, and shortly after took out execution. The judgment-debtor appeared within thirty days of the decree, and applied for stay of execution on the ground that the bond was a forgery. Execution was stayed on security given, a re-hearing was granted in the presence of both parties, the original decree was reversed, and a fresh decree given. *Held* that in this state of the facts, the Small Cause Court had jurisdiction to grant a review and fresh decree, and that the procedure laid down in section 21 of Act XI of 1865 was followed as far as it was applicable. IN THE MATTER OF MOHUN SAHOO . . . . **11 W. R., 245**

271. ——————— *Second application for new trial.*—An application having been made to a Small Cause Court Judge to set aside an *ex parte* decree, the Judge found from the record that the defendant had been personally served with a summons. He accordingly requested the pleader to tell his client to be present three days after to be examined. As neither the applicant nor his pleader was present on that date, the Judge rejected the application without issuing notice on the opposite party. A second application was then made under section 21, Act XI of 1865. *Held* that the communication to the pleader was an informal proceeding, and as applicant had not been summoned in due form his application should not have been rejected in his absence, and the Judge was bound to hear the second application. GOPAL CHUNDER ROY *v.* ARMAN SHAIKH **[15 W. R., 402**

Reviews of judgment of a Small Cause Court as distinguished from new trials are now governed by section 623 of the Civil Procedure Code, 1882.

(*c*) REFERENCE TO HIGH COURT.

References to the High Court are now made under section 617 of the Civil Procedure Code of 1882, which has been substituted for section 22 of Act XI of 1865. The substituted section is of wider application than section 22, and embraces questions arising in execution of decree as well as questions in a suit, which it was formerly held could not be referred.

See SUROOP CHUNDER PATEE *v.* JADOO MOYTEE **[5 W. R., S. C. C. Ref., 7**

ANAND CHANDRA MAZUMDAR *v.* GOBARDHAN KHAN . . **B. L. R., Sup. Vol., 457 [5 W. R., S. C. C. Ref., 19**

KAMINEE SOONDUREE CHOWDHRAIN *v.* MUDHOO SOODUN MOOKERJEE . . **21 W. R., 376**

BANK OF BENGAL *v.* CURRIE **[3 B. L. R., 396 : 12 W. R., 432**

As to what is to be referred

See GUJENDRO MOHUN SHAHA *v.* EASTERN BENGAL RAILWAY COMPANY . **18 W. R., 145**

and how the reference is to be made

DINONATH ADDY *v.* WELLER . **7 W. R., 16**

SMALL CAUSE COURT, MOFUSSIL— *continued.*

3. PRACTICE AND PROCEDURE—*continued.*

(*c*) REFERENCE TO HIGH COURT—*continued.*

272. ——— Ground for reference.—*Application of parties.*—A Small Cause Court should not make a reference on a simple point merely on the application of the parties, unless it entertains a doubt upon the question. HURISH CHUNDER TALAPUTTUR *v.* O'BRIEN . . **14 W. R., 248**

273. ——— Questions arising on application for new trial.—*Act X of 1867, s. 1.—Act XI of 1865, s. 22.*—When the judgment of a Small Cause Court is called in question by one of the parties on a point of law, such as that damages have been assessed on a wrong principle, his proper course is to apply for a new trial. The facts not being disputed, the Judge may grant a new trial as to what amount of damages were sustained; and in determining that question, he may alter his opinion as to the principle on which damages ought to be assessed, and upon the new trial assess them on the proper principle. A question of law arising on an application for a new trial, was a question which might be referred to the High Court for its opinion as a question within the meaning of section 1, Act X of 1867, arising at any point in the proceedings previous to the hearing of a suit. The hearing in a new trial is a hearing within Act XI of 1865, section 22. An application for a new trial is a point in the proceedings previous to the hearing. ISAN CHANDRA SING *v.* HARAN SIRDAR **[3 B. L. R., A. C., 135: 11 W. R., 525**

274. ——— *Act XI of 1865.*—A point arising upon the application for a new trial may be referred to the High Court. NOBO COOMAR CHUCKERBUTTY *v.* KOYLASH CHUNDER BAROOREE . . . . **17 W. R., 518**

275. ——— Change of Judges pending reference.—*Second reference by successor of Judge in case already decided.*—Where a case was determined by a former Judge of a Small Cause Court, contingent upon the opinion of the High Court upon the question submitted by that Judge, and the parties had an opportunity of appearing and being heard in the High Court before the Judges expressed their opinion,—*Held* that when that opinion was expressed the case was at an end, and that it was irregular for a Judge who had succeeded to the Judge who referred the case to interfere in the matter. UMANUND ROY *v.* BROWNE . . . . **7 W. R., 352**

(*d*) MISCELLANEOUS CASES.

276. ——— Act XI of 1865, s. 45 and s. 20.—*Power of Clerk of Small Cause Court.*—A clerk of a Small Cause Court is not authorised to sign the copy of the judgment and certificate alluded to in section 20, Act XI of 1865. ANONYMOUS **[3 W. R., S. C. C. Ref., 7**

277. ——— s. 51.—*Powers of Local Legislature.—Judges of Small Cause Courts.*—*Held* that, in permanently investing, under section

SMALL CAUSE COURT, MOFUSSIL— *continued.*

3. PRACTICE AND PROCEDURE—*continued.*

(*d*) MISCELLANEOUS CASES—*continued.*

Act XI of 1865, s. 51—*continued.*

51 of Act XI of 1865, the Judges of the Courts of Small Causes at Agra, Allahabad, and Benares, with the powers of a Principal Sudder Ameen (Subordinate Judge), the Local Government did not exceed its power or contravene the law, although the occasional investiture of Small Cause Court Judges by name from time to time, with the powers of a Principal Sudder Ameen, may have been the mode of procedure contemplated by the Legislature as the one likely to be ordinarily adopted. *Bijee Kooer* v. *Damodur Doss, 5 N. W., 55,* impugned. CROSTHWAITE *v.* HAMILTON . **I. L. R., 1 All., 87**

278. ——— *Execution of decrees of Small Cause Courts against immoveable property.* —*Powers of Judge of Small Cause Court.*—The Judge of a Court of Small Causes, who has been duly invested with the powers of a Subordinate Judge under the provisions of section 51 of Act XI of 1865, has "general jurisdiction" within the meaning of section 20 of that Act, and can consequently, under the provisions of that section, enforce a decree under that Act against the immoveable property of the judgment-debtor. GOPAL *v.* NANKU **[I. L. R., 1 All., 624**

279. ——— *Power to invest Small Cause Court Judge with powers of Principal Sudder Ameen.*—Section 51, Act XI of 1865, did not authorise the Local Government to permanently and unconditionally invest the Judge of a Small Cause Court with the powers of a Principal Sudder Ameen. The section only contemplated an occasional investment of the powers, and one contingent on the state of the business of the Court. BIJEE KOOER *v.* DAMODUR DASS . . . **5 N. W., 55**

280. ——— Power to invest Small Cause Courts with insolvency jurisdiction.—*Civil Procedure Code, 1877, s. 5.—Ch. XX., ss. 344-360.*—The effect of section 5 of the Code of Civil Procedure (Act X of 1877), coupled with the second schedule to that Act, was to render the whole of Chapter XX (relating to insolvent debtors) of the Code, including section 360, inapplicable to Courts of Small Causes in the mofussil, notwithstanding the words "any Court other than a District Court" and any "Court situate in his district" which occur in that section. Consequently, the Government Resolution No. 2133, of the 3rd of April 1878, investing the Judge of the Court of Small Causes at Ahmedabad with powers, under the said chapter, to adjudicate in insolvency matters, was *ultra vires* and invalid. LALLU GANESH *v.* RANCHHOD KAHANDAS **[I. L. R., 2 Bom., 641**

By the Civil Procedure Code Amending Act XII of 1879, section 360 is made applicable to Small Cause Courts, so that such a resolution would now apparently be valid.

SMALL CAUSE COURT, PRESIDENCY TOWNS.

Col.

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SMALL CAUSE COURT, PRESIDENCY TOWNS—*continued.*

1. JURISDICTION.

(a) GENERALLY.

1. ——— **Extension of jurisdiction by Act XV of 1882.**—*Act IX of 1850, s. 53.—Abandonment of excess.*—Whilst the pecuniary jurisdiction of the Small Cause Court was limited to R1,000, the plaintiffs brought a suit for that amount for damages for breach of a certain contract after abandoning the excess, and in that suit they elected a non-suit under section 53, Act IX of 1850. *Held*, in a suit brought in respect of the same damages for the full amount due to them, that the plaintiffs were not precluded, by their having abandoned the excess in the former suit, from recovering the full amount sued for. SIMSON *v.* GORA CHAND DOSS [I. L. R., 9 Calc., 473

2. ——— **Adding sum to legal claim for purpose of giving jurisdiction.**—*Act IX of 1850, s. 28.—Act XXVI of 1864, s. 2.*—A plaintiff cannot give jurisdiction to the Small Cause Court by adding to his claim sums which he could not, under any circumstances, be entitled to recover. *Sikhur Chund* v. *Sooringmull, 1 Hyde, 272*, distinguished. BONOMALLY NAWN *v.* CAMPBELL [10 B. L. R., 193 : 19 W. R., 20

3. ——— **Abandonment of excess.**—*Claim not within pecuniary limits of jurisdiction.*—The Court has no jurisdiction to hear a case unless there be an abandonment of any excess above its pecuniary jurisdiction. GORACHUND CHUNDER BOSE *v.* CHABROO CHUNDER GHOSE [Bourke, O. C., 3 : Cor., 93

4. ——— **Splitting claim.**—*Omission to abandon excess.—Act IX of 1850, s. 34.—Held*, under section 34 of Act IX of 1850, that an abandonment of excess not stated in the summons is a splitting of the claim, and the Court has no jurisdiction to amend its record where there is no abandonment so stated. GORACHUND CHUNDER BOSE *v.* CHABROO CHUNDER GHOSE . Bourke, O. C., 3 : Cor., 93

5. ——— **Splitting cause of action.**—*Act IX of 1850, s. 34.*—The defendant, as broker for the plaintiffs, guaranteed all transactions entered into by the plaintiffs with native firms through the defendant. Some of these native firms, in respect of such transactions, became indebted to the plaintiffs, and the defendant wrote to the plaintiffs requesting them to sue such defaulting firms. The plaintiffs accordingly sued six of such firms, and sent a letter to the defendant claiming from him payment of the taxed costs incurred in all the suits, amounting to R7,553-10-6. The defendant having failed to pay, the plaintiffs sued him in the Small Cause Court, to recover payment of the taxed costs incurred in one of the suits, amounting to R438. *Held* that the plaintiffs, in doing so, were splitting their cause of action within the meaning of section 34 of the Small Cause Court Act (IX of 1850). BLACKWELL & CO. *v.* SUMAR AHMED [6 Bom., O. C., 88

SMALL CAUSE COURT, PRESIDENCY TOWNS—*continued.*

1. JURISDICTION—*continued.*

(*a*) GENERALLY—*continued.*

Splitting cause of action—*continued.*

See CHOCKALINGA PILLAI *v.* VIRUTHALAM [4 Mad., 334

6. ——————— *Act IX of 1850, s. 34.—Tradesman's account.*—A tradesman cannot, by keeping separate accounts of his dealings with a customer, split his cause of action so as to bring his suit within the jurisdiction of a Small Cause Court in the Presidency towns. CASSUM JOOMA *v.* THUCKER LILADHUR KISSOWJI [I. L. R., 2 Bom., 570

7. ——— **Valuation of suit.**—*Suit for damages under R1,000, on contract of more than R1,000.*—In an action for damages on account of defendant's refusal to take delivery of goods of the value of R3,699-6-8, sold to him by plaintiff, which goods were afterwards re-sold at a loss of R344-5-9, —*Held* that the Court of Small Causes had jurisdiction, notwithstanding that the original contract was for more than R1,000. KUPPU CHETTI *v.* CHIDAMBARA MUDALI . . . . . 3 Mad., 170

8. ——————— *Act IX of 1850, s. 27.—Liquidated damages.—Earnest-money.*—Where a contract for the sale and delivery of 2,000 baras of stone contained a provision that in case of breach by the purchaser a sum as liquidated damages was to be paid by him at the rate of R1 per bara, and the purchaser paid R1,000 earnest-money, but made default in accepting the stone,—*Held* that, though in default of acceptance the earnest-money, R1,000, was forfeited, the vendor could not retain the earnest-money and sue for the whole amount of the liquidated damages; but that his proper course was to sue for the difference only, which suit could properly be brought in the Small Cause Court, being R1,000 only. MEHERVANJI MANCHARJI *v.* PUNJA VELJI . . . . . 5 Bom., O. C., 147

9. ——————— *Set-off.—Deduction of amount of proceeds of goods not accepted.*—The plaintiffs consigned goods to the defendant, and drew a bill for R2,711-9-6 against them on the defendant in favour of the Chartered Mercantile Bank. The bill was accepted by the defendant, and, when presented for payment, was dishonoured. The bill was paid for honour by the attorney of the plaintiffs. The goods arrived, and (the defendant having refused to pay the bill) were sold by the plaintiffs, after notice to the defendant, at his risk, and realised R1,655-15-4. The plaintiffs refused to hold a survey on the goods unless the defendant paid the amount of the acceptance. The plaintiffs sued the defendant in the Small Cause Court for the amount of his acceptance, giving him credit for the proceeds of the goods, and abandoning the excess. *Held* that the plaintiffs were not entitled to do so, as the claim on the bill was not brought within the jurisdiction of that Court by payment or admitted set-off. SHORTT *v.* ABDUL RAHIMAN [6 Bom., O. C., 53

SMALL CAUSE COURT, PRESIDENCY TOWNS—*continued.*

1. JURISDICTION—*continued.*

(*a*) GENERALLY—*continued.*

Valuation of suit—*continued.*

10. ——————— *Part payment.—Set-off.—Suit for balance of account.*—The plaintiffs advanced R15,000 against the defendant's grain consigned to Hong-Kong, to be there sold on his account by the plaintiffs' agents. The plaintiffs subsequently gave credit to the defendant for R14,115-3-3, alleged to have been received by them as the proceeds of the sale, and sued him for the balance in the Bombay Small Cause Court, abandoning the excess so as to bring the claim within the Court's extended jurisdiction of R1,000. The defendant disputed the correctness of the account sales forwarded by the agents at Hong-Kong, and contended that the Court had no jurisdiction to try the case. The Judge, subject to the opinion of the High Court upon the facts as stated, struck the case out of the list for want of jurisdiction. *Held* that, as both the plaintiffs and the defendant were bound, by the nature of the transaction, to have the proceeds of the sale applied to satisfy the advance made by the plaintiffs to the defendant, the receipt by the plaintiffs of the amount, for which they gave credit in their particulars of demand, was in the nature of a part payment; and that the suit was, therefore, on a balance of account, and within the jurisdiction of the Court of Small Causes. EWART, LATHAM, & CO., *v.* MUHAMMAD SIDDIK . . . . . 4 Bom., O. C., 133

(*b*) ARMY ACT.

11. ——— **Stat. 44 and 45 Vict., c. 58, ss. 148, 151.**—*Act XV of 1882, s. 18.—Leave to sue.*—The jurisdiction given to Small Cause Courts by Act XV of 1882 is not affected by 44 and 45 Victoria, cap. 58, section 151. WALLIS *v.* TAYLOR [I. L. R., 13 Calc., 37

(*c*) DECREE, SUIT ON—

12. ——— **Suit on decree of Small Cause Court.**—*Presidency Small Cause Courts Act, XV of 1882, ss. 1, 4, 94.*—A judgment-creditor in the Court of Small Causes had not before the 1st July 1882 the right to sue in that Court on his judgment. MERWANJI NOWROJI *v.* ASHABAI [I. L. R., 6 Bom., 1

(*d*) INSOLVENCY.

13. ——— **Madras Small Cause Court.**—*Civil Procedure Code (Act XIV of 1882), ss. 8-3.—Presidency Small Cause Courts Act (XV of 1882), ss. 2-23.*—The Madras Court of Small Causes has no jurisdiction in insolvency. The second paragraph of section 8 of the Code of Civil Procedure, 1882, which authorised the Local Government, by notification published in the official Gazette, to extend to the Presidency Small Cause Court certain portions of the said Code, is repealed by the Presi-

SMALL CAUSE COURT, PRESIDENCY TOWNS—*continued.*

1. JURISDICTION—*continued.*

(*d*) INSOLVENCY—*continued.*

Madras Small Cause Court—*continued.*

dency Small Cause Court Act (section 2 of Act XV of 1882), and consequently the notification of the Governor in Council of Fort St. George, dated 25th February 1879, conferring on the Madras Court of Small Causes jurisdiction in insolvency, being repugnant to section 8 of the Code of Civil Procedure, 1882, as amended, if otherwise valid, ceased to have effect when Act XV of 1862 came into force. IN RE WALLER . . **I. L. R., 6 Mad., 430**

(*e*) MOVEABLE PROPERTY.

14. ——— Tiled huts.—*Act IX of 1850, ss. 58, 88.—Goods and chattels.*—Tiled huts were not "goods and chattels" within the meaning of section 58, Act IX of 1850, and therefore could not be taken in execution under that section. Where tiled huts had been seized under a decree of the Small Cause Court, and a third party interpleaded under section 88 of Act IX of 1850, and claimed the huts, —*Held* that the Court, having no power to seize the huts, was right in dismissing the claim. KALLYPERSAUD SINGH *v.* HOOLAS CHUND **[10 B. L. R., 448: 20 W. R., 8**

15. ——— Fixtures.—*Act IX of 1850, s. 58.—Seizure of goods and chattels in execution of decree.—Engine in flour-mill.—Landlord and tenant.* —In a suit for damages for the removal of oil and flour mills and a steam-engine and boiler seized in execution of a decree of the Calcutta Small Cause Court,—*Held* that such things were fixtures and not goods and chattels, within the meaning of section 58 of Act IX of 1850, and therefore could not be seized in execution. The question whether fixtures are removeable by a tenant as against his landlord has nothing to do with the question whether they are seizable in execution as goods and chattels. MILLER *v.* BRINDABUN **[I. L. R., 4 Calc., 946: 4 C. L. R., 460**

(*f*) RECOVERY OF IMMOVEABLE PROPERTY.

16. ——— Question of title.—*Act IX of 1850, s. 91 (Act XV of 1882, s. 41).—Summons to show cause on what title occupier holds, without leave of owner.*—Upon a summons issued under section 91 of Act IX of 1850 by the Judge of the Small Cause Court to the occupier of a house to show by what title he claims to hold or occupy the same or part thereof,—*Held*, that the jurisdiction of the Small Cause Court was not ousted by the occupier appearing and showing as cause that which did not amount to an allegation of title in the occupier. *Held*, also, that the words in that section, "without leave of the owner," comprised a case where the original possession was with leave of the owner but was afterwards withdrawn by his vendee, the subsequent owner. DADABHAI HUSSANJI *v.* KUVARBAI . . . . . **10 Bom., 386**

SMALL CAUSE COURT, PRESIDENCY TOWNS—*continued.*

1. JURISDICTION—*continued.*

(*f*) RECOVERY OF IMMOVEABLE PROPERTY —*continued.*

Question of title—*continued.*

17. ——— *Act IX of 1850, ss. 91-93.—Difficult or doubtful question of title.*— Proof of the existence of a difficult or doubtful question as to the right to possession, *bonâ fide* raised by the person in possession, was held to be sufficient cause shown to justify a Presidency Small Cause Court in refusing a warrant of ejectment under section 93 of Act IX of 1850. MUHAMMED ESUF SAHIB *v.* GEORGE . . **I. L. R., 4 Mad., 385**

Mere assertion of a title to possession is not sufficient. MUHAMMED ESUF SAHIB *v.* GEORGE **[I. L. R., 4 Mad., 385**

ANONYMOUS CASE . **I. L. R., 4 Mad., 389, note**

18. ——— *Title to immoveable property.—Act IX of 1850, ss. 25, 91.—Act XXVI of 1864, s. 2.—Practice.—Leave to amend summons and plaint.*—In a suit brought under section 91 of Act IX of 1850, the Bombay Court of Small Causes had no jurisdiction to try a question of adverse title to the immoveable property, the subject of the suit. *Aliter*, if the suit were brought under section 25 of Act IX of 1850, as extended by section 2 of Act XXVI of 1864, and the value of the property in dispute did not exceed R1,000. In a case involving a question of adverse title, the plaintiff should be allowed to amend the summons issued under section 91 of Act IX of 1850, so as to render it conformable with a claim under section 25 of Act XXVI of 1864, if the summons were issued in the mistaken form by the fault of the Clerk of the Court, and not of the plaintiff. NOWLA OOMA *v.* BALA DHURMAJI **[I. L. R., 2 Bom., 91**

19. ——— *Act IX of 1850, s. 91.—Equitable defence.—Suit for ejectment.*—The plaintiff in 1879 took out a summons under section 91 of the Presidency Towns Small Cause Court Act, IX of 1850, calling on his nephew the defendant, to deliver up possession of certain premises in his occupation belonging to the plaintiff. The plaintiff alleged that he had purchased the premises in question in 1870 from one *N.*, to whom the defendant had mortgaged them in 1866 with power of sale. The plaintiff produced the deed of mortgage to *N.*, and the conveyance to himself. It was admitted on his behalf that he had never received any rent from the defendant, and never had manual possession of the premises occupied by him. But the plaintiff produced a writing of attornment, dated April 1873, passed to him by the defendant, whereby the latter acknowledged that he was occupying the premises in question as the plaintiff's tenant, and agreed to pay rent for the same at R25 a month. His defence was that the mortgage, the sale, and the writing of attornment were all merely colourable, executed for the purpose of defeating his creditors and screening the property from execution; that no money had passed between the parties; that the defendant had never been out of possession, and that the

SMALL CAUSE COURT, PRESIDENCY TOWNS—*continued.*

1. JURISDICTION—*continued.*

(*f*) RECOVERY OF IMMOVEABLE PROPERTY—*continued.*

Question of title—*continued.*

plaintiff now required the Court to assist him in turning his own wrong to his own advantage. At the hearing in the Court of Small Causes the defendant proposed to prove the above facts, and submitted that, under the circumstances, a *bonâ fide* question of title was raised which ousted the jurisdiction conferred on the Court by section 91. The Court, however, refused to receive the evidence, and held that it had jurisdiction. On reference to the High Court,—*Held* that the defendant was entitled to set up the defence which he had, and that it ousted the jurisdiction of the Court of Small Causes to proceed further with the action—inasmuch as such defence raised a question of adverse title, which, in suits under section 91 of Act IX, 1850, that Court had not jurisdiction to decide. LUCKMIDAS KHIMJI *v.* MULJI CANJI . . **I. L. R., 5 Bom., 295**

20. ———— *Act XV of 1882, s. 41.—Landlord and tenant.—Admission of tenancy.—Suit in ejectment.*—The plaintiff, alleging that the defendant was his tenant at a monthly rental of R52 and had refused to deliver up possession to the plaintiff, took out a summons against the defendant under section 41 of the Small Cause Court Act, XV of 1882. The defendant admitted the tenancy, but contended that he held under an unexpired lease for four years. The Judge of the Court of Small Causes was of opinion that a question of title was involved, and he dismissed the case on the ground that he had no jurisdiction to hear it. The plaintiff thereupon applied to the High Court under its extraordinary jurisdiction. *Held* that the case was within the jurisdiction of the Small Cause Court. DAVIDAS HARJIVANDAS *v.* TYABALLY ABDULALLY **[I. L. R., 10 Bom., 30**

21. ———— Trespass to immoveable property.—*Act XV of 1882, ss. 18, 19, 38, 45.*—The plaintiff brought a suit in the Calcutta Court of Small Causes to recover damages for trespass to certain immoveable property of which he proved he was in possession; the defendant contended that such a suit was one for the determination of a right to, or interest in, immoveable property, and was, therefore, not maintainable in the Small Cause Court. *Held*, the Court had jurisdiction to entertain such a suit. PEARY MOHUN GHOSAUL *v.* HARBAN CHUNDER GANGOOLY . . . **I. L. R., 11 Calc., 261**

(*g*) REGISTRATION ACT, 1866, ss. 52, 53.

22. ———— Petition and decree under Registration Act.—Small Cause Courts in the Presidency towns had no jurisdiction to entertain petitions and make decrees under the provisions of sections 52 and 53, Act XX of 1866. IN THE MATTER OF ACT XX OF 1866. IN THE MATTER OF NIL KAMAL BANERJEE *v.* MADHUSUDAN CHOWDRY **[6 B. L. R., 177**

S. C. NIL COMUL BANERJEE *v.* MUDOOSOODUN CHOWDHRY . . . **14 W. R., 478**

SMALL CAUSE COURT, PRESIDENCY TOWNS—*continued.*

1. JURISDICTION—*continued.*

(*h*) REVENUE.

23. ———— Matter concerning revenue.—*Trespass by Collector.—Action of Collector in preserving waste land.—Act IX of 1850, s. 25.*—The Collector of Bombay *bonâ fide* believing that certain land upon which a quarry had been opened by the plaintiff was Government waste land, by his servants forcibly stopped the quarrying operations of the plaintiff "for the purpose (the Collector stated in his evidence) of preserving the land for Government, as land from which revenue might in future be collected." In an action for trespass brought against him by the plaintiff, it was held that the act of the Collector was not "a matter concerning revenue" within the meaning of section 25 of Act IX of 1850, and that the jurisdiction of the Small Cause Court was therefore not excluded. NARAYAN KRISHNA LAUD *v.* NORMAN (COLLECTOR OF BOMBAY) . . . . . **5 Bom., O. C., 1**

2. PRACTICE AND PROCEDURE.

(*a*) GENERAL CASES.

The practice and procedure of the Presidency Small Cause Courts is so different now from what it was under the former Acts IX of 1850 and XXVI of 1864, that most of the cases decided under those Acts have become useless as precedents. The procedure is now governed by Act XV of 1882 by which a great portion of the Civil Procedure Code has been extended to these Courts.

24. ———— Dismissal of suit for want of jurisdiction.—*Costs.—Form of decree.*—Where a plea to the jurisdiction of the Small Cause Courts established under Act IX of 1850 is successful, the judgment ought to be one dismissing the suit. But whatever the form, it should be stated that the suit abates or is dismissed "for want of jurisdiction." In such a case the Court has power to award costs to the defendant. FRECK *v.* HARLEY **[I. L. R., 6 Calc., 418: 7 C. L. R., 237**

25. ———— Power to restore case struck off for default in appearance.—*Act IX of 1850, s. 42.*—A Court of Small Causes, constituted under Act IX of 1850, could, during the same day, and at the same sitting of the Court, *ex parte* restore a cause once struck out under section 42, though the order for striking off may have been duly recorded. In such a case it would be open to the defendant to apply to set aside such *ex parte* order, and the sufficiency of the grounds of the application would be a question for the discretion of the Judge. SHIB CHUNDER MULLICK *v.* KISSEN DYAL OPADHYA **[I. L. R., 1 Calc., 476**

(*b*) NEW TRIAL.

26. ———— Application for new trial.—*Fresh evidence.—Affidavits.*—A party who applies

SMALL CAUSE COURT, PRESIDENCY TOWNS—*continued.*

2. PRACTICE AND PROCEDURE—*continued.*

(*b*) NEW TRIAL—*continued.*

Application for new trial—*continued.*

for a rule for a new trial and obtains it on particular materials, ought not to be allowed to go into fresh evidence with a view to strengthen his case when the rule comes on for hearing. If on hearing both parties the Court thinks further inquiry necessary, it can of course make such inquiry in such manner as seems most fit to it. When new trials are moved for on allegation of facts, it would be very convenient that a practice should be introduced of requiring the facts to be stated by affidavit, and in like manner the answer to be supported by affidavit. MODHOOSOODUN KOONDOO *v.* MADHUBRAM SEWLOLL [15 W. R., 161

27. ——— **Ground for new trial.**—*Want of jurisdiction.*—A new trial may be granted on the ground of want of jurisdiction in the Court, though such ground was not formally raised or recorded at the original hearing. CHUNDER CHURN DUTT *v.* EDJULJEE COWASJEE BIJNEE [I. L. R., 8 Calc., 678: 11 C. L. R., 225

28. ——— **Difference of opinion between Judges as to allowing new trial.**—In a case of difference of opinion between two Judges upon the point as to whether there should be a new trial, no rule can be granted. JARDINE, SKINNER, & Co., *v.* MONEY . . . . . 14 W. R., 312

29. ——— **Second new trial.**—It is competent to the Judges of the Calcutta Small Cause Court to grant a second new trial of the same case. PURSON CHUND GOLACHA *v.* KAJOORAM [10 B. L. R., 355: 19 W. R., 203

(*c*) REFERENCE TO HIGH COURT.

30. ——— **Question of law.**—Only questions of law in suits can be referred. MOHUN SING *v.* KAREEM OONISSA BEGUM . 8 Mad., 57

The point of law referred should be expressly stated. JARDINE, SKINNER, & Co., *v.* MONEY [14 W. R., 312

31. ——— *Question of fact.*—*Act XXVI of 1864, s. 7.—Act IX of 1850, s. 55.*—The question whether or not cotton fabrics bordered with silk, or having a portion of silk otherwise used in their manufacture, are "silks in a manufactured or unmanufactured state wrought up or not wrought up with other materials," within the meaning of section 10, Act XVIII of 1854, was a question of fact to be decided on the evidence, and not a question of law to be referred for the opinion of the High Court under Act IX of 1850, section 55, and Act XXVI of 1864, section 7. LAKHMIDAS HIRACHAND *v.* G. I. P. RAILWAY COMPANY . . 4 Bom., O. C., 129

32. ——— **Order rejecting application for new trial.**—*Judgment contingent on opinion of High Court.*—The decision of a Small Cause Court rejecting an application for a new trial, but making such rejection contingent upon the opinion of the High Court, was not such a judgment as could be referred under section 7, Act XXVI of 1864. HALL *v.* JOAKIM . . . . 12 B. L. R., 34

See also MACKINTOSH *v.* GILL [12 B. L. R., 37: 20 W. R., 358

33. ——— *Act XV of 1882, s. 69.—Reference to High Court, Question for.—New trial, Application for.—Difference of opinion between Judges.—Contingent judgment.*—An order rejecting an application for a new trial, subject to the decision of the High Court on certain point or points referred, is not a "contingent judgment" within the meaning of section 69 of Act XV of 1882, nor can points of difference between the Judges at that stage form matter for reference. NUSSERWANJEE *v.* PURSOTUM DASS . . . I. L. R., 4 Calc., 298

Under the Acts of 1850 and 1864 the Judge in referring a point was bound to make his judgment contingent on the opinion of the High Court.

See DOSABHAI KAVASJI *v.* KHERBADJI HORMASJI . . . . . 7 Bom., O. C., 180

But now under the Act of 1882, section 69, he can either give judgment contingent on the opinion of the High Court or reserve his judgment.

34. ——— **Deposit of security for costs.**—*Act XXVI of 1864, s. 8.*—A case should not be referred to the High Court by a Judge of the Small Cause Court until security has been deposited in accordance with section 8, Act XXVI of 1864, by the party against whom the judgment has been given. If such party do not deposit the security "forthwith," he must be taken to submit to the judgment of the Small Cause Court. Where, however, a case was sent up without security for costs being deposited, and before the case was heard the plaintiffs tendered a sum as security, which the Judge refused to accept as being too late, the High Court, on the sum being deposited, and it appearing that the defendant would not be prejudiced by such a course, allowed the case to be heard. FORNARO *v.* RAMNARAIN SOOKDEB [14 B. L. R., 180: 23 W. R., 136

35. ——— *Act XXVI of 1864, s. 8.—Omission to deposit costs.—Non-appearance.*—Where a case had been referred from the Small Cause Court, for the opinion of the High Court, at the request of the plaintiffs, and they neither deposited any security for the cost of the reference, nor appeared in the High Court,—*Held*, the defendants, who appeared, were entitled to judgment and to an order that the plaintiffs should pay the costs

SMALL CAUSE COURT, PRESIDENCY TOWNS—*continued.*

2. PRACTICE AND PROCEDURE—*continued.*

(c) REFERENCE TO HIGH COURT—*continued.*

Deposit of security for costs—*continued.*

of reference and other expenses connected therewith. DISSENT *v.* JUSTICES OF THE PEACE FOR THE TOWN OF CALCUTTA

[5 B. L. R., Ap., 24 : 20 W. R., 349, note

In a similar case, however, the reference was held not to be properly before the Court, and an application for costs by the defendant was refused. RAJKUMAR PARAMANICK *v.* STEWART . **5 B. L. R., Ap., 23**

These cases were under the old procedure. Under Act XV of 1882, if security is not deposited the party against whom the contingent judgment has been given is to be taken to have submitted to it.

36. ——— **Case referred at request of party.**—*Non-appearance of such party before High Court.—Costs.*—When a case is referred by the Small Cause Court for the opinion of the High Court, at the request of one of the parties, and such party does not appear in the High Court, the decision must be given against him, whether security has been given for the costs of the reference and the amount of the judgment or not, and he must pay the cost of the reference. WILLIAMSON *v.* ARAB ISMAIL KHAN

[11 B. L. R., 415 : 20 W. R., 349

SMALL CAUSE COURT, RANGOON.

1. ——— **Establishment of.**—*Act XXI of 1863.—Act XI of 1865.—Local Government.*—Act XXI of 1863, after establishing Recorders' Courts in British Burma, and fixing the limits of their jurisdiction, enacted by section 10 that, "save as in this Act provided, no Court other than the Recorder's Court shall have or exercise any civil jurisdiction whatever within the limits for the time being fixed as aforesaid." Act XI of 1865, after declaring that the words "Local Government" should denote "the person authorised to administer the Executive Government in such part," enacted by section 3 that the Local Government may, with the previous sanction of the Governor General in Council, constitute Courts of Small Causes under that Act at any place within the territories under such Government. By section 3 the Judge of such Small Cause Court was to be appointed by the Local Government. Act XI of 1865 did not repeal section 10 of Act XXI of 1863. By notification dated 1st September 1869, the Governor General appointed a Judge of the Small Cause Court at Rangoon, extended the provisions of Act III of 1864 to British Burma, and invested the Chief Commissioner of British Burma with the powers conferred on a Local Government by that Act. By notification of 2nd October 1869, the Governor General in Council sanctioned the establishment of a Court of Small Causes in Rangoon under section 3, Act XI of 1865, extended the jurisdiction of the said Court to an amount not exceeding R1,000 and notified that the territorial jurisdiction would be co-extensive with that of the existing Small Cause Court jurisdiction of the Recorder's Court at Rangoon. *Held* that the Small Cause Court at Rangoon

SMALL CAUSE COURT, RANGOON.—Establishment of—*continued.*

so established was properly constituted. There is nothing to show that the words "Local Government" as used in Act XI of 1865, were intended to include a Chief Commissioner. KO SHOAY DOON *v.* SHOAY GAN . . **6 B. L. R., 196 : 14 W. R., 331**

2. ——— **Jurisdiction of.**—*Foreign ship.—Suit by sailor for wages.—Mofussil Small Cause Court Act, XI of 1865, s. 8 (expl. a).*—Civil Courts have, as a general rule, jurisdiction to try all civil suits against all persons of any nationality within the local limits of their jurisdiction. A captain of a ship, who was at the time loading or unloading his vessel within the local limits of the Small Cause Court of Rangoon, was sued by one of his sailors (who had contracted to serve on a voyage from Bremerhaven to East India), for wages in the Small Cause Court of Rangoon. *Held*, that the sailor's cause of action arose within the local limits of the Small Cause Court where the defendant was residing when the suit was brought, and that, therefore, the Small Cause Court had jurisdiction to hear the suit. OLNER *v.* LAVEZZO

[I. L. R., 10 Calc., 878

SMUGGLING.

See STOLEN PROPERTY—OFFENCES RELATING TO . . **18 W. R., Cr., 63**
[19 W. R., Cr., 37

SNAKE-CHARMERS, DEATH CAUSED BY—

See MURDER.

[3 B. L. R., A. Cr., 25 : 12 W. R., Cr., 7
I. L. R., 5 Calc., 351 : 4 C. L. R., 580

SOLDIER, RESIDENCE OF—

See JURISDICTION—CAUSES OF JURISDICTION—DWELLING OR RESIDENCE.

[I. L. R., 1 All., 51

SOLICITOR.

——— **Duty of.**—*Attorney and client.*—It is the duty of a solicitor who has once undertaken a cause, to carry it to a conclusion. IN RE A SOLICITOR . . . . **4 B. L. R., P. C., 29**

This was an observation made in some remarks addressed by the Judicial Committee to a solicitor who, having obtained a final order in an appeal, had abstained from carrying that order to its proper termination. It was intimated subsequently that it was not intended to have any judicial authority, being only a personal admonition addressed to the solicitor and having reference to the peculiar circumstances of his case . . **4 B. L. R., P. C., 51**

——— **Lien of, for costs.**

See COSTS—COSTS OUT OF ESTATE.

[I. L. R., 10 Bom., 248

SOLITARY CONFINEMENT.

See SENTENCE—SOLITARY CONFINEMENT.

[3 B. L. R., A. Cr., 49
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SONTHAL PERGUNNAHS.

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[I. L. R., 12 Calc., 536

See HIGH COURT, JURISDICTION OF—HIGH COURT, CALCUTTA—CIVIL.
[I. L. R., 3 Calc., 298
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See JURISDICTION—SUITS FOR LAND.
[I. L. R., 4 Calc., 222

See SUBORDINATE JUDGE, JURISDICTION OF . . . 5 C. L. R., 128

SONTHAL PERGUNNAHS SETTLEMENT (REGULATION III OF 1872).

1. ——— s. 5.—*Jurisdiction of Civil Court.—Settlement proceedings.*—During the time of the settlement in the Sontbal Pergunnahs, certain proceedings were instituted, with the permission of the settlement officer, by the plaintiff to get possession of certain land, and came before the Subordinate Judge, by whom they were treated as a regular suit. The decision was not pronounced until the settlement had been completed.—*Held* that section 5 of Regulation III of 1872 did not apply, and that, under the circumstances, the proceedings must be taken to have been regularly commenced, and that they might be completed as proceedings in the ordinary Civil Court. *Held*, further, that the proceedings were not necessarily irregular by reason of the fact that issues had not been framed under section 5 of the Regulation. SONAMONI DASI *v.* LILANUND SINGH . . 11 C. L. R., 30

2. ——— *Appeal from settlement proceedings.—Notification of the Lieutenant-Governor of the 7th May 1872.—Act XXXVII of 1855, s. 2.*—The officers appointed under section 2 of Act XXXVII of 1855, and not the settlement officers as such, are the persons empowered to try such suits as are referred to by Regulation III of 1872, section 5, and to certify issues to the Civil Courts under that section. The notification of the Lieutenant-Governor, dated the 7th May 1872, being still in force, the settlement officers have no power to deal with such cases. Where a settlement officer referred certain issues to a Deputy Commissioner as a Civil Court under Regulation III of 1872, section 5, to be dealt with by him, and he gave a decision thereon and certified the same to the settlement officer, and it appeared that the Deputy Commissioner had previously been invested with the powers of a settlement officer, and the proceedings were subsequently returned to him for the settlement record to be amended in conformity with his findings, he being thoroughly conversant with all the facts of the case, and he accordingly passed an order and amended the record defining the areas to which the plaintiffs were entitled. On appeal against that order,—*Held* that so far as he was acting as a Civil Court, the Deputy Commissioner had no jurisdiction to try the issues sent him or deal with the case, but that, inasmuch as he was vested with the powers of a settlement officer, and was fully competent as such to deal with the case himself, seeing that the parties could not in any way be prejudiced by the irregularity committed, the High Court would not interfere to set aside the order. *Held* also that, treating the action of the Deputy Commissioner as that of a settlement officer, the High Court had no jurisdiction to hear the appeal. TARINI PERSHAD MISRA *v.* MAHAMUD CHOWDHRY
[I. L. R., 7 Calc., 376

S. C. TARINI PROSAD MISSER *v.* HURRISH CHUNDER CHOWDHRY . . 8 C. L. R., 548

——— ss. 24, 25.—*Suit to set aside order of settlement officer.—Non-publication of record of rights.*—Where, in December 1884, a suit was brought to set aside an order of the settlement officer under Regulation III of 1872, made in December 1875, after disposing of the plaintiff's objections to the defendants' title, and it was found that no record of rights had been published in accordance with section 24 of the Regulation,—*Held*, the suit was not barred under section 25 as not having been brought within three years from the date of the order. The final order referred to in that section must be one subsequent to or not preceding the publication of the record of rights. RAM NARAIN SINGH *v.* RAM RUNJUN CHUCKERBUTTY
[I. L. R., 13 Calc., 245

SPECIAL OR SECOND APPEAL.

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[10 B. L. R., 155, 156, note

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[11 W. R., 511
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6 B. L. R., 333, 634, note

SPECIAL OR SECOND APPEAL—*continued.*

1. ORDERS SUBJECT TO APPEAL.

1. ——— Law applicable to special appeals.—*Civil Procedure Code, 1877, ss. 588, 591.*—Second appeals to the High Court must either come within Chapter XLII or sections 588 and 591 of Act X of 1877. HIRDHAMUN JHA *v.* JINGHOOR JHA
[I. L. R., 5 Calc., 711

2. ——— Order improperly adding plaintiff to suit.—*Civil Procedure Code, 1882, s. 591.*—An appeal lies, under section 591 of the Civil Procedure Code, from an order improperly adding a person as a plaintiff in a suit. GOOGLEE SAHOO *v.* PREMLALL SAHOO . . I. L. R., 7 Calc., 148

3. ——— Order for attachment for contempt.—*Civil Procedure Code, 1882, s. 591.*—An order for attachment for contempt is not an order in the exercise of the High Court's civil jurisdiction and therefore does not come within the provisions of section 591 of the Civil Procedure Code. NAVIVAHOO *v.* NAROTAMDAS CANDAS
[I. L. R., 7 Bom., 5

4. ——— Decision of Political Agent in a regular appeal.—*Political Agent of Southern Maratha Country.*—A special appeal lies from the decision of the Political Agent of the Southern Maratha Country passed in regular appeal. NILOWA *v.* FAKIRAPPA . . . . 6 Bom., A. C., 75

5. ——— Suits under Beng. Act I of 1879.—*Chota Nagpore.—Landlord and Tenant Procedure Act (Beng. Act I of 1879), ss. 37, 137.—Arrears of rent and ejectment, Suit for.*—In suits instituted under Bengal Act I of 1879, for arrears of rent and ejectment on account of the non-payment of arrears of rent, a second appeal lies to the High Court, this class of cases not being within the provision of section 137 of the same Act. RAMJAN KHAN *v.* RAMAN CHAMAR
[I. L. R., 10 Calc., 89

6. ——— Order for penalty under Stamp Act.—*Civil Procedure Code, 1877, s. 588.—Act VIII of 1859, s. 365.*—A decision of a Judge directing a penalty to be enforced under the Stamp Act is not "an order as to a fine" within the meaning of section 365 of Act VIII of 1859 (with which section 588 of Act X of 1877 corresponds). Section 365 was not intended to apply to penalties under the Stamp Act, but only to fines which may be levied under the Code itself. SONAKA CHOWDRAIN *v.* BHOOBUNJOY SHAHA
[I. L. R., 5 Calc., 311

7. ——— Order as to compensation for land.—*Land Acquisition Act X of 1870, ss. 15, 39.—Dispute as to right to compensation.*—Where a dispute as to the right of one of two claimants to certain compensation awarded under the provisions of the Land Acquisition Act has been referred to the Civil Court under section 15 of that Act, a second appeal will lie to the High Court from the judgment passed in an appeal against the decision of the Court

SPECIAL OR SECOND APPEAL—*continued.*

1. ORDERS SUBJECT TO APPEAL—*continued.*

Order as to compensation for land—*continued.*

to which the dispute was referred. ATRI BAI *v.* ARNOPOORNA BAI

[I. L. R., 9 Calc., 838 : 12 C. L. R., 409

8. ——— Order directing plaint to be returned for presentation in proper Court. —*Civil Procedure Code, 1882, s. 57.*—A Munsif dismissed a suit, on the ground that if it had been properly valued, it would not have come within his jurisdiction. The District Judge affirmed the Munsif's judgment, and directed the plaint to be returned for presentation to the proper Court under section 57 of the Civil Procedure Code. This was not done. *Held* that a second appeal would lie. JOYNATH ROY *v.* LALL BAHADOOR SINGH

[I. L. R., 8 Calc., 126 : 10 C. L. R., 146

9. ——— Order as to execution of decree under R5,000 but with interest, &c., exceeding R5,000.—*Second Class Subordinate Judge.—Subject-matter of suit under R5,000 and within jurisdiction.*—The plaintiffs obtained a decree in the Court of a Second Class Subordinate Judge for a sum less than R5,000, which with accumulations of interest subsequently exceeded R5,000. The plaintiffs applied in execution to recover the total amount. The application was rejected by the Subordinate Judge on the ground that the Court had no jurisdiction under section 24 of Act XIV of 1869. On appeal, the District Judge made an order confirming the decision of the Subordinate Judge. The plaintiffs filed a second appeal in the High Court. *Held* that no second appeal lay to the High Court from such an order. The subject-matter of the suit was within the jurisdiction of the Subordinate Judge, and his jurisdiction continued, whatever might be the result of the suit, in all such matters in the suit as were within his cognisance, amongst which were matters in execution in the suit. The mere circumstance that the amount actually due by process of accumulation exceeded R5,000 could not oust him from the jurisdiction he hitherto had over the suit. SHAMRAV PANDOJI *v.* NILOJI RAMAJI

[I. L. R., 10 Bom., 200

10. ——— Regular appeal heard ex parte.—A special appeal lies from a regular appeal heard *ex parte.* TARA CHAND GHOSE *v.* ANAND CHANDRA CHOWDHRY

[2 B. L. R., A. C., 110 : 10 W. R., 450

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PARÁN CHUNDER GHOSE *v.* CHUKKUN LALL ROY

[20 W. R., 402

11. ——— Appeal from ex parte decree.—*Appeal improperly admitted.*—Where a decree is passed *ex parte* in an original suit, the defendant has no right to a special appeal, even though his appeal have been entertaind by the Civil Court. CHIDAMBARA PILLAI *v.* KAMAN

[1 Mad., 189

SPECIAL OR SECOND APPEAL—*continued.*

1. ORDERS SUBJECT TO APPEAL—*continued.*

12. ——— Order refusing to set aside ex parte decree.—*Civil Procedure Code (Act X of 1877), ss. 588, 622.*—After a decree had been made *ex parte,* the defendant applied to have it set aside. The Subordinate Judge refused the application, but his order was reversed by the District Judge. *Held* that the order of the District Judge was final under section 588, and that no second appeal would lie: nor would the Court interfere under section 622 of the Code. AUBINASH CHUNDER MOOKERJEE *v.* MARTIN . . . I. L. R., 8 Calc., 832

13. ——— Order of remand.—*Order under s. 354, Civil Procedure Code, 1859.*—A special appeal did not lie from an order of remand under section 354, Civil Procedure Code. COLLECTOR OF AGRA *v.* BULJEETA . . . 3 Agra, 368:

[S. C. Agra, F. B., Ed. 1874, 161

14. ——— Order on inquiry in case of obstruction in execution of decree.—*Miscellaneous appeal.—Civil Procedure Code, 1859, s. 229.*—Where an inquiry had been held under section 229, Code of Civil Procedure, and a regular appeal lay to the High Court under section 231, a miscellaneous appeal could not be entertained. GOOROO DOSS ROY *v.* PUNCHANUN BOSE . . 9 W. R., 337

15. ——— Order refusing to admit appeal presented after time.—A special appeal will not lie against an order of the Judge refusing to admit a regular appeal presented after the expiration of the time provided for preferring appeals. PHOOLHAREE *v.* BISHESHUR PERSHAD . . 3 Agra, 301

16. ———. *Case decided ex parte.*—A special appeal does not lie from the order of a Judge declaring that sufficient cause has not been shown to his satisfaction for presenting after time an appeal from an *ex parte* judgment of a Deputy Collector. HOGHOONATH SINGH *v.* MOHUN LAL MITTER . . . . 7 W. R., 296

Contra, SUDEROODDEEN *v.* HURONATH SEIN

[8 W. R., 87

17. ——— Order dismissing appeal as presented out of time.—*Civil Procedure Code, 1882, s. 584.—Limitation Act, 1877, s. 4.*—An order dismissing an appeal as being presented out of time under section 4 of the Limitation Act, 1877, is a "decree passed in appeal" within the meaning of section 584 of the Civil Procedure Code, 1882. A second appeal will therefore lie from such order. GUNGA DASS DEY *v.* RAMJOY DEY

[I. L. R., 12 Calc., 30

18. ——— Refusal to restore appeal withdrawn.—No special appeal lies from the order of a Judge refusing an application to restore an appeal that had been withdrawn. MODHOOMUTTY DEBIA *v.* DHUNPUT SINGH . . 13 W. R., 167

19. ——— Order dismissing appeal on failure of appellant to deposit costs of notice.—*Act XXIII of 1861, ss. 5 and 6.*—A

SPECIAL OR SECOND APPEAL—*continued.*

1. ORDERS SUBJECT TO APPEAL—*continued.*

Order dismissing appeal on failure of appellant to deposit costs of notice— *continued.*

special appeal lay from an order passed under sections 5 and 6 of Act XXIII of 1861 dismissing an appeal for non-service of notice in consequence of failure to deposit the cost of issuing the same. DINOBUNDHOO CHUTTERAJ *v.* BEHAREE LAL MOOKERJEE **[3 W. R., Mis., 23**

INDUR CHUNDER BABOO *v.* OOZEER ALI KHAN **[7 W. R., 338**

20. ——— Order re-admitting appeal dismissed for want of prosecution.—*Civil Procedure Code, 1859, s. 347.*—A special appeal lay from an order under section 347 of Act VIII of 1859 re-admitting an appeal dismissed for want of prosecution. DINOBUNDHOO CHUTTERAJ *v.* BEHAREE LAL MOOKERJEE . . **3 W. R., Mis., 23**

21. ——— Order rejecting application for re-admission of appeal dismissed for default of prosecution.—*Proof of illegality of order.—Civil Procedure Code, 1859, s. 347.*—A special appeal will lie from an order of a Judge rejecting an application for the re-admission of an appeal dismissed for default of prosecution, provided the order be shown to be illegal. HALOO *v.* ATWARO **[7 W. R., 81**

22. ——— Order rejecting application for re-admission of appeal dismissed for want of prosecution.—*Civil Procedure Code, 1859, s. 347.*—A special appeal lay from an order rejecting an application, under the provisions of section 347 of Act VIII of 1859, for the re-admission of an appeal dismissed for default of prosecution, if it appears that the Court below has not exercised the discretion which it possessed under the section. The lower Appellate Court, without inquiry, and without recording any reasons, summarily refused an application under section 347. The order of refusal was set aside in special appeal, and the application remanded for proper consideration and disposal. LALL SINGH *v.* ZAHURIA . . **6 N. W., 222**

23. ——— Order dismissing appeal for non-appearance of appellant.—*Civil Procedure Code, 1859, s. 346.*—A special appeal lay to the High Court from an order passed under section 346 of the Civil Procedure Code, dismissing the appellant's regular appeal for non-appearance of the appellant in person or by pleader. *Devappa Setti* v. *Ramanandha Bhatt, 3 Mad., 109,* commented on. CHINNAPPA CHETTI *v.* NADARAJA PILLAI **[6 Mad., 1**

24. ——— Order refusing to admit appeal dismissed for default.—*Application for re-admission.*—No special appeal lay to the High Court from the order of a Judge refusing to re-admit an appeal dismissed for default by a Principal Sudder Ameen. The application for re-admission

SPECIAL OR SECOND APPEAL—*continued.*

1. ORDERS SUBJECT TO APPEAL—*continued.*

Order refusing to admit appeal dismissed for default—*continued.*

should be made to the Principal Sudder Ameen. KISTO PERSAD DUTT *v.* COWIE **[W. R., 1864, 315**

25. ——— Order affirming or reversing order confirming sale.—*Civil Procedure Code, 1859, s. 257.*—No special appeal lay from the decision affirming or reversing an order under section 257, Act VIII of 1859, confirming a sale. JACKSON, *J.*, dissented. KOOLDEEP NARAIN SING *v.* LUCKHUN SING **[B. L. R., Sup. Vol., 917 : 9 W. R., 218**

ABDOOL KUREEM *v.* OGHUN LAL **[6 W. R., Mis., 119**

26. ——— Order confirming sale complained of for irregularity.—*Civil Procedure Code, 1859, s. 257.*—A defendant complained, under section 257 of the Civil Procedure Code, of irregularity in conducting the sale of his lands taken in execution of a decree against him. The sale was confirmed by the Court of first instance, and the order was affirmed on appeal by the Civil Judge. *Held* that a special appeal to the High Court did not lie. VARADHA REDDI *v.* VENKATA SUBBA REDDI . . . . . **5 Mad., 213**

27. ——— Order setting aside sale.—*Order on regular appeal.*—The High Court has no power to entertain a special appeal from an order passed in regular appeal by a Judge setting aside a sale in execution, and reversing the order of a Munsif confirming such a sale. RUGHOONATH SINGH *v.* TOODEY SINGH . . . . **5 N. W., 19**

28. ——— Order overruling objections to confirmation of sale.—*Civil Procedure Code, 1859, s. 257.*—A judgment-debtor having preferred various objections to the Court of the Subordinate Judge which was executing the decree against him, his objections were rejected, and the Court proceeded to sell the property attached in execution. The judgment-debtor then preferred an appeal to the Judge against the order which threw out his objections, but without expressly objecting to the confirmation of the sale. *Held* that the Judge was entitled to deal with the case as an appeal against the sale which had taken place before the appeal was preferred, and no further appeal therefore lay to the High Court. SONAMONEE DOSSIA *v.* MOTEE SINGH **[14 W. R., 385**

29. ——— Order imposing fine for avoiding of summons to attend as witness.—*Civil Procedure Code, 1859, s. 365.—Witness absconding.—Right of appeal.*—By the words of section 365 of Act VIII of 1859, the Legislature must have intended to give the person aggrieved by any order of a Civil Court imposing a fine on him as a punishment for keeping out of the way in order to avoid service of summons to attend as a witness, the right of appeal to the High Court, whether the order was

SPECIAL OR SECOND APPEAL—*continued.*

1. ORDERS SUBJECT TO APPEAL—*continued.*

Order imposing fine for avoiding of summons to attend as witness—*continued.*

strictly referable to section 160 of that Act or not. IN RE GAJADHAR PRASAD NARAYAN SINGH [1 B. L. R., A. C., 187

S. C. GUJADHUR PERSHAD NARAIN SINGH *v.* JUGDEO NARAIN . . 10 W. R., 233

30. ——— **Order passed by Appellate Court on appeal from order granting a review of judgment.**—*Civil Procedure Code (Act XIV of 1882), ss. 624, 626, 629.*—No second appeal lies against an order passed under section 629 of the Civil Procedure Code. An application was made by a plaintiff for review of a judgment dismissing his suit as against all the defendants, which application was granted. Against that order the defendants appealed, and the lower Appellate Court confirmed the lower Court's order, granting the review as against one of the defendants, but set it aside as against the other defendants. *Held* that no second appeal lay against such order. THAN SINGH *v.* CHUNDUN SINGH . . . I. L. R., 11 Calc., 296

31. ——— **Order on application for revival of suit.**—*Act LIII of 1860, s. 2.—Civil Procedure Code, 1859, s. 378.*—The Zillah Judge reversed a decree in the plaintiff's favour on the ground that the suit was barred by the period of limitation prescribed by section 30 of Act X of 1859; subsequently to this decree Act LIII of 1860 came into operation, which by sections 1 and 30 provided that suits for causes of actions which had accrued before the 1st of August 1859, might be instituted within two years from that day; and by section 2 that suits or appeals dismissed on the ground that they had not been commenced within the period prescribed by the Act of 1859 might be revived. The Zillah Judge rejected an application under the Act of 1860 to revive the suit. *Held* that this was not an application for a "review of judgment" within section 378 of Act VIII of 1859, as to which the order of the Court was final; but being for the revival of a suit under the provisions of the latter law, his order was the subject of an appeal. BUNGSHEEDHUR MUNDUL *v.* PUDDOLOCHUN ROY [Marsh., 38: W. R., F. B., 11 1 Ind. Jur., O. S., 5: 1 Hay, 90

32. ——— **Decree in rent suit under R100.**—*Beng. Rent Act VIII of 1869, s. 102.—Beng. Tenancy Act, VIII of 1885, s. 5.—Effect of repeal.*—In a suit between landlord and tenant a decree was passed by the lower Appellate Court on the 28th of July 1885. Under the provisions of the Act then in force—namely, Bengal Act VIII of 1869, section 102—a second appeal to the High Court was prohibited. That Act was repealed by Act VIII of 1885, which came into force on the 1st of November 1885, this latter Act allowing an appeal to the High Court in suits similar to the one in question. A second appeal to the High Court in that suit was filed on the 18th of November 1885. *Held*

SPECIAL OR SECOND APPEAL—*continued.*

1. ORDERS SUBJECT TO APPEAL—*continued.*

Decree in rent suit under R100—*continued.*

that no appeal lay. HURROSUNDARI DABI *v.* BROJOHARI DAS MANJI . I. L. R., 13 Calc., 86

33. ——— **Order in suit entertained without jurisdiction.**—*Subsequent Act passed giving jurisdiction.—Appeal brought after passing of such Act.*—A suit had been dismissed by a lower Appellate Court on the ground that the Court of first instance had no jurisdiction to entertain such suit. An Act was subsequently passed declaring that all suits which had been similarly entertained without jurisdiction should be deemed to have been duly preferred. The plaintiff, after the passing of the Act, filed a special appeal, in which he urged that the decision of the Court of first instance was no longer illegal, and that the suit should be heard by the lower Appellate Court on its merits. *Held* (*per* TURNER, *J.*) that, as at the time the lower Appellate Court gave the decision from which the special appeal was presented, the Act had not been passed, it must be held that its judgment was correct, and that a new law, passed since the decision, could not make that decision wrong, which was, and still is, with reference to the law then in force, right, and that the appeal should be dismissed. *Held* (*per* SPANKIE, *J.*) that a special appeal would lie, the decision being contrary to a law in force at the time that the special appeal was instituted, which law the Court was bound to enforce. BULDEO *v.* LUCHMUN [5 N. W., 106

34. ——— **Order in execution of a decree.**—Under Act VIII of 1859 there was no special appeal from orders passed in execution of a decree. ANONYMOUS . 1 Ind. Jur., O. S., 50
ANONYMOUS . . 1 Ind. Jur., O. S., 68

But there is now since the passing of Act XXIII of 1861.

See MAHOMED HOSSEIN *v.* AFZUL ALLY [B. L. R., Sup. Vol., Ap., 1: Marsh., 296 W. R., F. B., 83: 2 Hay, 293

BAGUBAI *v.* NIZMUDDIN . 6 Bom., A. C., 205

VIRASAMY MUDALI *v.* MANOMMANY AMMAL. VENKATA BALAKRISHNA CHETTI *v.* VIJIARAGUNADHA VALAJI KRISHNA GOPALER [4 Mad., 32

35. ——— *Act XXIII of 1861, ss. 11 and 44.—Act VIII of 1859, ss. 257, 269, and 372.*—A special appeal will lie from an order passed on appeal in relation to the execution of a decree. MAHOMED HOSSEIN *v.* AFZUL ALI [B. L. R., Sup. Vol., Ap., 1: Marsh., 296 W. R., F. B., 83: 2 Hay, 293

36. ——— *Decree in suit on bond registered under s. 53, Act XX of 1866.*—No second appeal lay to the High Court against an order passed on an application for execution of a decree made in a suit under section 53 of Act XX of

SPECIAL OR SECOND APPEAL—*continued.*

1. ORDERS SUBJECT TO APPEAL—*continued.*

Order in execution of a decree—*continued.*

1866. *Quære,*—Whether an appeal lay at all against such an order passed in proceedings taken in execution of such a decree. SRI BULLOV BHATTACHARJI *v.* BABURAM CHATTOPADHYA [I. L. R., 11 Calc., 169

37. ——— *Civil Procedure Code, 1877, s. 244.—Registration Act, 1866, s. 53.*—An application was made to a District Munsif on the 16th July 1877 to issue execution on a decree dated 6th November 1869, obtained on a bond registered under section 53 of the Registration Act of 1866. He made an order refusing execution, the decree being one passed, not in a regular suit, but in a summary suit, and governed by the period of limitation prescribed by article 166, schedule II, Act IX of 1871. On appeal the Subordinate Judge reversed the order of the Munsif, holding that article 167, schedule II of Act IX of 1871, applied. On application to the High Court,—*Held* that, as section 588 of Act X of 1877 provided that orders passed in appeal from orders under section 244 should be final, no second appeal lay. SURYA PRASAKA RAU *v.* VAISYA SANNYASI RAZU [I. L. R., 1 Mad., 401

2. RIGHT OF APPEAL.

38. ——— **Appeal by one defendant against another.**—A special appeal cannot be entertained by one defendant against another. RAMESSUR GHOSE *v.* AZEEM JOARDAR . 17 W. R., 373

39. ——— **Right of parties not appealing from first Court's decision.**—*Ground of appeal.*—Parties who did not appeal from the decision of the first Court cannot bring a special appeal against the decision of the lower Appellate Court on the ground that the decision of the first Court prejudiced their rights. BOYKANT RAM SAHOO *v.* POORNO CHUNDER DASS [W. R., 1864, Act X, 97

40. ——— **Right of defendant not appearing as respondent on appeal.**—A defendant who obtains a judgment in his favour in the Court of first instance, and who, on appeal by the plaintiff, does not appear at the hearing of the appeal or present a petition for a re-hearing, may, under Act X of 1877, present a second appeal against the decree of the lower Appellate Court. EX PARTE MODALATHA . . I. L. R., 2 Mad., 75

41. ——— **Party dissatisfied with findings in judgment.**—*Civil Procedure Code (Act X of 1877), ss. 540 and 584.*—An appellant, who has obtained a decree setting aside the decision of the Court of first instance, is not entitled to a further appeal to the High Court, on the ground that he is dissatisfied with some of the findings recorded in the judgment of the lower Appellate Court, an appeal from an appellate decree under section 584 being strictly restricted to matters contained in the decree alone. KOYLASH CHUNDER KOOSARI *v.* RAM LALL NAG . . . . I. L. R., 6 Calc., 206

SPECIAL OR SECOND APPEAL—*continued.*

2. RIGHT OF APPEAL—*continued.*

Party dissatisfied with findings in judgment—*continued.*

3. SMALL CAUSE COURT SUITS.

(*a*) GENERAL CASES.

42. ——— **Cases in which appeal is taken away.**—*Act XXIII of 1861, s. 27.—Civil Procedure Code, 1859, s. 387.*—Section 27, Act XXIII of 1861, took away special appeal in all those cases that were expressly alluded to therein, thus overriding section 387, Act VIII of 1859. The provision applied in execution of decree, as well as in suits themselves, and to suits and proceedings in execution commenced before 1861, or even before 1859. RAM JADUB CHATTERJEE *v.* RASH MONEE DOSSEE [8 W. R., 321

MOBARUKOONISSA BEGUM *v.* OZEER JEMADAR [8 W. R., 107

SOORJO COOMAR SURMA ROY *v.* KRISHTO COOMAR CHOWDHRY [12 B. L. R., 224: 14 W. R., F. B., 30

43. ——— **Order in execution of decree.**—*Suit brought before Act XLII of 1860.*—No special appeal lay from a regular appeal from an order made in execution of a decree passed in a suit of a nature cognisable by a Small Cause Court, though the suit was instituted before the passing of Act XLII of 1860. GORA CHAND MISSER *v.* BOYKANTO NARAIN SINGH [12 B. L. R., F. B., 261: 20 W. R., 421

BHICHUK SINGH *v.* NAGESHAR NATH [I. L. R., 2 All., 112

44. ——— *Act XXIII of 1861, s. 27.—Execution proceedings arising out of decision in regular appeal.*—Section 27, Act XXIII of 1861, barred a special appeal in execution proceedings arising out of decisions passed on regular appeal in suits of a nature cognisable by Courts of Small Causes. ANUND CHUNDER ROY *v.* SIDHY GOPAL MISSER . . . . . 8 W. R., 112

DEBEE PERSHAD SINGH *v.* DELAWAR ALI [12 W. R., 86

45. ——— **Case wrongly decided to be not cognisable by Civil Court.**—*Act XXIII of 1861, s. 27.*—Section 27, Act XXIII of 1861, which barred a special appeal in suits below R500, as being of a nature cognisable by a Small Cause Court, did not apply to a case in which the lower Appellate Court had wrongly decided that the case was not cognisable by any Civil Court. GUREEBOOLLAH *v.* SYEFOOLLAH . . . . . 7 W. R., 41

SPECIAL OR SECOND APPEAL—*continued.*

3. SMALL CAUSE COURT SUITS—*continued.*

(*a*) GENERAL CASES—*continued.*

46. ——— Suit instituted in ordinary Civil Court though cognisable by Small Cause Court.—*Civil Procedure Code, 1877, s. 586.—Questions incidentally arising.*—Section 586 of the Code of Civil Procedure precludes a second appeal in a suit for damages under R500, although the suit has been instituted in the District Munsif's Court and not in a Court of Small Causes, and although a question of title has been raised by the defendant and decided. *Per* MUTTUSAMI AYYAR, *J.*—The question what is a suit of the nature cognisable in Courts of Small Causes within the meaning of section 586 of the Civil Procedure Code has reference to the mode of adjudication and not to the *forum*, and the fact that the suit is instituted in the District Munsif's Court and not in a Court of summary jurisdiction makes no difference for the purposes of that section. If the matter adjudicated on in a suit is only incidentally in issue or cognisable, the adjudication is final whether by a Court of concurrent or limited jurisdiction only for the purpose and object of that suit. MANAPPA MUDALI *v.* MCCARTHY . . . **I. L. R., 3 Mad., 192**

47. ——— ——— *Civil Procedure Code, 1882, s. 586.*—Where a suit, though one cognisable by a Small Cause Court, was instituted and dealt with in the ordinary Civil Courts, it was contended that a second appeal would lie. *Held* that no second appeal would lie. A small cause is such wherever it is instituted, and the nature of the cause not being variable in any way according to the Court in which it is brought, the circumstance that it has been instituted in an ordinary Civil Court and dealt with there, would not for that reason admit of a second appeal which in such a case is expressly excluded by section 586 of the Code of Civil Procedure (Act XIV of 1882). KALIAN DAYAL *v.* KALIAN NARER . . . . **I. L. R., 9 Bom., 259**

(*b*) ACCOUNT.

48. ——— Suit for balance of account.—*Act XXIII of 1861, s. 27.—Suit in Civil Court in local jurisdiction of Small Cause Court.*—Where a suit for a balance due on account of rents collected from the plaintiff's zemindaris by the defendant's father acting as agent of the plaintiffs for an amount under R500 was entertained by the Civil Court within the local jurisdiction of a Small Cause Court, a special appeal lay to the High Court,—section 27 of Act XXIII of 1861 only applying to a suit which is properly brought in a Civil Court, because there is no Small Cause Court having jurisdiction to try it. DYEBUKEE NUNDUN SEN *v.* MUDDEE MUTTY GOOPTA . **I. L. R., 1 Calc., 123: 24 W. R., 478**

49. ——— Suit against agent for account.—*Suit for account, or in default, for damages.*—Plaintiff, a talookdar, sued her late hubsand's agent for the delivery up of certain account papers and documents, for an account of his agency, and in

SPECIAL OR SECOND APPEAL—*continued.*

3. SMALL CAUSE COURT SUITS—*continued.*

(*b*) ACCOUNT—*continued.*

Suit against agent for account—*continued.*

default of account, for R500 as damages,—*Held* that the suit was of a nature cognisable by a Small Cause Court, and that consequently no special appeal would lie. HURRI NARAIN ROY CHOWDHRY *v.* JOY DURGA DASSI . . . . . **2 C. L. R., 17**

(*c*) AWARD.

50. ——— Decision on award.—*Award of cognisable nature and value.*—When the subject-matter of an award is as to its nature and value cognisable by a Court of Small Causes, no special appeal will lie to the High Court against the decree of an ordinary Civil Court in respect of such award. BANU *v.* NARAYAN SAHU **[4 B. L. R., Ap., 82: 13 W. R., 233**

51. ——— Suit on award.—*Award dealing with matters not within cognisance of Small Cause Court.—Act XXIII of 1861, s. 27.*—*G.* and *R.* referred to arbitration disputes between them regarding the partition of their paternal estate. The award found that a sum of R338 was due by *G.* to *R.* and contained other provisions which could not be dealt with by a suit in a Small Cause Court,—*Held* that a suit to recover the money due under the award could not be brought in the Small Cause Court and that section 97, Act XXIII of 1861, therefore did not bar a special appeal. GAURI SAHAI *v.* RAM SAHAI **[7 N. W., 157**

(*d*) CONTRACT.

52. ——— Suit to recover collections from co-sharer.—*Agreement to pay share to other co-sharers.*—A suit by a co-sharer to recover from the defendant collections which are in his charge and which he is under agreement to pay to the other co-sharers is a suit for due under a contract, and if less than R500 is cognisable by a Small Cause Court. ALI AHMED *v.* OODHRAJ RAM . **10 W. R., 79**

53. ——— Suit against agent for money.—*Money received for plaintiff.—Act XXIII of 1861, s. 27.*—In a suit to recover the balance, unaccounted for, of the plaintiff's money in the hands of the defendant, who had been employed as a law agent on a salary to conduct and look after the plaintiff's law suits and to receive and disburse moneys connected with such suits, it was held that the case might be brought under the terms "claim for money due under a contract" in Act XI of 1865, section 6, and that therefore under Act XXIII of 1861, section 27, a special appeal would not lie. JOOGUL KISHORE ROY *v.* RUGHOO NATH SEAL . . **20 W. R., 4**

54. ——— Suit on implied contract.—*Suit against co-sharers for share of rent.—Civil Procedure Code, 1877, s. 586.*—*A.* was the proprietor of 9 annas of a mouzah, *B.* and his family of 1

SPECIAL OR SECOND APPEAL—*continued.*

3. SMALL CAUSE COURT SUITS—*continued.*

(*d*) CONTRACT—*continued.*

Suit on implied contract—*continued.*

anna, and *C.* and others of the remaining 6 annas. *B.* and his family having occupied and enjoyed, to the exclusion of their co-shareholders, 54 bighas of the mouzah, failed to pay any rent in respect of such occupation. *A.* instituted a suit against them (making *C.* and the other holders of the six annas share defendants to the suit) to recover the sum of R412-8 as the sum justly due to him after making all proper deductions, including as well the share of the rent of the 54 bighas to which the 6 annas shareholders were entitled, as also the share which *B.* and his family were entitled to retain as proprietors of a 1-anna share. *Held* that the facts showed an implied contract on the part of *B.* and his family to pay to their co-shareholders whatever, upon taking an account, should appear to be due to them; and that, inasmuch as the total amount sought to be recovered in the suit by *A.* did not exceed R500, the suit was one which might have been brought in a Small Cause Court, and therefore the plaintiff had no right of second appeal to the High Court under section 586 of the Code of Civil Procedure. ASMAN SINGH *v.* DOORGA ROY **[I. L. R., 6 Calc., 284 : 7 C. L. R., 94**

(*e*) CONTRIBUTION.

55. ———— **Suit for contribution for revenue paid to save estate.**—A claim for money below R500 paid as revenue by one partner in an estate on account of another, in order to save the whole estate from sale, arises under an implied contract between them, and therefore is cognisable by a Small Cause Court. No special appeal lay in such a case under section 27, Act XXIII of 1861. RAM MONEY DOSSIA *v.* PEAREE MOHUN MOZOOMDAR . . . . . **6 W. R., 325**

(*f*) CUSTOMARY PAYMENT.

56. ———— **Suit by zemindar against putnidar for dak expenses.**—*Act XXIII of 1861, s. 27.*—A case in which a zemindar sues a putnidar for dâk expenses, according to his putni jumma, is of a nature cognisable by a Court of Small Causes; and as such, by section 27, Act XXIII of 1861, no special appeal will lie. DHEEAJ MAHTAB CHUND BAHADOOR *v.* RADHA BINODE CHOWDHRY **[8 W. R., 517**

ERSKINE *v.* TRILOCHUN CHATTERJEE **[9 W. R., 518**

(*g*) DAMAGES.

57. ———— **Suit for damages.**—*Damages to moveable or immoveable property.*—No special appeal lies in a suit for damages below R500, whether the damages are on account of moveable or immoveable property. BHEENUCK LALL MAHTOON *v.* RUNG LALL MAHTOON . . **11 W. R., 369**

SPECIAL OR SECOND APPEAL—*continued.*

3. SMALL CAUSE COURT SUITS—*continued.*

(*g*) DAMAGES—*continued.*

58. ———— **Suit where claim for damages exceeds R500, but decree is given for less than R500.**—*Act XXIII of 1861, s. 27.*—Where the damages claimed in a suit exceeded R500, and the Court gave the plaintiff less than R500 damages,—*Held* that the right of appeal was not taken away by Act XXIII of 1851, section 27. NEELMONEE SINGH DEO *v.* GORDON, STUART, & CO. **[1 Ind. Jur., N. S., 356 : 6 W. R., 152**

59. ———— **Suit for damages for illegal arrest.**—*Proceedings in execution of decree against surety.*—A decree-holder having taken out execution, the judgment-debtor paid a sum of money in satisfaction of the decree, and got a surety to execute a security-bond on his behalf. The decree-holder thereupon took out proceedings under section 204, Act VIII of 1859, had the surety arrested, and realised from him the amount due under the decree. The surety then brought an action to recover damages for illegal arrest, the sum claimed not exceeding R500. *Held* that the suit was cognisable by a Small Cause Court, and that under section 27, Act XXIII of 1861, no appeal would lie. TOOLSEE RAM *v.* NUND KISHORE LALL . . . . **12 W. R., 471**

60. ———— **Suit for damages for assault.**—*Absence of pecuniary injury.*—No suit for damages occasioned by personal injury will lie in the Small Cause Courts, unless actual pecuniary loss has resulted from such injury to the plaintiff. When there is no such pecuniary loss, the suit for damages will lie in the ordinary Civil Courts, and a special appeal will lie to the High Court, although the damages claimed are below R500. ALI BUKSH *v.* SAMIRUDDIN . **4 B. L. R., A. C., 31 : 12 W. R., 477**

RAJ CHUNDER CHUCKERBUTTY *v.* PUNCHANUN SURMAH CHOWDHRY . . . **4 W. R., 7**

61. ———— **Suit for money paid by unsuccessful claimant to attached property.**—*Civil Procedure Code, 1859, s. 246.*—A suit for money paid by an unsuccessful claimant, under section 246, Act VIII of 1859, in order to save from sale his share of an estate which had been attached in execution of a decree, is in reality a suit for damages and (the value being below R500) is in the nature of a Small Cause Court suit in which no special appeal will lie. POORSUTTUM CHUNDER *v.* GOUR SOONDER PANDEY . . **18 W. R., 283**

62. ———— **Suit to recover money attached.**—*Removal of attachment on wrongful objection to attachment of property.*—*C.*, a decree-holder, alleging that *K.*, a lumbardar of a village, had objected to the attachment in his hands of money due as profits to the judgment-debtor, a co-sharer, on the ground that he had paid such money to the judgment-debtor before the attachment, by reason where of the attachment had been removed; and that such objection was dishonest and wrongful, inasmuch as such money was still in *K.'s* hands, sued

SPECIAL OR SECOND APPEAL—*continued.*

3. SMALL CAUSE COURT SUITS—*continued.*

(*g*) DAMAGES—*continued.*

Suit to recover money attached—*continued.*

K. for the amount of such money and the costs of the attachment proceedings. *Held* that the suit was one for damages, and, the amount claimed not exceeding R500, one of the nature cognisable in a Court of Small Causes, and consequently a second appeal in the suit would not lie. KALIAN SINGH *v.* CHUNNI LAL . . **I. L. R., 6 All., 10**

63. ——— Suit for money lent to redeem mortgage.—*Suit for damages as on breach of contract.—Act XXIII of 1861, s. 27.*—Defendant borrowed a sum of money below R500 from the plaintiff, with a view to redeem a mortgage on condition that, after redemption, he would sell the property to the plaintiff. He did not, however, redeem the property. *Held* that plaintiff's suit to recover his dues was one for damages as upon a breach of contract in which, under section 27, Act XXIII of 1861, no special appeal would lie. KHULLEEL MAHOMED *v.* FURZAM ALLY . **12 W. R., 269**

64. ——— Suit for damages for breach of contract controlling terms of decree.—No special appeal lies in a suit for damages for breach of a private arrangement by which the parties agree to control the terms of a decree, when the amount is within the jurisdiction of the Small Cause Court. CHUNDY PERSAD DOSS *v.* KASSEENATH DOSS **[W. R., 1864, 346**

65. ——— Suit for damages to crops by inundation.—*Omission to cut bund.—Act XLII of 1860, s. 3.*—Under section 3, Act XLII of 1860, a suit for damages of any kind below R500 (*e.g.*, a suit for damages for not cutting through a bund whereby plaintiff's crops were destroyed in consequence of accumulation of water) was cognisable by a Small Cause Court; and, consequently, under section 27, Act XXIII of 1861, no special appeal lay in such a case. GOPEENATH PAUL *v.* GEORGE **[6 W. R., 7**

66. ——— Suit for damages for inadequate sale of decree.—*Act XXIII of 1861, s. 27.*—No special appeal lay under section 27, Act XXIII of 1861, for damages for inadequate sale of a decree. KRISTOMONEE THAKOOR *v.* BISHAMBHUR DOSS **[5 W. R., 215**

67. ——— Suit for defamation of character.—*Absence of pecuniary injury.*—Suits for defamation of character, where there has not been any actual pecuniary loss, were not, under clause 3, section 6, Act XI of 1865, cognisable by the Small Cause Courts, and therefore in such a suit a special appeal would lie under Act XXIII of 1861, section 27. BHAIRAB CHANDRA CHUCKERBUTTY *v.* MAHENDRA CHANDRA CHUCKERBUTTY **[4 B. L. R., Ap., 59: 13 W. R., 118**

68. ——— ——— *Absence of pecuniary damage.—Quære,*—Before a suit can lie in a case of defamation of character, is it necessary to presume that actual pecuniary damage has resulted? DHURMO DOSS KOONDOO *v.* KOYLASH KAMINEE DOSSIA . . . . . **12 W. R., 372**

69. ——— Suit for malicious prosecution.—*Absence of pecuniary damage.*—The defendant laid a charge of assault against the plaintiff before the Magistrate, and the charge was heard and dismissed. The plaintiff then brought a suit for damages occasioned to his reputation by the false and malicious charge, laying the damages at R150; but no actual pecuniary loss in consequence of the charge was alleged. *Held* that it was not a suit cognisable by the Small Cause Court, and therefore a special appeal would lie. PRANKRISHNA BANERJEE *v.* NADIAR CHAND CHATTERJEE **[4 B. L. R., A. C., 35, note: 10 W. R., 115**

70. ——— ——— *Injury to reputation.*—The defendant charged the plaintiff with plotting to murder him, and the case came before the Magistrate and was dismissed. The plaintiff then sued in the Munsif's Court for damages on account of the injury "to his reputation and pain of body and mind" caused by the malicious prosecution, and laid the damages at R100. A special appeal to the High Court was dismissed on the ground that it was a suit cognisable by a Small Cause Court. NADIAR CHAND ROY *v.* BAIKANT NATH MISSER **[4 B. L. R., A. C., 33, note**

71. ——— Suit for damages for loss of reputation and business.—A suit for damages not exceeding R500 on account partly for injury to reputation and partly for loss in business and professional position, was held to come within the provisions of section 6, Act XI of 1865, and was not open to special appeal. BROJO SOONDUR BHADOOREE *v.* ESHAN CHUNDER ROY . . **15 W. R., 179**

72. ——— Suit for money paid as rent to save estate from sale.—*Enforced payment where rent had been already paid.—Act XXIII of 1861, s. 27.—Act XI of 1865, s. 6.—Act X of 1859, s. 23, cl. 2.*—The plaintiff, the holder of a putni talook, by an arrangement with the defendants, his zemindars, paid the Government revenue and the road-cess tax for the year 1874, and then tendered the balance of the rent for that year to the defendants, but they refused to accept it; and he, therefore, deposited it in the Munsif's Court in accordance with section 46 of Bengal Act VIII of 1869. One of the defendants then took proceedings under Bengal Regulation VIII of 1819 to recover his share of the rent, and notwithstanding the protest of the plaintiff that the rent had been already paid, obtained an order for the sale of the tenure; and to prevent the sale the plaintiff had to pay the sum claimed for rent. In a suit brought to recover that amount with interest,—*Held*, it was a

SPECIAL OR SECOND APPEAL—*continued.*

3. SMALL CAUSE COURT SUITS—*continued.*

(*g*) DAMAGES—*continued.*

Suit for money paid as rent to save estate from sale—*continued.*

suit cognisable by a Court of Small Causes under section 6 of Act XI of 1865, and therefore a special appeal was barred by section 27, Act XXIII of 1861. It was not a suit for "damages on account of illegal exaction of rent" within the meaning of clause 2, section 23 of Act X of 1859. KRISHNA KISHORE SHAHA *v.* BIRESHUR MOZOOMDAR [I. L. R., 4 Calc., 595 : 3 C. L. R., 177

73. ——— **Suit for payments made on account of rent.**—*Refusal to allow for such payments in rent account.*—A suit to recover certain cash, and the value of certain grain which the defendants had persuaded the plaintiff to pay them, engaging that the lumbardar would allow the same in his account (as part payment of rent) but which the lumbardar refused to do, is practically a suit for damages, and the amount in question being cognisable by a Small Cause Court, no special appeal can be entertained. YACOOB ALI *v.* KOOER SINGH [2 N. W., 111

74. ——— **Suit to recover a share of malikana.**—*Act XXIII of 1861, s. 27.*—A suit to recover a share of malikana, which the defendant had realised from the Collector, is a suit for recovery of a sum of money which has been taken away by the defendants to the damage of the plaintiff, and is therefore cognisable by the Small Cause Court; and under section 27, Act XXIII of 1861, no special appeal lies from a judgment passed in appeal in such a suit. LASMANI DEBIA *v.* MAHOMMED HAFEZULLA . . . 3 B. L. R., Ap., 96

S. C. RASMONEE DEBIA *v.* MAHOMED HAFEZOOLLAH . . . . 12 W. R., 29

(*h*) DEBTS.

75. ——— **Suit for division of debt due to estate of deceased.**—*Held* that a suit for division of debts due to the deceased's estate (the sum being ascertained) was cognisable by a Small Cause Court, and no special appeal lay to the High Court. OODEYTA *v.* GOPAL . . 2 Agra, 234

(*i*) DECLARATORY DECREE.

76. ——— **Suit to have property made over to plaintiff on an adjusted account.**—Where, on an adjusted account between two parties, one claims from the other some money and some grain which are shown to be due to him and asks in effect that they may be made over to him, the suit is not a suit for a declaratory decree, and a special appeal does not lie in such a suit to the High Court under section 27, Act XXIII of 1861. BULDEO SINGH *v.* RAM SURUN LALL . 25 W. R., 234

SPECIAL OR SECOND APPEAL—*continued.*

3. SMALL CAUSE COURT SUITS—*continued.*

(*j*) DECREE.

77. ——— **Decree for land under a compromise in a suit cognisable by a Small Cause Court.**—*Act XXIII of 1861, s. 27.*—In a suit for recovery of a sum of money below R500, the parties entered into a compromise, whereby the defendant made over a certain piece of land in lieu of the money claimed, and a decree was passed accordingly. In execution of the decree, disputes arose between the parties. Upon special appeal by the judgment-debtor to the High Court,—*Held* that, under section 27, Act XXIII of 1861, no special appeal lay to the High Court. TALAN BIBI *v.* TENU BIBI . 6 B. L. R., Ap., 82 : 15 W. R., 65

(*k*) MAINTENANCE.

78. ——— **Suit by widow for maintenance.**—*Act XXIII of 1861, s. 27.*—A Hindu widow who had been supported by her father-in-law after his death sued his eldest son for maintenance and obtained a decree for R150, notwithstanding the defendant's objection that, being one of three brothers who inherited their father's estate, he was not solely liable for the maintenance claimed. *Held* that as this was a Small Cause Court suit an appeal did not lie. RAMCHANDRA DIKSHIT *v.* SAVITRIBAI [4 Bom., A. C., 73

JUDAL KOM RANCHHOD MULJI *v.* HIRA MULJI [4 Bom., A. C., 75

(*l*) MESNE PROFITS.

79. ——— **Suit for mesne profits.**—*Act XXIII of 1861, s. 27.—Suit under R500.*—A suit for the recovery of mesne profits (not amounting to R500) is cognisable by a Court of Small Causes. A special appeal therefore does not lie in such a suit. KAKAJI SAKHARAM *v.* GOVIND GANESH . . . . 8 Bom., A. C., 96

80. ——— *Act XI of 1865, s. 6.—Act XXIII of 1861, s. 27.*—In a suit brought in the Sudder Ameen's Court for R133 for mesne profits, it was objected on special appeal that, under section 27, Act XXIII of 1861, no special appeal would lie, the suit being cognisable by the Small Cause Court. *Held*, it being merely a suit for mesne profits and no question of right or title arising in it, it was a suit for damages within section 6, Act XI of 1865, and therefore cognisable by the Small Cause Court. RAM PYARI DEBI *v.* DINANATH MOOKERJEE [2 B. L. R., S. N., 13 : 10 W. R., 375

(*m*) MONEY.

81. ——— **Suit for money had and received for the plaintiff's use.**—*C.*, a mortgagee, the mortgage having been foreclosed, sued *D.*, the mortgagor, for possession of the mortgaged

SPECIAL OR SECOND APPEAL—*continued.*

3. SMALL CAUSE COURT SUITS—*continued.*

(*m*) MONEY—*continued.*

Suit for money had and received for the plaintiff's use—*continued.*

property and obtained a decree for possession thereof. He subsequently agreed with *D.* to surrender the mortgaged property to him, if he deposited the mortgage-money in Court by a specified day. *D.* borrowed the money for this purpose by means of a conditional sale of the property to *L.*, and deposited it in Court. The deposit was made after the specified day and consequently *C.* took possession of the property. The money deposited by *D.* remained in deposit, and while there *C.* caused it to be attached in execution of a money-decree he held against *D.*, and it was paid to him. *L.* thereupon sued *C.* in the Munsif's Court to recover such money, which amounted to R350. *Held* that the suit must be regarded as one for money had and received by the defendant for the use of the plaintiff, and was therefore one cognisable in a Court of Small Causes. LACHMAN PRASAD *v.* CHHAMMI LAL [I. L. R., 4 All., 6

COLLECTOR OF CAWNPORE *v.* KEDARI [I. L. R., 4 All., 19

82. ——— Suit to recover purchase-money.—*Act XXIII of 1861, s. 27.—Held* that the suit to recover R200 paid in respect of the purchase of land which was not completed, was a suit of the description cognisable by the Small Cause Court, and a special appeal would not lie. KHOOB CHUND *v.* HAZAREE LALL . . . 1 Agra., 275

83. ——— Suit for money paid as excess of rent.—In a suit for recovery of a sum of money less than R500, as money paid in excess of rent due,—*Held* that the suit being cognisable by the Court of Small Causes under section 6, Act XI of 1865, no special appeal lay to the High Court. SIB SAHAYA SUKUL *v.* BIRCHANDRA JUBARAJ [2 B. L. R., A. C., 172

S. C. SHIB SUHAYE SOOKOOL *v.* BEER CHUNDER JOOBRAJ . . . . 11 W. R., 30

84. ——— Suit for money illegally levied on land.—*Act X of 1876, s. 15.—Civil Procedure Code, 1876, s. 586.*—The plaintiff sued to recover from the defendant R71-3-3, alleging that the defendant had illegally levied the money on the plaintiff's land on account of enhanced summary settlement and local-fund cess. The defendant being a minor was represented by the Collector as his administrator. The Assistant Judge who tried the suit awarded the plaintiff's claim. The District Judge, on appeal, reduced the amount of the plaintiff's claim to R38-4-9, but upheld the decree of the first Court in other respects. The defendant thereupon filed a second appeal in the High Court. *Held* that under the Civil Procedure Code (Act X of 1877) section 586, no second appeal lay, as the suit was one cognisable by a Small Cause Court. Act X of 1876, section 15, removes suits to which the Collector

SPECIAL OR SECOND APPEAL—*continued.*

3. SMALL CAUSE COURT SUITS—*continued.*

(*m*) MONEY—*continued.*

Suit for money illegally levied on land—*continued.*

is a party from the jurisdiction of the Small Cause Court; but the nature of the suit remains unaltered. MUSA MIYA SAHEB *v.* GULAM HUSEIN [I. L. R., 7 Bom., 100

85. ——— Suit by lessee for refund of revenue.—*Contract to refund excess.*—In a suit by a lessee upon a contract for a refund of excess revenue remitted by Government, a special appeal is not admissible if the amount claimed be under R500. WHITE *v.* TRIPORA SUNKUR MOOKERJEE [W. R., 1864, 297

86. ——— Suit to recover money paid in excess of share of profits of land.—A suit to recover from the defendant R235, paid to him in excess of his share of the profits of certain lands, is cognisable in the Small Cause Court, and consequently no special appeal will lie in such a case under section 27, Act XXIII of 1861. JOYNARAIN MANJEE *v.* MUDDOOSOODUN GORAIT . . 2 W. R., 134

87. ——— Suit for recovery of money stolen from Court.—*Suit against Government.*—A sum of money was stolen from the Judge's Court of Tippera while *A.* was the Nazir. *A.* paid the amount to Government, and died, leaving *B.* his heir. *B.* sued Government for recovery of the amount paid by *A.*, on the ground that as there was no negligence of *A.*, and as the amount was under the custody of the guards of Government at the time of the theft, *A.* was not responsible for the loss thereof. *Held*, the suit was cognisable by a Small Cause Court, and therefore, under section 27, Act XXIII of 1861, no special appeal lay to the High Court. COLLECTOR OF TIPPERA *v.* MAFIZUNNISSA BIBEE [4 B. L. R., Ap., 46

(*n*) MORTGAGE.

88. ——— Suit to recover debt charged on immoveable property.—*Act XXIII of 1861, s. 27.*—A suit brought to enforce a debt or demand not exceeding R500 which is secured upon, and must in law be primarily satisfied out of immoveable property, is not a suit of a nature cognisable in Courts of Small Causes under section 27 of Act XXIII of 1861, so as to exclude a right to special appeal. This is so though the plaint on the face of it seeks recovery in the alternative, either from the mortgagor personally, or from the mortgaged property. ATMARAM BALLAL KAGJI *v.* SADASHIV HARI MAHAJANI [2 Bom., 1

(*o*) MOVEABLE PROPERTY.

89. ——— Suit for price of personal property sold.—*Suit by co-sharer.*—A suit lies in a Small Cause Court by a co-sharer to recover the

SPECIAL OR SECOND APPEAL—*continued.*

3. SMALL CAUSE COURT SUITS—*continued.*

(*o*) MOVEABLE PROPERTY—*continued.*

Suit for price of personal property sold —*continued.*

price of a share of personal property alienated by another co-sharer. RADHANATH SHAHA *v.* KAMEENEE SOONDEREE DOSSEE . . **2 W. R., 37**

90. ——— Suit for materials of hut, or their value.—*Act XXIII of 1861, s. 27.*—A suit for the materials of a hut in which the plaintiff sought for a decree to break up and remove them, or too btain their value (R29), was held to be a case cognisable by a Small Cause Court under Act XI of 1865, section 6, and therefore no special appeal would lie. KASHEE CHUNDER DUTT *v.* JUDOONATH CHUCKERBUTTY . . . . . **10 W. R., 29**

91. ——— Suit to recover possession of share of a boat.—*Act XXIII of 1861, s. 27.*—A suit to recover possession of a share of a boat by establishment of the plaintiffs' right, is a suit for personal property within the meaning of Act XI of 1865, section 6, and therefore no special appeal lies in such a case under Act XXIII of 1861, section 27. MAHOMED AZIM BHOOYAH *v.* MAHOMED SOMEE **[21 W. R., 413**

92. ——— Suit for the value of trees and fish.—*Trees destroyed by defendant.*—A suit to recover the value of a tree destroyed by the defendants and for the value of fish taken from the plaintiffs' tank (the claim being under R500) is a suit cognisable by a Small Cause Court and no special appeal lies to the High Court. SUJJAD ALI *v.* BHOLARAM . . . . . **5 N. W., 24**

93. ——— Suit for recovery of value of fruit from trees.—Where a suit was brought for the recovery of the value of the fruit of certain mango trees alleged to have been misappropriated by the defendants,—*Held* that, as the suit was of the nature of a suit cognisable by Courts of Small Causes, a special appeal would not lie. SHAMANUND *v.* NUNDKOOMAR **[3 Agra, 290 : S. C. Agra, F. B., Ed. 1874, 153**

94. ——— Suit for value of sugar-mill.—A stone sugar-mill is moveable property, and a suit for the value of it, if under R500, will lie in the Small Cause Court. No special appeal lies therefore in such a suit. HURMUNGAL SINGH *v.* ATHUL SINGH **[4 N. W., 15**

95. ——— Suit by widow to recover personal property or its value taken from deceased.—*Act XXIII of 1861, s. 27.*—The widow and heiress of a deceased person sued the defendants to recover personal property, valued at R200, said to have been taken by them from deceased in his lifetime. *Held* that a special appeal was barred by section 27, Act XXIII of 1861. KAPAHI BEWA *v.* KESHRAM KUCH **[2 B. L. R., Ap., 23 : 11 W. R., 93**

SPECIAL OR SECOND APPEAL—*continued.*

3. SMALL CAUSE COURT SUITS—*continued.*

(*p*) RENT.

96. ——— Suit for arrears of rent.—*Act XXIII of 1861, s. 27.*—In suits for arrears of rents of land, when the claim is under R500, a special appeal lies to the High Court, such claims not being generally cognisable by Courts of Small Causes. RAMCHANDRA RAGHUNATH *v.* ABAJI BIN RASTYA **[6 Bom., A. C., 12**

97. ——— *Bom. Reg. XVII of 1827, s. 31, cl. 3.*—*Act XXIII of 1861, s. 27.*—The expression "or former year" in Regulation XVII of 1827, section 31, clause 3, did not mean the year immediately preceding the current year, but any previous year, and a suit for rent could have been brought before a revenue officer, when Act XI of 1865 was passed, and not before the Small Cause Courts constituted by that Act. A special appeal lay in a suit of this nature. KRISHNARAV RAMCHANDRA *v.* MANAJI BIN SAYAJI **[11 Bom., 106**

98. ——— Suit for zemindari cess.—*Suit for payment for use of land.*—*Act XXIII of 1861, s. 27.*—Where the plaintiff claimed a sum of money under the name of a zemindari cess, but in point of fact what was claimed was claimed on account of the use of land,—*Held* that such a suit was a suit of a nature cognisable by a Small Cause Court under section 6, Act XI of 1865, and that a special appeal would not lie. BUCHOO CHOWBEY *v.* GHOORLAIT . . . . . **4 N. W., 56**

99. ——— Suit for Government assessment and local fund cess.—*Suit for arrears of rent.*—The defendant executed to the plaintiff in 1847 a mulgeni kabuliat (*i.e.*, one kabuliat corresponding to a lease at a fixed rental), agreeing to pay to the plaintiff R150 annually. At the date of the execution of the mulgeni the Government assessment was R56-8-0, but in 1872 it was enhanced to R129-8-0, and a local-fund cess of R4-9-0 imposed in addition. The plaintiff sued the defendant to recover from him the enhanced assessment and the cess. On appeal an objection was taken that, the amount claimed by the plaintiff being less than R500, the suit was cognisable by a Court of Small Causes, and that, therefore, there was no second appeal. *Held* that the suit might be regarded as one for arrears of rent at an increased rate, and, as such, was not cognisable by a Court of Small Causes. BABSHETTI *v.* VENKATRAMANA . . . . . **I. L. R., 3 Bom., 154**

(*q*) SPECIFIC PERFORMANCE.

100. ——— Suit for specific performance of contract.—A suit (valued at R500) for specific performance of a contract is not cognisable by a Small Cause Court. Consequently no special appeal will lie in such a case. NILKANTH SURMAH *v.* BISHEN BASHEE . . . **6 W. R., 322**

SPECIAL OR SECOND APPEAL—*continued.*

3. SMALL CAUSE COURT SUITS—*continued.*

(r) SURETY.

101.——Suit to establish surety's liability for rent.—*Necessity to prove non-payment by principal.*—A suit to establish a surety's liability on account of arrears of rent due from a putnidar where the non-payment of the rent by the putnidar would have to be established is not cognisable by a Small Cause Court; and consequently a special appeal was not barred in such a case by section 27, Act XXIII of 1861. MAHATAB CHUND BAHADOOR *v.* BROJONATH MITTER . . . . . **8 W. R., 111**

(s) TITLE, QUESTION OF.

102. —— Issues affecting proprietary rights.—*Act XXIII of 1861, s. 27.*—The decision or order mentioned in section 27 was confined to those decrees which, if made in a Small Cause Court, would be conclusively binding on the parties, and did not include a decree based upon an issue affecting the proprietary relations between the parties, which, if it had properly arisen incidentally in a suit brought in a Small Cause Court, could not then have been finally concluded between the parties. BHOOPNARAIN SAHOO *v.* MAHOMED HOSSEIN **[4 W. R., 60**

See KISTO COOMAR CHOWDHRY *v.* ANUNDMOYEE CHOWDHRAIN . . **6 W. R., Mis., 128**

103. —— Question of title incidentally raised.—Where, in a suit of a nature cognisable by a Small Cause Court, there is no right of special appeal, although a question of title is incidentally raised, the finding of the Small Cause Court not being conclusive and only for the purpose of that suit. SUNKUR LALL PATTUCK GYAWAL *v.* RAM KALEE DHAMIN . . . **18 W. R., 104**

104.—— Question of title raised and tried.—*Act XXIII of 1861, s. 27.*—No special appeal lies to the High Court in a suit cognisable by the Small Cause Court, although a question of title to immoveable property has been raised and tried in the Court below. MOHESH MAHTO *v.* PIRU **[I. L. R., 2 Calc., 470: 1 C. L. R., 33**

105. —— Failure of Appellate Court to decide necessary question of title.—*Act XXIII of 1861, s. 27.*—Where a question of title arises in a suit of a nature triable by a Small Cause Court, which must be determined before plaintiff can get a decree, and the lower Appellate Court fails to determine it, a special appeal is admissible. *Raghu Ram Biswas* v. *Ram Chandra Dokay, B. L. R., Sup. Vol., 34: W. R., F. B., 127;* and *Nanda Kumar Banerjee* v. *Ishan Chandra Banerjee, 1 B. L. R., A. C., 91: 10 W. R., 130,* distinguished. PACHOO RABEE *v.* GOOROO CHURN DASS . **15 W. R., 556**

106. —— Where, in a suit cognisable by a Court of Small Causes, in order to determine the question at issue between the parties, it was necessary for the Court of Appeal in the first instance to determine a question of title to land (which had been raised by the Munsif),—*Held* that a special appeal lay to the High Court, though the Court below had omitted to determine such question of title. KISANDRAM VALAD HIRA CHAND *v.* JETHIRAM VALAD MAGNIRAM . **5 Bom., A. C., 57**

SPECIAL OR SECOND APPEAL—*continued.*

3. SMALL CAUSE COURT SUITS—*continued.*

(s) TITLE, QUESTION OF—*continued.*

Failure of Appellate Court to decide necessary question of title—*continued.*

107. ——Question of title decided by Appellate Court.—Where a suit appears from the plaint to be one of a nature cognisable in a Court of Small Causes, but a question of title has been gone into and decided by the District Court in appeal, a special appeal will lie. DIKSHIT *v.* DIKSHIT . . . . . **2 Bom., 4**

108. —— Suit for damages involving question of title.—A suit for damages for an amount not exceeding R500 is within the competency of a Small Cause Court to decide, notwithstanding that it involves an inquiry into a question of right No special appeal lies in such a case. LUCKHEE DEBIA CHOWDHRAIN *v.* MALICK **[W. R., 1864, 237**

KHANDU VALAD KERU *v.* TATIA VALAD VITHOBA **[8 Bom., A. C., 23**

109. —— Suit which may involve question of title.—*Suit for damages for detention of materials of house.—Act XXIII of 1861, s. 27.*—A suit for damages for detention of materials of a house involves no question of title. Such a suit is cognisable by a Small Cause Court, if under R500, and a special appeal was barred by section 27, Act XXIII of 1861. KISHUB CHUNDER SHAHA *v.* BROMMO MOYEE DABEA . . . **1 W. R., 35**

110. —— Suit involving question of title.—*Suit for damages.*—A special appeal was held not to lie in a case for damages for value of crops misappropriated under R500 cognisable by a Small Cause Court, notwithstanding that the case involved a question of title. HEDAETOLLAH *v.* KARLOO **[7 W. R., 73**

RAM DYAL GANGOOLY *v.* HURO SOONDUREE DOSSIA . . . . . **10 W. R., 272**

111. —— *Suit for price of trees cut down and removed.—Damages.—Act XXIII of 1861, s. 27.*—A suit for the price of trees cut down and removed is not the less a suit for damages, because the Court, in order to determine whether the plaintiff is entitled as damages to the value of his trees, has to go into evidence as to whether they belong to the plaintiff or not. Such a suit is cognisable by a Court of Small Causes, and no special appeal will lie. SHIB DEEN TEWARY *v.* BUKSHEE RAM PROTAB SINGH . **W. R., 1864, Mis, 3**

SPECIAL OR SECOND APPEAL—*continued.*

3. SMALL CAUSE COURT SUITS—*continued.*

(*s*) TITLE, QUESTION OF—*continued.*

Suit involving question of title—*continued.*

112. ——————— *Act XXIII of 1861, s. 27.—Claim by zemindar to wrecked property.—Salvage.*—A quantity of rice having been recovered from the wreck of a boat, a portion was left on the river bank by the owner for the remuneration of the salvors, including some left as "huk zemindari," which the owners of a neighbouring jote carried away. In a suit brought by the former against the jotedar for the value of the portion last mentioned, the Court of first instance went into the question of the custom entitling to property so saved. *Held* that this question was only incidentally raised for the purposes of the suit, which was simply one for the value of moveable or personal property and cognisable by a Court of Small Causes, and the value being less than R500, a special appeal did not lie. GRANT *v.* MODHOO SOODUN SINGH **[10 W. R., 79**

(*t*) TRESPASS.

113. ——————— *Suit cognisable by Small Cause Court.—Suit for damages for trespass.*—In a suit for damages for trespass laid at a sum under R100, a special appeal will lie to the High Court if the title to the land trespassed upon has been raised in the Courts below. LUKHYNARAIN CHUTTOPADHYA *v.* GORACHAND GOSSAMY **[I. L. R., 9 Calc., 116: 12 C. L. R., 89**

4. GROUNDS OF APPEAL.

(*a*) FORM OF—

114. ——— **Requisites for grounds.**—*Clearness and distinctness.*—The grounds of special appeal must not be vague and indistinct, conveying no information to the respondent what the point of law is that he has to meet. NAND KISHOR DAS *v.* RAM KALP ROY **[6 B. L. R., Ap., 49: 15 W. R., 8**

(*b*) QUESTIONS OF FACT.

115. ——— **What are or are not questions of fact.**—*Question of custom.*—A question of custom is a question of fact on which the lower Court alone can pass a decision, and on which the High Court cannot interfere. HUREEHUR MOOKERJEE *v.* JUDOONATH GHOSE . . **10 W. R., 153**

ALI *v.* GOPAL DASS . . **13 W. R., 420**

116. ——————— *Question of damages.—Discretion of Judge.*—A Judge has a discretion with respect to the amount of the damages which will not ordinarily be interfered with on special appeal. TEEKARAM KYBUTT *v.* RAJKISHEN ROY . . . . . **Marsh., 495**

AHMEDOOLLA *v.* HUR CHURN PANDAH **[2 W. R., 236**

SPECIAL OR SECOND APPEAL—*continued.*

4. GROUNDS OF APPEAL—*continued.*

(*b*) QUESTIONS OF FACT—*continued.*

What are or are not questions of fact—*continued.*

117. ——————— *Question of amount of damages.—Difference of opinion on evidence between lower Courts.*—In a suit for damages on account of false charge and consequent arrest, in which the Court of first instance found that there were probable and reasonable grounds for bringing the charge, and the lower Appellate Court took a different view of the evidence, it was held that the difference of view was not a subject for special appeal. The amount of damages to be awarded is a question for a jury to decide, and one with which the High Court cannot interfere in special appeal. BANEE MADHUB CHATTERJEE *v.* BHOLANATH BANERJEE. HEERA CHAND BANERJEE *v.* BANEE MADHUB CHATTERJEE . . **10 W. R., 164**

118. ——————— *Question of amount of damages.—Award of damages under Act X of 1859, s. 10.*—An award of damages by a lower Appellate Court under section 10, Act X of 1859, though excessive, if it is within the legal limit, cannot be interfered with in special appeal as an error of law. JOHEEROODDEEN MAHOMED *v.* DABEE PERSHAD SINGH . . **13 W. R., 22**

Affirmed on review . . . **13 W. R., 391**

119. ——————— *Refusal to award damages.—Beng. Act VI of 1863, s. 2.—Discretion of Court.*—The refusal of a Court to award damages under section 2, Bengal Act VI of 1862, is not a ground for special appeal, it being a matter of discretion to award them or not. DHEERAJ MAHATAB CHAND *v.* DEBENDER NATH THAKOOR **[W. R., 1864, Act X, 68**

GOPAL LAL THAKOOR *v.* MAHOMED KADIR **[W. R., 1864, Act X, 73**

120. ——————— *Question of law.—Sufficiency of evidence.*—It is a question of law for the Court to decide on second appeal whether there is evidence before the Court, on which a Court could properly arrive at any given conclusion of fact. BIDHUMUKHI DABEA CHOWDHRAIN *v.* KEFYUTULLAH . . . . . **I. L. R., 12 Calc., 93**

121. ——————— *Jurisdiction, Question of.*—A special appeal will not lie upon a question of jurisdiction depending upon a question of fact, unless the fact has been determined by the lower Court, or is admitted by the parties. *Quære,*—Whether if the fact appears a special appeal will lie unless the error in procedure has affected the merits. LUTEEFOONNISSA BEEBEE *v.* POOLIN BEHARY SEIN . **W. R., F. B., 31: 1 Ind. Jur., O. S., 10 [1 Hay, 242**

S. C. POOLIN BEHARY SEIN *v.* LUTEEFOONISSA BEEBEE . . . . . **Marsh., 107**

COURT OF WARDS *v.* ROOP MOONJUREE KOOER **[25 W. R., 260**

SPECIAL OR SECOND APPEAL—*continued.*

4. GROUNDS OF APPEAL—*continued.*

(*b*) QUESTIONS OF FACT—*continued.*

What are or are not questions of fact— *continued.*

122. ——————— *Existence of legal necessity.*—Where both the lower Courts found that there was no necessity for a widow to borrow money, the High Court refused in special appeal to consider it other than a question of fact, and held they could not interfere with the finding in special appeal. INDER CHUNDER BABOO *v.* HURNAUTH CHOWDHRY . . . . . **1 Hay, 257**

123. ——————— *Question of law.—Onus probandi.*—Where each of the parties has gone into evidence upon the issues raised in the lower Courts, no question as to whether the onus lies on the one or on the other can arise in special appeal. HUREE MOHUN MOJOOMDAR *v.* ASGUR BEHAREE . . . . . **23 W. R., 324**

Reversing the decision in ASGUR BEPAREE *v.* HUREE MOHUN MOJOOMDAR . . **23 W. R., 56**

124. ——————— *Proceeding to enforce decree.—Act XIV of 1859, s. 20.*—The question whether the action of the judgment-creditor taken in execution of his decree was a proceeding taken to enforce the decree within the meaning of section 20, Act XIV of 1859, was a question of fact for the decision of the Courts below, and not one of law on which to bring a special appeal to the High Court. IRSHAD ALI *v.* RADHU SHAH **[13 B. L. R., Ap., 1: 21 W. R., 188**

125. ——————— *Order finding proceedings to enforce decree not bonâ fide.—Act XIV of 1859, s. 20.*—The question as to whether proceedings which had been taken to execute a decree had been taken *bonâ fide* to keep alive such decree, was a question of fact, and no special appeal lay from an order finding that the proceedings taken were *bonâ fide.* BHUBAN MOHUN CHATTOPADHYA *v.* SAUDAMINI DEBI . . **5 B. L. R., Ap., 59**

126. ——————— *Service of notices.*—Where a Judge found on evidence that the notices in certain execution proceedings were not caused to be properly served, and that those notices were not made in good faith, the finding was held to be a finding of fact which could not be disturbed in special appeal. ABDOOL AZEEZ *v.* SHUMSUNNISSA **[11 W. R., 263**

127. ——————— *Service of notice of enhancement.*—A decision that notice of enhancement was duly served cannot be interfered with in special appeal. TARA PROSUNNO MOJOOMDAR *v.* BISHO NATH SIRCAR . **23 W. R., 144**

Reversing on appeal BISSONATH SIRCAR *v.* TARA PROSONNO MOZOOMDAR . . **22 W. R., 482**

128. ——————— *Right of way.*—In suits to enforce a right of way, the question whether the plaintiff has a right of way or not, is a question of fact to be determined by the evidence he produces of user. Where, on the evidence the Judge found the plaintiff had not a right of way,—*Held,* there was no error of law which gave the plaintiff a right to a special appeal. MAHOMED ALI *v.* JUGAL RAM CHANDRA **[5 B. L. R., Ap., 84: 14 W. R., 124**

129. ——————— *Finding as to user.*—A finding of a lower Appellate Court as to a right of user being proved cannot be interfered with on special appeal, even though not very distinct as to the precise period of enjoyment. WUZERROODDEEN *v.* SHEOBUND LALL . . **11 W. R., 285**

130. ——— **Finding on facts.**—*Decision in regular appeal.*—When the decision passed in regular appeal turns upon a mere question of fact, if that question of fact is determined after due investigation, there is no ground of special appeal. GOPAL KHUNDEE RAO *v.* DEOKEE NUNDUN **[6 N. W., 172**

131. ——————— *Consent of parties.*—The High Court will not, even with consent of parties, pronounce a decree on the facts in a special appeal. KADAMBINEE DOSSEE *v.* DOORGA CHURN DUTT . . . . . **Marsh., 4**

S. C. DOORGA CHURN DUTT *v.* KADUMBINEE DOSSEE . . . . . **1 Hay, 25**

132. ——————— *Inference of fact.*—It is most essential in special appeal that the High Court should be very careful in not interfering with inferences of fact drawn by a lower Appellate Court. HAMEER MAHOMED CHOWDRY *v.* FOOL MAHOMED CHOWDRY . . . **16 W. R., 311**

WOOMA MOYEE BURMONYA *v.* KUNUCK CHUNDER MOOKERJEE . . . **17 W. R., 418**

Even though it is not an inference the High Court itself would have drawn, provided the Judge was at liberty to draw it. MAHOMED MANOO BHOOYAH *v.* MAHOMED ASANOOLLAH CHOWDHRY **[17 W. R., 349**

KALEE DOSS ACHARJEE *v.* KHETTRO PAL SINGH ROY . . . . . **17 W. R., 472**

133. ——————— *Ground for setting aside decision.*—If the reasons in a judgment are such as can be rightly given, and the inferences such as can be legally drawn, it cannot be set aside in special appeal, even if the High Court cannot agree with or support all the reasons given. RUMMEEZOODDEEN BHOOYAN *v.* JOYMALA **[15 W. R., 303**

134. ——————— *Decision on fact though probably erroneous.*—In special appeal a lower Appellate Court's findings upon a question of

SPECIAL OR SECOND APPEAL—*continued.*

4. GROUNDS OF APPEAL—*continued.*

(*b*) QUESTIONS OF FACT—*continued.*

Finding on facts—*continued.*

fact were accepted as final, although it seemed to the High Court at least doubtful whether the judgment of the first Court was not the right one, and it was not unlikely, if they had the power of going into the matter, that they might have come to a different conclusion from the lower Appellate Court. LOOYEE DHUR ATTO *v.* PROSUNNO MOYEE DOSSEE [20 W. R., 267

135. ——————— *Error in law.*—A finding of fact by a lower Appellate Court may be disturbed in special appeal, if, as in this case, the reasonings and the views upon which that finding is based are erroneous in law, as where evidence is credited or disbelieved on unreasonable grounds. JUGGURNATH DEB *v.* MAHOMED MOKEEM [17 W. R., 161

SAGE *v.* MACKAY & CO. . . 2 Hay, 463

BEHAREE LALL NAEK *v.* SREERAM ROY [20 W. R., 259

See KRISTO GOBIND KUR *v.* GUNGA PERSHAD SURMA . . . . 23 W. R., 266

PUTSAHEE KOOER *v.* SHEO PERSHAD RAM OOPADHYA . . . . . 24 W. R., 61

CHAND MONEE DOSSEE *v.* OBHOY CHURN MAL [24 W. R., 289

HUNSA KOOER *v.* SHEO GOBIND RAOOT [24 W. R., 431

GOBINDO CHUNDER MOULICK *v.* MUDHOOSUDUN MOULICK . . . . . 25 W. R., 550

DHOONDH BAHADOOR SINGH *v.* PRIAG SINGH [17 W. R., 314

KEWAL KANDOO *v.* OMRAO SINGH [25 W. R., 166

136. ——————— *Error in law.*—*Partnership.*—Where a Subordinate Judge held, from the fact of one person carrying on a business firm and appearing to the world to be the only person carrying it on, that there could be no other person in partnership with him, he was considered to have committed an error which materially affected his decision on the merits, and was a good ground for special appeal. SHOOBUL CHUNDER KULLEAH *v.* KOYLASH CHUNDER MAL . . 14 W. R., 23

137. ——————— *Finding on speculative reasoning.*—A finding of fact arrived at upon reasons purely speculative amounts to a mistrial, which can be set aside by the High Court in special appeal. MAHOMED AIZADDI SHAHA *v.* SHAFFI MULLA . . . . 8 B. L. R., 26

138. ——————— *Improper assumption of, and inference from, facts.*—A finding of a fact by the lower Appellate Court was set aside on special appeal, and the case was remanded on the ground that the Judge assumed a state of things in

SPECIAL OR SECOND APPEAL—*continued.*

4. GROUNDS OF APPEAL—*continued.*

(*b*) QUESTIONS OF FACT—*continued.*

Finding on facts—*continued.*

favour of the defendant which the defendant had not urged, and which was contradictory to his case, and because the finding of the Judge was opposed to a proper inference which arose from such facts. SURBESWAR GHOSE *v.* CHOTO ARIZOLLAH MANDAL [8 B. L. R., Ap., 78 : 17 W. R., 213

139. ——————— *Judgment founded on errors of fact.*—The High Court reversed on special appeal a judgment which was founded on many errors of fact, and sent it back for a re-trial. POORNO CHUNDER CHATTERJEE *v.* CHUNDER COOMAR ROY . . . . . 24 W. R., 171

(*c*) EVIDENCE, MODE OF DEALING WITH—

140. ——— **Evidence generally.**—*Error in legal presumptions from facts.—Decision without legal evidence.*—A Judge in this country is Judge both of law and fact, but if, in deciding upon the facts, he deals improperly with the presumptions which the law would raise, he commits an error in law which the High Court can correct in special appeal. When a Judge decides without legal evidence he commits an error in law. SURNOMOYEE *v.* LUCHMEEPUT DOOGUR . . . 9 W. R., 338

141. ——————— *Assumption made without evidence.*—Where an assumption is made by the Court without any evidence, that is an error of law warranting a special appeal HIMMUT ALI KHADIM *v.* NYAMUTOOLLAH KHADIM [23 W. R., 250

Upholding on appeal NIAMUTOOLLAH KHADIM *v.* HIMMUT ALI KHADIM . 22 W. R., 519

142. ——————— *Drawing unwarranted conclusions.*—Special appeal allowed, and case remanded for re-trial, where the lower Appellate Court had drawn conclusions from the evidence not warranted by law or reason, and had failed to try a material issue in the case. MAHARAM SHEIKH *v.* NAKOWRI DAS MAHALDAR [7 B. L. R., Ap., 17

143. ——————— *Omission of Appellate Court to consider presumption of facts material to case.*—When an Appellate Court appears not to have taken into its consideration a presumption of facts arising out of the circumstances in evidence, and materially affecting the decision of the case, that is such an omission and defect (sections 354 and 372, Act VIII of 1859,) as the High Court will remedy on special appeal by directing an issue. NILATATCHI *v.* VENKATACHALA MUDALI [1 Mad., 131

S. C. ANONYMOUS . 2 Ind. Jur., O. S., 13

144. ——————— *Omission to draw inference.*—An omission of the Judge to draw

SPECIAL OR SECOND APPEAL—*continued.*

4. GROUNDS OF APPEAL—*continued.*

(c) EVIDENCE, MODE OF DEALING WITH —*continued.*

Evidence generally—*continued.*

an inference from the conduct of parties relied on as evidence is not an error of law with which the High Court will interfere in special appeal. SAVI *v.* PUNCHANUN . . . 25 W. R., 503

145. ——————— *Omission to consider evidence.—Error in decision on the merits.*—Every Judge of a question of fact is bound to take into consideration all the allegations and proofs upon the record bearing upon that question, as well as the material presumptions arising therefrom, and to overlook them is a defect in law. But before such defect can constitute a good and valid ground of special appeal, it must be of such a character that it may have caused an error in the decision of the case on the merits. GUNEE BISWAS *v.* SREEGOPAL PAUL CHOWDHRY . . . . 8 W. R., 395

146. ——————— *Decision of lower Court as to credit to be given to particular proofs.*—It is the province of the Court which has to decide issues of fact to determine the amount of credit to which each particular proof offered is entitled; and with the fair exercise of its discretion in this respect by such Court, the High Court, as a Court of special appeal, is not at liberty to interfere. MUTHRA DOSS *v.* MAGH SINGH . . . 2 N. W., 207

147. ——————— *Weight of reasons given for decision.*—No special appeal will lie on a ground relating merely to the weight of the reasons given by the lower Appellate Court for the conclusion arrived at. DOORGA CHURN SETT *v.* SHAMANUND GOSSAIN . . 12 W. R., 376

Or as to the worth of testimony. MACKENZIE *v.* JOWAHIR MAHTOON . . 25 W. R., 137

148. ——————— *Weight of evidence.—Discretion of Court under Act XL of 1858.*—Weight of evidence is not a point on which the High Court can interfere in special appeal, nor will it interfere with the discretion of the Judge in not allowing a person to represent a minor. DHOONDH BAHADOOR SINGH *v.* PRIAG SINGH [17 W. R., 314

149. ——————— *Giving credit to evidence.*—Where the lower Appellate Court has dealt with the evidence on both sides, has weighed it and come to the conclusion that one side ought to be believed, the giving in the course of his observations a bad reason for believing it is not a ground of special appeal. SHEO GOLAM SAHOY *v.* MOHADEO LALL SAHOO . . . . 18 W. R., 110

150. ——————— *Difference between lower Courts on questions of evidence.*—Where the first Court and the lower Appellate Court differ as to questions of evidence, it is not a ground of special appeal nor are the parties entitled to argue

SPECIAL OR SECOND APPEAL—*continued.*

4. GROUNDS OF APPEAL—*continued.*

(c) EVIDENCE, MODE OF DEALING WITH —*continued.*

Evidence generally—*continued.*

in special appeal whether the former or the latter is right. TARA PROSUNNO MOJOOMDAR *v.* BISHONATH SIRCAR . . . 23 W. R., 144

Reversing on appeal BISSONATH SIRCAR *v.* TARA PROSONNO MOZOOMDAR . . 22 W. R., 482

151. ——————— *Ground for discrediting evidence found not to exist.*—Where it was found, in special appeal, that the main ground on which the lower Appellate Court had suspected the evidence for the plaintiff and given credence to the evidence for the defendant had no existence, the High Court ordered a reconsideration of the evidence. AMEERUN *v.* CHERAG ALI . 24 W. R., 343

MACKENZIE *v.* JOWAHIR MAHTOON 25 W. R., 137

152. ——————— *Erroneous dealing with evidence.*—Whether or not a lower Appellate Court commits such an error in dealing with a case on the evidence before him as would make his conclusion on the facts bad in law, if he does not treat the evidence otherwise than reasonably, he gives no room for special appeal. MOHUR MATOON *v.* UMATUM . . . 18 W. R., 499

153. ——————— *Improper mode of dealing with evidence.—Remand.*—On special appeal it appearing that the Judge had dealt with the evidence in the case in an improper manner, it was pointed out where he had committed errors, and the case was remanded that he might pass a fresh decision upon it. RAM DAS SAHA *v.* MAN MAHINI DASI [7 B. L. R., Ap., 4

154. ——————— *Judgment showing want of consideration of evidence.*—A judgment which shows on the face of it want of due consideration of evidence and the introduction of foreign matters into the case may be brought up before the High Court in special appeal. SOORAJ KANT ACHARJE *v.* KHOODEE NARAIN MANNA . . 22 W. R., 9

KOOLDEEPNARAIN SINGH *v.* RUMMON SINGH [22 W. R., 278

155. ——————— *Civil Procedure Code, 1882, s. 584.—Grounds impugning findings of fact.—Held* by the Full Bench (PETHERAM, *C. J.*, dissenting) that under section 584 (*c*) of the Civil Procedure Code, it is competent for the High Court to entertain pleas in second appeals which impeach the findings of fact recorded by the lower Appellate Court, on the ground that such findings are conjectural, that they ignore the evidence, and that the Court has given no reasons for the conclusions at which it arrived. Where a lower Appellate Court has drawn strained or unreasonable conclusions from the evidence, or has discredited or disbelieved witnesses or documentary proof upon capricious or unsustainable grounds, or has stated no intelligible reasons for

SPECIAL OR SECOND APPEAL—*continued.*

4. GROUNDS OF APPEAL—*continued.*

(*c*) EVIDENCE, MODE OF DEALING WITH —*continued.*

Evidence generally—*continued.*

arriving at its findings of fact, the High Court may take notice of all such matters in second appeal. *Futtehma Begam* v. *Mohamed Ausur, I. L. R., 9 Calc., 309; Assanullah* v. *Hafiz Muhammad Ali, I. L. R., 10 Calc., 932;* and *Lal Mahomed Bepari* v. *Shoila Bewa, 11 C. L. R., 104,* referred to. *Per* PETHERAM, *C. J.*—The High Court is not at liberty in second appeal to look into the evidence in the cause for the purpose of ascertaining whether the lower Courts have found the facts correctly, inasmuch as no question of fact is included in the grounds of appeal allowed by section 584 of the Civil Procedure Code, and it would seem that the intention of the Legislature was that in small causes the findings of the lower Courts on questions of fact should be absolutely final. By "specified law" in clause (*a*) of section 584 is meant the statute law, and by "usage having the force of law" the common or customary law of the country or community, and the clause is confined to cases in which the lower Appellate Courts have either misconstrued a statute or written document, or have come to a wrong conclusion as to what is the customary law of the country or community with reference to questions at issue between the parties. Clause (*b*) can only refer to mistakes in law, and does not extend the operation of clause (*a*). The term "procedure" in clause (*c*) means the practice followed by the Courts in the trial of cases, and cannot be construed as including the mental process by which a Court comes to a conclusion upon a question of fact. *Per* MAHMOOD, *J.*—That the Legislature, by framing section 574 of the Civil Procedure Code, intended to guard against such failure of justice as might arise from the defective or arbitrary exercise of the extensive powers possessed by the Court of first appeal in cases which, with reference to their nature, would be proper subjects of second appeal; and a judgment of a Court of first appeal which falls short of due compliance with the various clauses of section 574, is essentially defective, and may properly be made the subject of complaint in second appeal under section 584. *Ramnarain* v. *Bhawanidin, Weekly Notes, All., 1882, p. 104;* and *Sheoambar Singh* v. *Lallu Singh, Weekly Notes, All., 1882, p. 158,* referred to. The word "procedure" in clause (*c*) of section 584 must be understood in its most generic sense, including all the rules contained in the Civil Procedure Code or any other law regulating the investigation of cases by the Civil Courts. When the Court of first appeal, after having entered into the merits of the case, has considered the evidence and adjudicated upon the merits in the manner required by section 574, the mere circumstance that the conclusions at which the Court has arrived are erroneous or opposed to the weight of evidence, will not justify interference in second appeal, even though such conclusions proceed upon an improper conception of the exact effect and bearing of the case upon the merits. On the other hand, when the Court of first

SPECIAL OR SECOND APPEAL—*continued.*

4. GROUNDS OF APPEAL—*continued.*

(*c*) EVIDENCE, MODE OF DEALING WITH —*continued.*

Evidence generally—*continued.*

appeal, while adjudicating with due compliance with the provisions of section 574, arrives at conclusions upon the merits ignoring any steps essential for justifying those conclusions, or where such conclusions are based upon evidence inadmissible by law, or proceed upon an erroneous view of the legal effect of any material part of the evidence, or are arrived at under a misconception either of the rules of evidence or of any other law, such conclusions, though they purport to be distinct findings of fact, would lay the judgment of the lower Appellate Court open to second appeal under clause (*c*) of section 584, so long as the error was substantial enough to have possibly affected the justice of the case upon the merits. NIVATH SINGH *v.* BHIKKI SINGH. BHIKKI SINGH *v.* NIVATH SINGH . . . **I. L. R., 7 All., 649**

156. ——————— *Finding on issue of fact remitted.—Civil Procedure Code, 1882, ss. 565, 566, 568.—Held* by the Full Bench (TYRRELL, *J.*, dissenting) that the findings upon issues remanded by the High Court in second appeal cannot be challenged upon the evidence as in first appeals, but objections to these findings must be restricted to the limits within which the original pleas in second appeal are confined. *Nivath Singh* v. *Bhikki Singh, I. L. R., 7 All., 649,* referred to. *Per* PETHERAM, *C. J.*, and TYRRELL, *J.*—Sections 565 and 566 of the Civil Procedure Code are, as far as may be, incorporated in Chapter XLII of the Code relating to second appeals, and when the evidence for disposing of the real issues in the case has been taken and exists on the record, it is the duty of the High Court, on the hearing of a second appeal, to itself fix and determine such issues on the evidence on the record, and not to put the parties to the expense and delay involved by a remand. *Per* STRAIGHT, *J.*—Section 587 of the Civil Procedure Code does not mean that the provisions of Chapter XLI relating to first appeals are to be applied indiscriminately or in their entirety to second appeals, and implies no warrant for the decision by the High Court of questions of fact in any shape or at any stage of a second appeal. *Ramnarain* v. *Bhawanidin, Weekly Notes, All., 1882, p. 104;* and *Sheoambar Singh* v. *Lallu Singh, Weekly Notes, All., 1882, p. 158,* referred to. *Per* TYRRELL, *J.*—The jurisdiction of Courts of second appeal in respect of questions of fact is restricted, in so much as the appeal may not be entertained on "grounds" of fact, but under the circumstances of section 566 of the Code, no less than under the abnormal circumstances contemplated by the ruling of the Full Bench in *Nivath Singh* v. *Bhikki Singh, I. L. R., 7 All., 649,* the Court may take cognisance of omitted issues of fact, and must determine them if there be evidence upon the record sufficient for that purpose. In cases where the Court, still acting under section 566, has been obliged in the absence of evidence on the record to supplement the defect

SPECIAL OR SECOND APPEAL—*continued.*

4. GROUNDS OF APPEAL—*continued.*

(c) EVIDENCE, MODE OF DEALING WITH —*continued.*

Evidence generally—*continued.*

through the agency of the Court below, its jurisdiction in respect of such evidence does not become limited thereby or by reason only of the circumstance that the evidence is accompanied by a "finding" of the inferior Court,—the term "finding" being used in section 566 in its restricted sense of an answer to the proposition referred for inquiry, and not of an award or decision of the issue before the Court. BALKISHEN *v.* JASODA KUAR [I. L. R., 7 All., 765

157. ——————— *Findings of fact.—Procedure of the High Court.*—Where the lower Appellate Court has clearly misapprehended what the evidence before it was, and has thus been led to discard or not give sufficient weight to important evidence, and to give weight to other evidence to which it is not entitled, and has thus been led not into any mere incidental mistake, but totally to misconceive the case, the High Court will interfere in second appeal, though it is not the ordinary course of procedure for it to interfere in such cases with any findings of fact which have been arrived at by the lower Appellate Court. FUTTEHMA BEGUM *v.* MAHOMED AUSUR . . I. L. R., 9 Calc., 309

158. ——————— *Question of fact.—Finding on evidence.*—The finding of a fact by the lower Appellate Court upon evidence, a portion of which was inadmissible, is not such a finding of fact as cannot be interfered with in special appeal. GURU DAS DEY *v.* SAMBHUNATH CHUCKERBUTTY [3 B. L. R., A. C., 258

159. ——————— *Giving undue weight to inadmissible evidence.*—Where the lower Appellate Court gave very great weight to evidence which ought not to have been treated as evidence between the parties, and this error materially affected his judgment throughout, the High Court in special appeal held that there had been a mis-trial, and remanded the case for re-consideration. ROHEE LALL *v.* DINDYAL LALL . . . 21 W. R., 257

160. ——————— *Error in law.—Rejection of evidence.*—There is a material difference between a case in which a Judge has assigned one bad reason for believing or disbelieving a particular piece of evidence, while he has given one or more good reasons for the same belief or disbelief; or a case in which, putting this particular piece of evidence wholly aside, enough remains to support the judgment, and a case in which the essential question, or one of the essential questions to be decided rests upon the evidence believed or disbelieved regarded as of great value, or considered worthless, for a reason which is unsound and unsustainable. In the latter case an Appellate Court can interfere on special appeal. HURO PROSAD ROY *v.* WOMATARA DEBEE [I. L. R., 7 Calc., 263; 8 C. L. R., 449

SPECIAL OR SECOND APPEAL—*continued.*

4. GROUNDS OF APPEAL—*continued.*

(c) EVIDENCE, MODE OF DEALING WITH —*continued.*

Evidence generally—*continued.*

161. ——————— *Misdirection.—Ground of special appeal.—Error of law.*—The fact that the lower Appellate Court has misdirected itself as to the effect of evidence which has been admitted in a suit, is an error of law affording a good ground for a second appeal. RAMPROSAD DAS *v.* RAJO KOER . . . . . 5 C. L. R., 94

162. ——————— *Disregard of evidence.*—Where the lower Appellate Court's judgment was not based on the whole evidence on the record (it having left some important evidence out of consideration), the judgment was set aside in special appeal, and the case remanded for re-trial. SHUNDHABUN MOHUNT *v.* SHURUT CHUNDER ROY [23 W. R., 160

ABDUL ROHMAN *v.* SOFY MIKHAYESH SAHEBA [24 W. R., 293

MOHUN SINGH *v.* JUGBUTTY KOOER [24 W. R., 297

163. ——————— *Disregard of evidence.—Error in law.*—A complete disregard of evidence which, although not conclusive and an estoppel, is of such a nature that a judgment in opposition to it cannot be allowed to stand, amounts to an error in law. HEERA LALL GHOSE *v.* KALEE DASS MOOKERJEE . . . . . 23 W. R., 65

ANUND CHUNDER CHUCKERBUTTY *v.* RUTNESSUR DOSS SEN . . . . 25 W. R., 50

164. ——————— *Irregular dealing with evidence.*—Where an Appellate Court ignores the great body of evidence on the record and places reliance on what can be shown either to be no evidence at all, or which points almost exclusively the other way, and where it lays down, as positive dicta of law, points which are not law, the High Court would be justified in considering such proceedings as errors of law, notwithstanding that the Court below has ostensibly based its judgment on the evidence. ROOP NARAINEE KOOER *v.* RESSAL TEWAREE [24 W. R., 119

165. ——————— *Improper dealing with evidence.*—In this case, departing from its general rule in special appeals not to disturb the finding of fact arrived at by the Court below, the High Court, seeing that, on the one hand, the Judge had misrepresented the effect of the evidence in some important particulars, and on the other hand omitted to notice facts very much in favour of the defendants, considered itself justified in saying that his mode of dealing with the appeal had led to material defects in the investigation of the case which had produced error in the decision on the merits. It accordingly reversed his judgment and remanded the case for re-trial. SHIBO SOONDUREE DOSSEE *v.* CHUNDER KANT GHOSE . . . . . 21 W. R., 217

SPECIAL OR SECOND APPEAL—*continued.*

4. GROUNDS OF APPEAL—*continued.*

(c) EVIDENCE, MODE OF DEALING WITH —*continued.*

Evidence generally—continued.

AMEER BEPAREE *v.* HUREEE MOHUN KURMOKAR [23 W. R., 87

166. ——————— *Improper and erroneous dealing with evidence.—Error in law.*—The investigation of a case upon a portion of the evidence, excluding the other portion under a mistaken impression that it was not legal evidence but conjecture, is an investigation erroneous in law, and is likely to produce an error in the decision of the case on its merits. The mode in which evidence is to be dealt with discussed. MATHURA PANDEY *v.* RAM RUCHA TEWARI . 3 B. L. R., A. C., 108 : 11 W. R., 482

167. ——————— *Partial consideration of evidence.*—It is a ground for special appeal, if the Appellate Court disregards one side of a case, and turns its attention exclusively to the evidence on the other; but it is no error of law merely to pronounce no objection upon the evidence on the former side. DEO SURUN POORY *v.* MAHOMED ISMAIL . . . . . 24 W. R., 300

168. ——————— *Ground for setting aside decision on facts.*—The lower Appellate Court has quite as much authority to decide upon facts as the Court of first instance, and the High Court is not at liberty to interfere with verdicts setting aside judgments of the Court of first instance, simply because such judgments are more detailed or even more satisfactory on the evidence. DOIBO CHUNDER ROY *v.* WOOMA MOYEE DEBIA . 19 W. R., 321

169. ——— Documentary evidence.—*Reasons for rejecting documentary evidence.*—The reasons of a Judge for not giving any weight to documents offered as evidence cannot be questioned in special appeal. MUNEE DUTT SINGH *v.* CAMPBELL [11 W. R., 278

But *see* SUBOSUTTY DOSSEE *v.* UMBIKA NUND BISWAS . . . . . 24 W. R., 192

170. ——————— *Finding as to sufficiency of documentary evidence.—Per* BAYLEY, *J.*—The omission in the first Court to inquire or specify in the judgment as to whether a pottah, which is admittedly 100 years old, and which is supported by the evidence of old witnesses, comes from proper custody or not, is not a sufficient reason to invalidate the finding that the pottah is proved; nor is it a defect in the investigation affecting the merits of the case which would justify the interference of the High Court in special appeal. *Per* GLOVER, *J.*—The question as to proper custody is not in issue, the Judge having found the pottah proved by the evidence of witnesses. BUDDIOODDEEN *v.* GOLAM PEER [17 W. R., 279

171. ——————— *Error of Judge in not giving proper effect to evidence.*—In order to support a contention that the judgment of the lower Appellate Court is erroneous in law because the Judge has failed to give proper effect to the documentary evidence adduced, it is necessary for the special appellant to show not only that the evidence is calculated to support certain conclusions, but that these conclusions alone flowed from it. SHAM NARAIN *v.* COURT OF WARDS . . . . . 20 W. R., 197

172. ——————— *Finding as to genuineness of deed from copy put in evidence.*—The finding of a lower Appellate Court pronouncing, on evidence, on the genuineness of a deed on the production of a copy (the original having been lost) is not open to interference in special appeal. BHUGWAN CHUNDER BANERJEE *v.* DUKHINA DEBIA [8 W. R., 356

173. ——————— *Finding as to genuineness of document.*—A decision that a document was not genuine cannot be interfered with on special appeal. TARA PROSUNNO MOJOOMDAR *v.* BISHO NATH SIRCAR . . 23 W. R., 144

Reversing on appeal BISSONATH SIRCAR *v.* TARA PROSONNO MOZOOMDAR . . 22 W. R., 482

174. ——————— *Use of probabilities against direct evidence.*—Where the lower Appellate Court merely on the appearance of a document discarded the evidence of witnesses who testified to the making and signing of it, the High Court reversed its decision, on the ground that probabilities which are useful as aids in considering the true value of direct evidence, can seldom be safely had recourse to alone for the purpose of entirely invalidating direct evidence. LALLAH JHA *v.* TULLEBMATOOL ZUHRA [21 W. R., 436

175. ——————— *Erroneous and unnecessary presumption of fact.*—Where the Court concluded against the genuineness of a document on a presumption erroneous or one which did not necessarily arise, his decision was set aside on special appeal. AKJOO BIBEE *v.* KOONJO BEHAREE LALL [19 W. R., 288

WISE *v.* RUBAA KHATOON . 19 W. R., 299

GOPAL CHUNDER GHOSE *v.* TINCOWREE MUNDUL [19 W. R., 349

MEHER BANOO *v.* KERAMUT ALI [22 W. R., 402

176. ——————— *Comparison of signatures in unusual manner leading to erroneous conclusion.*—Where the lower Appellate Court relied on a comparison between the signature in a mortgage-deed and the signature in a vakalutnama, and it appeared, in special appeal, that there were very considerable discrepancies between the signatures, the High Court (departing from the ordinary assump-

SPECIAL OR SECOND APPEAL—*continued.*

4. GROUNDS OF APPEAL—*continued.*

(*c*) EVIDENCE, MODE OF DEALING WITH—*continued.*

Documentary evidence—*continued.*

tion in such cases that the comparison had taken place in open Court before the parties in the usual way) concluded that the comparison had been conducted in some way which led the lower Court into error. They accordingly reversed its decision and remanded the case for re-trial. PHOODEE BIBEE *v.* GOBIND CHUNDER ROY. . . . **22 W. R., 272**

177. ——————— *Receipts for rent.—Comparison of signatures.—Credibility of evidence.*—In a suit for rent the defendant pleaded payment and put in evidence receipts for the rent claimed. The Court of first instance disbelieved this evidence and gave a decree for the plaintiff. The Judge on appeal compared the signature of the plaintiff on the receipts with his signature to a document not in evidence in the case, and reversed the decree and dismissed the suit. *Held* that the decision of the Judge, proceeding upon the point as to the credibility and weight of evidence, could not be objected to on special appeal. RAMSOONDER SIRCAR *v.* KISTOBAG BAG . . **Marsh., 322: 2 Hay, 421**

178. ——————— *Receipts for rent.—Civil Procedure Code, 1859, s. 372.—Error in investigation of case.*—In a suit for arrears of rent the defendant pleaded payment and filed receipts. The Collector distrusted the receipts, and gave a decree in favour of the plaintiff, saying that, as to three of the receipts evidence had been given which he did not believe; and that with respect to the other receipts no evidence had been offered. The Judge on appeal reversed the decree, and gave a decree in favour of the defendant, expressing an opinion that the distrust of the evidence in support of the three receipts was without sufficient reason. *Held* that, with respect to the receipts in support of which no evidence had been offered, the plaintiff was entitled to a decree for the rents to which they applied, and that the finding of the Judge that such rents had been paid without any evidence having then been given of such payments was an "error in the investigation of the case" which had produced error in the decision of the case upon the merits, within section 372 of Act VIII of 1859, and was therefore ground of special appeal. MOHUN CHUNDER DHUR *v.* KIDGE . . . **Marsh., 381: 2 Hay, 419**

179. ——————— *Misapprehension of, and irregular dealing with, evidence by Appellate Court.—Ground for reversing decision.*—Where the lower Appellate Court misapprehended the documentary evidence, mistook the statements of witnesses, and without recording clearly its reasons for doing so, sent for documents which had not been put in evidence before the first Court; and also came to the conclusion that certain documents whose authenticity had been sworn to were fabricated merely because their appearance seemed to indicate this, the High Court in special appeal held that the case had not been properly tried, and reversing the decision of the lower Appellate Court, remanded the case for re-trial, excluding from the evidence on the record the evidence which had been received in the appeal stage without any reasons being recorded for its admission. NOWAB KHAN *v.* RUGHOONATH DOSS **[20 W. R., 474**

180. ——————— *Error in law.—Misconstruction of document.*—The misconstruction of a document is an error in law sufficient to form a ground of appeal. ODIT NARAIN *v.* MAHESHUR BUX SINGH . **Agra, F. B., 52: Ed. 1874, 39**

181. ——————— *Misconstruction of document.—Error on facts.*—Where the Court in recording the words of a document on which it relies puts one term for another, it is a misconstruction "affording ground for special appeal;" but where for reasons given it places a particular boundary mark in a particular spot its decision, even though wrong on the facts, would not be a misconstruction unless incompatible with the wording of the document. KALEE CHURN PATTUR *v.* CHUNDEE CHURN MUNDUL . . . **9 W. R., 366**

182. ——————— *Question of fact.—Erroneous use of admission by lower Courts.*—The High Court, in special appeal, interfered with the concurrent finding of the first Court and the lower Appellate Court on a finding of fact, where the decision turned entirely on the construction of a written admission which had been wrongly understood. LALLA IMRIT LALL *v.* MAHOMED LALLZAMAH **[18 W. R., 447**

183. ——————— *Mistake as to meaning of evidence.—Misconstruction of document.*—The misconstruction of a document which is the foundation of the suit, being in the nature of a contract or a document of title, is a ground for special appeal, although not named in Act VIII of 1859, section 372. But a special appeal does not lie because of a mistake as to the meaning of some portion of the evidence which is in writing, if it is connected with other evidence affecting its construction. NOWBUT SINGH *v.* CHUTTER DHAREE SINGH **[19 W. R., 223**

184. ——————— *Error in construction and dealing with sale certificate.*—A Judge is bound to give full effect to the terms of a sale certificate; and when he proceeds to limit the effect of that certificate by certain inferences and conclusions drawn from other documents, he does that which he is not at liberty to do, and commits an error of law which it is in the power of the High Court to remedy on special appeal. MOOKHYA HURUCKRAJ JOSHEE *v.* RAM LALL GOMASHTA . **14 W. R., 435**

SPECIAL OR SECOND APPEAL—*continued.*

4. GROUNDS OF APPEAL—*continued.*

(*c*) EVIDENCE, MODE OF DEALING WITH —*continued.*

Documentary evidence—*continued.*

185. ——————— *Construction of depositions of witnesses.*—The construction of the deposition of witnesses is not a question of law, and therefore not a ground of special appeal. HIMMUT ALI KHADIM *v.* NYAMUTOOLLAH KHADIM [23 W. R., 250

Upholding on appeal, NIAMUTOOLLAH KHADIM *v.* HIMMAT ALI KHADIM . . 22 W. R., 519

186. ——————— *Construction of document.—Question of fact.*—Where the conclusion of the lower Appellate Court rested, not only upon the contents of a document involving the question of its correct construction, but also upon all the facts of the case and the whole conduct of the parties,—*Held* that it was not open to special appeal. BUNGSHEE DHUR MAHATA *v.* MUDHOO SOODUN CHOWDHRY [23 W. R., 406

187. ——————— *Decision without sufficient evidence.*—In a suit on a kabuliat, the Court of first instance found that the kabuliat had not been signed by the defendant, but by a third party, and that there was no evidence that such third party was authorised to sign it. The Judge on appeal reversed the decision. *Held* that the decision of the Judge holding the defendant responsible for the signature of a person of whose authority there was no evidence was erroneous in point of law, and was a ground of special appeal. SHAM CHAND BYSACK *v.* BUNGO CHUNDER CHATTERJEE [Marsh., 556 : 2 Hay, 663

188. ——————— *Finding of fact as to Ameen's report.*—Where the lower Appellate Court finds as a fact that the Ameen's report is untrustworthy and his map wrong, the finding cannot be interfered with by the High Court in special appeal. SHEO DYAL SINGH *v.* HODGKINSON [24 W. R., 342

189. ——————— *Omission to record opinion on evidence.*—The omission to record an opinion on one of many items of evidence (*e.g.*, an Ameen's report) is not such an error in law as to come within the scope of the provisions for special appeals. BUNDHOO SOOKOOLANY *v.* JOY PROKASH SINGH . . . . . W. R., 1864, 367

HIMMUT ALI KHADIM *v.* NYAMUTOOLLAH KHADIM . . . 23 W. R., 250

Upholding on appeal under the Letters Patent the decision of KEMP, *J.*, in NIAMUTOOLLAH KHADIM *v.* HIMMUT ALI KHADIM . . 22 W. R., 519

190. ——————— *Entry in account book.—Error in law.*—The improbability of plaintiff having received payment for one bill whilst another and older one remained unpaid, was no reason for the Judge refusing to consider the evidence adduced by plaintiff in support of her demand, and his not having done so was held to be an error of law. So also the Judges having entirely ignored the evidence with regard to an entry in the plaintiff's day-book on which the first Court decided the case, was held to be an error of law in the investigation and a proper subject for special appeal. DARIMBO DEBEE *v.* HURREEHUR MOOKERJEE . . 18 W. R., 53

191. ——————— *Documents improperly admitted.*—Where a Judge is influenced in his estimate of parol testimony by the result of his consideration of documents which he ought not to have dealt with as evidence, there was held to have been no proper trial of the case. The High Court on special appeal remanded the case. BOIDONATH PAROOYE *v.* RUSSICK LALL MITTER . 9 W. R., 274

PURAN CHUNDER CHATTERJEE *v.* GRISH CHUNDER CHATTERJEE . . . 9 W. R., 450

192. ——— **Oral evidence.**—*Difference of opinion between lower Courts as to credibility of witnesses.*—Where the Courts differ as to the credibility of witnesses, such difference does not form a ground of special appeal. SREEKANT GHOSE *v.* BHUGWAN CHUNDER SEN . . 24 W. R., 13

193. ——————— *Finding as to materiality of evidence or witnesses.*—Though a Judge has a right to say that in the absence of a witness he considers material, he cannot give the plaintiff a decree, yet where he stated that unless a certain witness (from whom the plaintiff had got a conveyance which it was necessary for him to prove) attended and gave evidence, the plaintiff could have no right whatever, his decision was held to be wrong in law and was set aside on special appeal. RAM DHUN BANERJEE *v.* RAM NARAIN MOOKERJEE [11 W. R., 311

194. ——————— *Discrediting witnesses for general reasons.—Error in law.*—For the lower Appellate Court to discredit witnesses merely for general reasons not affecting the particular credit of any individual deponent, is to commit an error of law, which can be the subject of a special appeal. SHEO PURSHUN PANDEY *v.* BRUN PANDEY . . . . . 24 W. R., 251

195. ——————— *Disbelief of witness as interested party.*—A special appeal will not lie merely on the ground that the lower Appellate Court has disbelieved a witness by reason of his being an interested person, or for any other reason within its discretion. DWARKANATH DOSS BISWAS *v.* MUDDUN MOHUN CHUCKERBUTTY [6 W. R., 292

196. ——————— *Omission to give reasons for believing witnesses disbelieved*

SPECIAL OR SECOND APPEAL—*continued.*

4. GROUNDS OF APPEAL—*continued.*

(*c*) EVIDENCE, MODE OF DEALING WITH —*continued.*

Oral evidence—*continued.*

by lower Court.—The omission of a lower Appellate Court to give its reasons for believing witnesses disbelieved by the first Court, does not constitute a ground of special appeal. LUCKHEE MONEE DOSSIA *v.* RAJKISHORE PAUL . . . **4 W. R., 106**

Nor the omission to give reasons for confirming the decision of the lower Court. SHAMER MOHAMED *v.* PRODHAN PALEE . . . **5 W. R., 178**

197. ——————— *Omission to give reasons for believing witnesses.*—No general rule can be laid down as to when the reasons should be stated by an Appellate Court for believing one set of witnesses rather than another; and the omission of a lower Appellate Court to state such reasons is not a ground for special appeal. SHUMSHUROODDY *v.* JAN MAHOMED SIKDAR . **21 W. R., 260**

MUKDOOMUNNISSA *v.* NOKHY SINGH **[24 W. R., 296**

198. ——————— *Omission to remind witness of former contrary statement.—Reference to statement in judgment.*—When witnesses under examination make statements which are contrary to statements previously made by them, the Court ought to draw their attention to the contradiction; but an omission to do so does not make the judgment bad in law, because he has remarked on those contrary statements in his judgment. SHAM LALL *alias* SHAMA *v.* ANUNTEE LALL **[24 W. R., 312**

199. ——————— *Putting onus of proof on wrong party.—Irregularity affecting merits.—Error in law.*—A suit instituted in the Court of the Principal Sudder Ameen was transferred under section 6 of Act VIII of 1859, to the Court of the Munsif, who took further evidence, and decreed in favour of the plaintiff. The defendant appealed to the District Court, on the ground (amongst others) that part of the evidence had been taken by the Principal Sudder Ameen; and the District Judge reversed the Munsif's decree, not on this ground, but on the merits. The plaintiff then appealed to the High Court, objecting that the suit had been illegally decided by the Munsif, upon evidence recorded by the Principal Sudder Ameen; and that the *onus* of proving the *bona fides* of the transaction, which was the subject-matter of the suit, was thrown by the District Judge on the plaintiff, instead of on the defendant, who alleged the want of it. *Held* (1) that the Munsif's having used the evidence recorded by the Principal Sudder Ameen was only an irregularity which was waived by the plaintiffs not requiring the witnesses to be examined again, and proceeding with the suit, and producing other witnesses to be examined in support of his claim; and as this irregularity did not affect the merits of the case, the decree of the Munsif being in the plaintiff's favour, it was not a ground for reversing the decree on special appeal; (2) that the *onus* was not thrown by the Judge upon the plaintiff in its proper sense, and so as to be an error in law, as the Judge did not hold that the defendant was entitled to succeed without giving any evidence, unless the plaintiff disproved the allegation of the want of *bona fides.* NARANBHAI VRIJBHUKANDAS *v.* NAROSHANKAR CHANDRO SHANKAR **[4 Bom., A. C., 98**

200. ——— **Admission or rejection of evidence.**—*Error in admission of document insufficiently stamped.*—An error in the admission of an insufficiently stamped promissory note was held not to be an error affecting the decision of the case on its merits. MAKBUL AHMAD *v.* IFTIKHARUNNISSA BEGUM . . . . . **7 N. W., 124**

201. ——————— *Order under s. 20, Stamp Act XVIII of 1869.—Discretion.—Ground of special appeal.*—A District Court refused to allow under Act XVIII of 1869, section 20, an insufficiently stamped document to be admitted on payment of the full amount of stamp duty, and the penalty, on the ground that it was wilfully executed in fraud of the stamp law. *Held* that the High Court could not in special appeal question the correctness of the District Court's refusal. *Pendse v. Malse, 3 Bom., A. C., 94,* commented on. GAMBHIRMAL *v.* CHEJMAL **[10 Bom., 406**

202. ——————— *Error in admission of secondary evidence.*—Whether secondary evidence is admissible in the place of primary is a question for the determination of the Court which tries the case on its merits, but such determination is open to special appeal, if it is come to without evidence at all, or without evidence legally sufficient. CHUNDERKANT GHOSE *v.* SHOWDAMINEE DEBIA **[9 W. R., 517**

203. ——————— *Refusal to admit secondary evidence of lost deed.*—All that it would be right for the Court to require for the protection of the revenue in cases where a lost deed was shown not to have had a stamp, would be that the same money should be paid, before admitting secondary evidence, as would have to be paid if the deed itself were produced. If the Court does not do that, but allows secondary evidence to be given of the contents of the deed, it is not an error which affects the merits of the decision or is a ground for special appeal. HARAN CHUNDER BHOOREE *v.* RUSSICK CHUNDER NEOGY . . . **20 W. R., 63**

204. ——————— *Refusal to allow additional evidence.—Discretion of Court.*—The parties in an appeal are not entitled as of right to put in additional evidence. The Appellate Court allows additional evidence in certain cases; but a special

SPECIAL OR SECOND APPEAL—*continued.*

4. GROUNDS OF APPEAL—*continued.*

(*c*) EVIDENCE, MODE OF DEALING WITH —*continued.*

Admission or rejection of evidence—*continued.*

appeal will not lie in the event of the Court refusing to allow it. GOLAM MUCKDOOM *v.* HAFEEZOONISSA [7 W. R., 489

KULPO SINGH *v.* THAKOOR SINGH [15 W. R., 429

205. ——— *Refusal to allow additional evidence.—Civil Procedure Code, 1859, s. 355.*—The High Court on special appeal cannot interfere with the refusal of a lower Court to comply with an application, under section 355, Act VIII of 1859, to file additional exhibits. MOHESH CHUNDER SHAH *v.* SHOSHEE MOOKHEE DEBIA . 6 W. R., 196

206. ——— *Taking of additional evidence by Appellate Court.—Civil Procedure Code (Act XIV of 1882), s. 568.*—Where the lower Appellate Court allows additional evidence to be taken, though it is not satisfied that the evidence is necessary under clause (*a*) or clause (*b*) of section 568 of the Code of Civil Procedure, the High Court will interfere on special appeal; but where this does not appear to be the case, and there is simply an omission on the part of the Appellate Court to record its reasons for allowing additional evidence to be taken, the High Court will not interfere. HAFIZ ABDUL KUBRIM *v.* SRI KISSEN RAI [I. L. R., 11 Calc. 139

207. ——— *Omission to give reasons for admission of additional evidence.*—*A.* sued *B.* for rent, making *C.* a defendant: the suit was dismissed and *A.* appealed. Then *C.* sued *B.* for rent; *A.* intervened and was made a defendant; a decree was passed in favour of *C.*, and *A.* again appealed. On appeal the Subordinate Judge tried both suits on the same evidence, though there was evidence in the second case which was not before the lower Court on the hearing of the first. *Held* that he should have recorded his reasons for doing so, but that the judgment would not be set aside on that ground, it not appearing that the party taking the objection had been prejudiced or that it had been raised before the Subordinate Judge. PRANNATH SANDYAL *v.* RAM COOMAR SANDYAL . . 2 C. L. R., 33

208. ——— *Improper rejection of evidence.*—The improper rejection of evidence affecting the decision of the case on the merits is an error in law which may be set aside on special appeal. HURO CHUNDER CHOWDHRY *v.* GOBIND CHUNDER MOITREE . . . . . 17 W. R., 255

209. ——— *Rejection of evidence which ought to have been admitted.—Ground for interference.*—The fact that the Judge may have rejected evidence which ought to have been received and considered does not warrant the High Court in interfering to set aside an order of such Judge. VENKATACHELLA CHETTI *v.* PARVATAMMAL [2 Mad., 418

SPECIAL OR SECOND APPEAL—*continued.*

5. OTHER ERRORS OF LAW OR PROCEDURE.

(*a*) APPEALS.

210. ——— **Appeal wrongly admitted.**—*Orders and proceedings thereon without jurisdiction.*—Where an appeal was allowed from an order rejecting a review, and other acts and proceedings took place based on such illegal order, the High Court set aside all the proceedings in special appeal. JEWUN BIBEE *v.* BUDDUN MUNDUL [9 W. R., 489

211. ——— *Appeal heard and decided without objection where no appeal lay.*—Although Act XXIII of 1861, section 26, barred an appeal from an order or decision passed in a suit instituted under Act XIV of 1859, section 15, yet where an appeal was made in such a case no objection taken and the appeal decreed, the High Court refused to interfere, the lower Appellate Court's decree having given the plaintiff what the first Court ought to have given. HURDYAL SINGH *v.* KUNHYA LALL [19 W. R., 247

(*b*) COSTS.

212. ——— **Interference with award of costs.**—The Court may interfere with the award of costs on appeal. JAFEEE BEGUM *v.* AHMED HOSSEIN KHAN . . . . 1 Agra., 270

213. ——— **Question of costs.**—There may be circumstances which would justify an appeal upon a mere question of costs. CHITRAYIL *alias* KUNATH AHMED KOYA *v.* IRUMANOM VITTIL KANHAMATH HAJI . . . 3 Mad., 279

214. ——— *Mode of awarding costs.*—The question of how costs have been awarded is not a point for special appeal. BEER PERSHAD *v.* DOORGA PERSHAD. W. R., 1864, 215

215. ——— *Appeal from portion of decree relating to costs.—Held,* in conformity with a Full Bench ruling of the late Sudder Court, that a special appeal lies from the order of the lower Courts in matters relating to costs, and that there is nothing in the law limiting or taking away the right to appeal specially from that part of a decree which relates to costs in any case where any legal ground for special appeal is shown to exist. ASSA RAM *v.* KASHMEEREE DASS [Agra, F. B., 90: Ed. 1874, 68

216. ——— *Discretion in assessing costs.—Civil Procedure Code, 1859, s. 187.*—Where no appeal is made against the judgment passed on the subject-matter of the suit, the discretionary power of assessing costs given by section 187 of Act VIII of 1859 should not, unless in a very exceptional case, be interfered with by the Appellate Court. KUPPUSVAMIAYYAN *v.* NANNUVAYYAN [1 Mad., 74

SPECIAL OR SECOND APPEAL—*continued.*

5. OTHER ERRORS OF LAW OR PROCEDURE—*continued.*

(*b*) COSTS—*continued.*

Question of costs—*continued.*

217. ——————— *Improper exercise of discretion in awarding costs.*—An improper exercise of discretion in awarding costs against which a regular appeal would lie, is no ground for allowing a special appeal, unless the award is contrary to some particular law on the subject. AMIRSAHEB HAFIZULLA *v.* JAMSHEDJI RUSTAMJI [4 Bom., A. C., 41

DESAJI LAKHMAJI *v.* BHAVANIDAS NAROTAMDAS [8 Bom., A. C., 100

218. ——————— *Improper exercise of discretion in awarding costs.*—There is no foundation for the opinion that an Appellate Court has no authority to interfere with the discretion of the lower Court as to costs. To assess the defendant in a suit with the plaintiff's costs, when plaintiff's suit is dismissed for want of any cause of action, is irregular and unreasonable. DANTULURI NARAYANA GAJAPATI RAZU GARU *v.* SURAPPA RAZU [3 Mad., 113

219. ——————— *Erroneous order as to costs.*—The Court below gave the plaintiff a decree in a suit for mesne profits for such an amount as should be ascertained to be due, and ordered that the plaintiff should have his costs on the amount claimed. *Held* that this constituted no ground of special appeal, but that the remedy of the defendant was by application to the Court below to amend the order. BHUGGOBAN CHUNDER GHOSE *v.* SHUMBHOO CHUNDER GHOSE . . . Marsh., 503

220. ——————— *Error in improper exercise of discretion as to costs.*—Where the first Court's discretion is improperly exercised in the matter of costs, the error may be rectified in regular appeal; but, if this is not done by the lower Appellate Court, the error is not such as would justify the High Court's interference in special appeal. OOMA CHURN *alias* GOPAL CHUNDER ROY MOZOOMDAR *v.* GIRISH CHUNDER BANERJEE . 25 W. R., 22

221. ——————— *Order in discretion of lower Court.*—Where, in a suit for defamation, a decree was given for the plaintiff for nominal damages, but he was ordered to pay the defendant's costs,—*Held* that the order as to costs was in the discretion of the Court below, and therefore no special appeal would lie from such order: the rule, as laid down in *Gridhari Lal Roy* v. *Sundar Bibi, B. L. R., Sup. Vol., 496*, being, that an order as to costs cannot be interfered with in special appeal unless it is illegal. FUTEEK PAROOKE *v.* MOHENDER NATH MOZOOMDAR [I. L. R., 1 Calc., 385 : 25 W. R., 226

Reversing on appeal under the Letters Patent the decision in MOHENDRO NATH MOJOOMDAR *v.* FUTTICK PAROOK . . . . 24 W. R., 319

ACHUMBIT SINGH *v.* KUNHYA LAL MOHAJUN [7 W. R., 208

SPECIAL OR SECOND APPEAL—*continued.*

5. OTHER ERRORS OF LAW OR PROCEDURE—*continued.*

(*c*) DISCRETION, EXERCISE OF, IN VARIOUS CASES.

222. ——— **Order for security for costs.**—*Appeal struck off in default.—Absence of error in law.*—When the Civil Procedure Code gives to a Court of regular appeal a discretionary power, and that discretionary power has been fairly exercised, it is no good ground of special appeal that a wiser exercise of the discretion would have led to different results. In a regular appeal the District Judge, at the instance of the respondent, on 26th March, called upon the appellant, who resided out of British territory, to show cause, within two days, why, under section 342 of Act VIII of 1859, he should not furnish security. The appellant appeared on the 13th of May, and filed a written statement that he owned land in Jhansi, and prayed that if the statement was denied, inquiry might be made. There was nothing to show that this statement was disputed. The Judge on the same day made the following order: "As I cannot say whether or no this is true, and am not aware of the terms under which land is held in Jhansi, if indeed the appellant holds any land there, the excuse cannot in its present form be accepted, nor can the respondent be exposed to risk while enquiries are pending. The appellant must file security within fourteen days or the appeal will be struck off." On 28th May the appellant produced certificates that he held maafi lands in Jhansi. The Judge not considering these to be security, after recording that no further order could be passed, struck off the appeal with costs. A special appeal having been admitted from the Judge's orders, the respondent objected that no special appeal would lie. *Held*, that the High Court ought not to interfere in special appeal merely on the ground that, in the exercise of the discretion given to the lower Appellate Court, another Court might have thought it unnecessary to call upon the appellant to furnish security. *Held*, also, that unless it could be shown that the investigation of either of the issues of fact touching the appellant's residence and property had been defective, or that there had been error in law, the High Court had no power to interfere in special appeal. *Held*, also, that if the appellant had, after the order of 26th March, come into Court without delay, or even on 13th May applied for an adjournment to enable him to put in proof that he held land in Jhansi, and been refused that permission, the Court would have interfered in special appeal. GOPAL KHUNDEE RAO *v.* DEOKEE NUNDUN [6 N. W., 172

223. ——— **Execution of decree.**—*Discretion of Court executing decree.—Civil Procedure Code, 1859, s. 207.*—It is entirely in the discretion of the Court executing a joint decree to make arrangements under Civil Procedure Code, section 207, regarding its execution by one of the decree-holders, and to take necessary steps for the protection of the interests of the rest; and if it does not choose to do that, it cannot be pronounced wrong in special appeal. HERA ROY *v.* GUJADHUR PERSHAD NARAIN SINGH [24 W. R., 286

SPECIAL OR SECOND APPEAL—*continued.*

5. OTHER ERRORS OF LAW OR PROCEDURE—*continued.*

(*c*) DISCRETION, EXERCISE OF, IN VARIOUS CASES—*continued.*

224. ——— **Refusal to grant fresh summons.**—*Delay.*—An exercise of the discretion of the Court in refusing to grant a fresh summons on account of delay in applying for it, cannot be interfered with on special appeal. BROJO LALL MOOKERJEE *v.* AUGHOR LALL GHOSAL . **25 W. R., 71**

225. ——— **Order for payment of decree by instalments without providing for interest or penalty agreed upon on default.**—*Discretion, Arbitrary exercise of.—Civil Procedure Code, 1859, s. 194.*—When the lower Courts ordered the decree to be paid by instalments which were hardly sufficient even to cover the interest and did not provide for the interest and penalty conditioned in case of default,—*Held* that they had exercised the discretion vested in them by section 194, Act VIII of 1859, arbitrarily and without due caution, and their order could be interfered with and set aside on special appeal. HUR GOBIND *v.* HURKHO . **1 Agra, 116**

JAFREE BEGUM *v.* AHMED HOSSEIN KHAN **[1 Agra, 270**

226. ——— **Refusal to allow application to amend plaint.**—*Discretion to allow amendment of plaint.*—A lower Court has discretion to permit, or not, the filing of a petition to amend a plaint, and its refusal is no ground for special appeal. WATSON & CO. *v.* NIDHOO DIGWAR **[10 W. R., 87**

227. ——— **Interest, Award of.**—*Interest on decree, Discretion of Court in allowing.*—The Court executing a decree has a discretion in allowing interest, which will not be interfered with in special appeal. PARES NATH MUKHOPADHYA *v.* KISTOMOHAN SAHA **[3 B. L. R., Ap., 105 : 12 W. R., 50**

(*d*) ISSUES, OMISSION TO DECIDE—

228. ——— **Omission to consider material facts.**—*Remand of appeal heard by a Subordinate Judge to District Judge.—Act XIV of 1882, s. 566.*—If, on second appeal, it is found that certain material facts, having an important bearing upon a question at issue in the suit, have been omitted to be considered by the lower Appellate Court, the High Court will interfere with the decision of the lower Appellate Court, even though it be on a question of fact. DENA NATH BANERJEE *v.* HARI DASI . . **I. L. R., 11 Calc., 499**

229. ——— *Omission to try question of possession when material.*—When the plaintiff sued as owner of property in dispute and in which the defendant admitted the plaintiff's possession but qualified it by saying that the plaintiff held as zur-i-peshgidar or mortgagee, the omission of the Appellate Court to try the question of possession

SPECIAL OR SECOND APPEAL—*continued.*

5. OTHER ERRORS OF LAW OR PROCEDURE—*continued.*

(*d*) ISSUES, OMISSION TO DECIDE—*continued.*

Omission to consider material facts—*continued.*

is an error of law in the investigation, which the Court will take notice of on special appeal. GOPAL ROY *v.* TEKAET ROY . . . **8 W. R., 333**

230. ——— **Omission to decide on limitation.**—An omission by the Judge on appeal to decree according to the law of limitation applicable to the case as stated by the plaintiff, although the objection may not be raised in the grounds of appeal, is an error or defect in the decision of the case on the merits and a ground of special appeal. SALUJI KESRAJI *v.* RAJSANGJI JAIMSANGJI **[2 Bom., 169 : 2nd Ed., 162**

231. ——— **Omission to inquire into defendant's plea.**—*Suit for confirmation of title and possession.*—Where a purchaser sues for confirmation of title and possession, and the plea set up by the defence is that the rights and interests in question were previously transferred to another party who had sold it to the defendant's vendor, the omission of the Court to inquire into the alleged transfer and see whether it was genuine, and if so, whether it was a real or only a colourable transaction, is an error in the decision which is a ground of special appeal. BHUGOBUTTY *v.* BIKRAMAJEET SINGH . **8 W. R., 477**

(*e*) JUDGMENTS.

232 ——— **Reversal of judgment without reasons.**—*Difference of opinion as to facts.*—A special appeal lies from an Appellate Court's judgment in which the decree of the lower Court is reversed without any reasons given for differing as to facts. GOBURDHUN *v.* SADHOO . **1 W. R., 244**

233. ——— **Omission to state reasons in judgment.**—*Civil Procedure Code (Act XIV of 1882), ss. 574, 584.*—The fact that the judgment of an Appellate Court is not drawn up in the manner prescribed by section 574 of the Civil Procedure Code is no ground for a second appeal under section 584 unless it can be shown that the judgment has failed to determine any material issue of law. BISVANATH MAITI *v.* BAIDYANATH MANDUL **[I. L. R., 12 Calc., 199**

234. ——— *Finding of fact*—*Civil Procedure Code, 1882, s. 204.*—A finding unaccompanied by the reasons for it, as required by section 204 of the Code, is not a conclusive finding of fact binding on a Court of second appeal. KAMAT *v.* KAMAT . . . **I. L. R., 8 Bom., 368**

235. ——— The Judge decided that the plaintiff was barred by limitation, but his judgment did not disclose the grounds on which he held that plaintiff was not entitled to deduct, in calculating the twelve years' limitation, the time

SPECIAL OR SECOND APPEAL—*continued.*

5. OTHER ERRORS OF LAW OR PROCEDURE—*continued.*

(*e*) JUDGMENTS—*continued.*

Omission to state reasons in judgment—*continued.*

occupied by certain suits brought for the same property, in which he was non-suited. *Held* that it was no ground of special appeal that the judgment was silent on the subject of the claim to deduction, and that whether the point was urged in the lower Court or not, the plaintiff had no ground of special appeal in respect of omission of all notice of it in the judgment. RAMSOONDER DOSS *v.* MAHOMED ABBED [1 Ind. Jur., O. S., 102

236. ——— *Error of procedure.—Civil Procedure Code, 1859, s. 359.*—A lower Appellate Court's omission to give reasons cannot be considered a ground for special appeal when it has not produced error or defect in the decision upon the merits. Where a lower Appellate Court has omitted to state reasons, and it appears to the High Court that reasons should have been stated, the proper course is to retain the case on special appeal, but to return the proceedings and require the omission to be supplied. DOOLEE CHUND *v.* OOMDA BEGUM . . . 18 W. R., 473

237. ——— **Omission to state points for decision and reasons in judgment.**—*Omission to follow direction in Civil Procedure Code, 1859, s. 359.*—Section 359, Act VIII of 1859, requires the points for determination—those in appeal as well as those in the original pleadings—to be stated, and the reasons upon which the decision was arrived at thereon: an omission to do this is ground of special appeal. ROOP CHAND ROY *v.* RAM KANT KOBEERAJ . . . . W. R., 1864, 98

238. ——— **Omission to give reasons in judgment until after appeal.**—The fact of a Judge not writing a judgment containing the reasons for his decision until after the decree in appeal was passed was held not to affect the decision of the case on the merits, and was therefore not a ground of special appeal. BHAGVATSANGJI JALAMSANGJI *v.* PARTABSANGJI AJJABHAI. GANPATRAM LAKHMIRAM *v.* JAICHAND TALAKCHAND [4 Bom., A. C., 105, 109

239. ——— **Decision on point not contested.**—In a suit by a talookdar, where the dispute was whether certain land which the plaintiff held was what he was entitled to hold as lakhiraj, under a sanad which he produced, and as to the genuineness of which no question was raised, the lower Appellate Court indicated that it considered the sanad not to be genuine. *Held* that this was an important error, as the genuineness of the sanad was in no way in issue, and that the judgment must be set aside and the case remanded. RAM SOONDUR BANERJEE *v.* KALEE PERSHAD HAJRAH [19 W. R., 267

SPECIAL OR SECOND APPEAL—*continued.*

5. OTHER ERRORS OF LAW OR PROCEDURE—*continued.*

(*e*) JUDGMENTS—*continued.*

240. ——— **Decision for plaintiff on ground not alleged by him.**—*Civil Procedure Code, 1859, s. 350.—Error not affecting merits.*—In a suit for possession of a quantity of land, where the first Court gave plaintiff a decree on the ground that he had proved title by purchase, and the lower Appellate Court, in confirming the decision on the substantial issue raised, went further, and found that one of the defendants was plaintiff's ryot, contrary to the allegation set up by the plaintiff himself,—*Held* in special appeal that the error did not affect the merits of the case or the jurisdiction of the lower Court; and the High Court could not therefore interfere under section 350 of the Code of Civil Procedure. RAM CHUNDER CHATTERJEE *v.* RAM JEEBUN DASS . . 14 W. R., 141

241. ——— **Decision founded on issues not raised in the suit.**—*Error of law.*—In a suit for the recovery of land upon an alleged lease found to be not genuine, the defendants set up a sale by plaintiff's father. The lower Court found that there had been a sale in fact, but held it to be invalid according to Hindu law, as having been without the concurrence of the plaintiff, the son of the vendor. *Held* that the validity of the sale not having been questioned by the plaintiff, who had rested his case on entirely different grounds, and no issues having been raised as to the validity of the sale, the Judge had committed an error of law affecting the merits in so deciding, and his decision was reversed on special appeal. PALANI YANDI KAUNDAN *v.* MUTTUSAMI KAUNDAN . . . . 2 Mad., 441

(*f*) LOCAL INVESTIGATIONS.

242. ——— **Order directing local investigation.**—*Discretion of Court.*—Directing a local investigation or not is a mere matter of discretion in which no special appeal will lie of right. GRAHAM *v.* LOPEZ . . . 1 W. R., 141

BYKUNT NATH SEIN *v.* PEAREE MONEE DASSEE [1 W. R., 196

POORNO PERSAD ROY *v.* CHUNDER NATH CHATTERJEE . . . . 1 W. R., 249

RAJKISHEN MOOKERJEE *v.* HURO MOHUN MOOKERJEE . . . . 5 W. R., 248

243. ——— **Order as to local inquiry.**—*Discretion of Judge.*—It is within the discretion of a Judge to order or refuse a local inquiry. When, in the exercise of a reasonable discretion, he refuses such inquiry, his order should not be interfered with, unless very strong grounds are shown for the necessity of the inquiry. RASH BEHAREE SINGH *v.* SAHEB ROY . . . . 12 W. R., 76

244. ——— **Omission to direct local investigation.**—*Error in law.*—It is not an error in law in the investigation of a case where the Courts

SPECIAL OR SECOND APPEAL—*continued.*

5. OTHER ERRORS OF LAW OR PROCEDURE—*continued.*

(*f*) LOCAL INVESTIGATIONS—*continued.*

Omission to direct local investigation—*continued.*

below do not direct a local investigation of their own motion when they are not asked by the parties to do so. MACDONALD *v.* MUNAR ROY
[B. L. R., Sup. Vol., 358 : 3 W. R., Act X, 153

245. ——— **Local inquiry in suit as to enhancement of rent.**—*Discretion of Judge to order local inquiry in suit to contest notice of enhancement.—Order of Judge.*—In a suit brought to contest a notice of enhancement, a Judge is not bound to order a local inquiry, merely because he incidentally states such an inquiry to be the best source from which to obtain reliable evidence upon the point of rates. Nor will a special appeal lie on the subject of the Judge exercising a discretion as to ordering or not ordering such an inquiry. HERALOLL SEAL *v.* GUNGADHUR SUNNAPUTTY
[W. R., F. B., 19 : 1 Ind. Jur., O. S., 8
1 Hay, 229

GUNGADHUR SUNNAPUTTY *v.* HERALOLL SEAL
[Marsh., 60

246. ——— **Irregularity in local inquiry.**—*Civil Procedure Code, 1859, s. 180.—Appointment of improper officer.*—Though section 180, Act VIII of 1859, makes it imperative on a Court to employ in the first instance the regular officer of the Court to hold a local inquiry, non-compliance with this requirement of law is not *per se* a ground of special appeal. RAMDOSS KOONDOO *v.* NILKANTO DHUR . . . . . 8 W. R., 6

(*g*) MISTAKES.

247. ——— **Mistake in account.**—*Review, Application for.*—A mistake of account not being an error in law or procedure is not a ground for special appeal. The remedy lies in an application for review. RAM KANTH ROY CHOWDHRY *v.* KALEE MOHUN MOOKERJEE . . 22 W. R., 310

PROSUNNO COOMAR DUTT *v.* CHYTUNNO CHURN BIDYALUNKAR . . . 25 W. R., 74

248. ——— **Error in description of defendant as a minor.**—*Appeal by guardian treated as appeal by minor.*—The father of a defendant filed an appeal from the judgment of the first Court, describing his son as a minor. It afterwards appeared that the defendant was not a minor; and the lower Appellate Court refused to pass an order, allowing the appeal by the father to stand as an appeal by the defendant. *Held* that the lower Appellate Court could, in the exercise of its discretion, allow the appeal to stand as an appeal by the defendant, but the High Court could not interfere with the order in special appeal. SHAMA CHARAN GHOSE *v.* TARAK NATH MUKHOPADHYA
[3 B. L. R., Ap., 115

SPECIAL OR SECOND APPEAL—*continued.*

5. OTHER ERRORS OF LAW OR PROCEDURE—*continued.*

(*g*) MISTAKES—*continued.*

249. ——— **Decree proceeding on mistake as to applicability of law.**—*Mistake of Judge not affecting merits.*—The Court will not interfere on special appeal with a decree proceeding on a mistake as to the applicability of a law when such error does not affect the decision of the case. KUREEM KHAN *v* MUHFOOZ
[W. R., F. B., 16 : 1 Ind. Jur., O. S., 77
1 Hay, 226

S. C. JUGOBUNDOO MOZOOMDAR *v.* GOOROO PERSAD ROY . . . Marsh., 52

ESSAN CHUNDER DUTT *v.* PRANNAUTH CHOWDHRY
[Marsh., 270 : 2 Hay, 236

AKBURALLY *v.* HOSSAN ALLY
[1 Ind. Jur., N. S., 101 : 5 W. R., Mis., 29

(*h*) MULTIFARIOUSNESS.

250. ——— **Misjoinder of causes of action.**—Misjoinder of causes of action is not alone a valid ground of special appeal. SHUNKUR PATUKH *v.* LALA SHEO CHURN LAL
[2 N. W., 443 : Agra, F. B., Ed. 1874, 238

251. ——— *Absence of material injury.*—Misjoinder of claims without proof of substantial injury sustained thereby, is no ground for special appeal. DURSHUN PANDEY *v.* SAMINAH BEBEE . . . . . 1 W. R., 114

252. ——— *Material irregularity.*—Where a plaint containing separate causes of action on the part of distinct plaintiffs, though but one prayer—*viz.*, for the delivery up of certain nekasi papers—was filed and tried as a single suit, the Court trying the case was held to have committed not a mere technical irregularity, but an incorrect proceeding liable to lead to injustice and a ground for interfering with the judgment on special appeal. RAMCOOMAR SIRCAR *v.* KALEE COOMAR DUTT . . . . . 10 W. R., 279

253. ——— **Objection on ground of misjoinder.**—Where an objection on the score of misjoinder is disallowed by the first Court but rightly allowed by the lower Appellate Court, the fact that the latter Court holds the objection to be good is no ground of special appeal. MAHOMED HOSSEIN *v.* POTUN . . . . . 20 W. R., 147

(*i*) PARTIES.

254. ——— **Adding parties.**—*Discretion of Court.*—The exercise of the discretion a Court had to add parties under section 73, Act VIII of 1859, could not be interfered with on special appeal unless it was manifestly unjudicial and wrong. GYARAM SEAL *v.* ISSUR CHUNDER CHUCKERBUTTY. 2 W. R., 158

POKAN MUNDUL MOLLAH *v.* SHAM CHAND GHOSE
[1 W. R., 228

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SPECIAL OR SECOND APPEAL—*continued.*

5. OTHER ERRORS OF LAW OR PROCEDURE—*continued.*

(*i*) PARTIES—*continued.*

Adding parties—*continued.*

255. ——— *Error in adding party as plaintiff.—Civil Procedure Code, 1877, s. 591.*—In a suit for rent where the defendant alleged that a person not on the record had a joint interest with the plaintiff in the property in respect of which the rent was due, and where the plaintiff disputed this and the third person was added by the Court as a co-plaintiff,—*Held*, this would be an error or defect to which objection could be taken in the memorandum of appeal under section 591 of Act X of 1877. GOOGLEE SAHOO *v.* PREMLALL SAHOO **[I. L. R., 7 Calc., 148**

256. ——— *Erroneously making intervenor party to suit.*—An error in allowing an intervenor to be made a party to the suit is one of procedure only and is not a ground of special appeal, unless it is shown that the decision of the case was affected by such error. NUNHOO MAHTOON *v.* TEELOCO KOOER . . . . **18 W. R., 313**

257. ——— **Refusal to add party.**—*Discretion of Court in refusing to add party under s. 73, Civil Procedure Code, 1859.*—The High Court will not on special appeal interfere with the discretion of a Court in refusing to add a party under section 73, Act VIII of 1859, unless it is clear the discretion was exercised capriciously, or it appears absolutely necessary to add the party. JAGADAMBA DASI *v.* HARAN CHANDRA DUTT **[10 W. R., 108: 6 B. L. R., 526, note**

258. ——— **Misjoinder of parties.**—*Irregularity producing error or defect on the merits.*—Where a suit was brought in the Court of the Subordinate Judge by joining as parties defendants who ought not to have been joined, and if they had not been joined the suit would have been cognisable by the Munsif—*Held*, that the irregularity of the course by which the matter of the suit was brought before another Court than that which would otherwise have had cognisance of it, was calculated to produce error or defect in the decision on the merits and therefore a ground of special appeal. GUNGA RAI *v.* SAKEENA BEGUM . . . . . **5 N. W., 72**

259. ——— **Death of party.**—*Filing plaint in name of dead person.—Irregularity.*—Where a plaint was filed in the name of a deceased party, of whose death the person filing the plaint was ignorant, and the heir and representative of the deceased was at once put upon the record as plaintiff in his room, the irregularity (if any) was held in special appeal to be immaterial and not such as the Court would take notice of. GOLUCK CHUNDER DUTT *v.* COURT OF WARDS . **10 W. R., 127**

260. ——— **Objection of non-joinder of parties.**—*Error causing wrong decision.*—The objection of non-joinder of parties cannot be made

SPECIAL OR SECOND APPEAL—*continued.*

5. OTHER ERRORS OF LAW OR PROCEDURE—*continued.*

(*i*) PARTIES—*continued.*

Objection of non-joinder of parties—*continued.*

a ground of special appeal unless the want of parties has caused a wrong decision to be given. HEERA LALL CHOWDHRY *v.* BISTOO LALL CHOWDHRY **[22 W. R., 288**

(*j*) REMAND.

261. ——— **Order of remand irregularly made.**—*Error in law.—Civil Procedure Code, 1859, s. 351.*—It is an error in law for a lower Appellate Court to remand a case except in accordance with section 351 of the Civil Procedure Code. A special appeal will lie against a decree remanding a suit. NANABHAI NAROTOMDAS *v.* RAMSHET GOVINDSHET . . . . . **6 Bom., A. C., 156**

262. ——— *Remand of case under s. 351, Civil Procedure Code, 1859.—Irregular procedure.*—A special appeal does not lie merely because the lower Appellate Court remanded a case under section 351 of Act VIII of 1859, instead of calling for additional evidence under section 355, without proof that the special appellant has been prejudiced. NOWCOWREE MUNDUL *v.* MOOKTA BIBEE **[2 W. R., 181**

Or instead of framing issues on which the case might be tried. JUGOBUNDHOO HALDAR *v.* SREENARAIN MITTER . . . **20 W. R., 188**

But *see* RAM KANT PANDEY *v.* GUNESHEE KOONWUR . . . . **6 W. R., 47**

263. ——— *Improper remand under s. 351, Civil Procedure Code, 1859.—Error in procedure.*—Where a lower Appellate Court, instead of keeping a case on its file, and either calling for further evidence, or remitting issues under section 354 of Act VIII of 1859, improperly remanded it under section 351, but its decision on the merits was not prejudiced by the error in procedure, the High Court refused to interfere in special appeal. BULDEO PERSHAD *v.* GOLAB KHAN . **6 N. W., 101**

GHASI SINGH *v.* BUDH SINGH . **7 N. W., 193**

264. ——— *Civil Procedure Code, 1859, s. 351.*—It does not necessarily follow, when a lower Appellate Court remands a suit under section 351 of Act VIII of 1859 instead of section 354, that the order of remand is void and reversable in special appeal. Where, however, a lower Appellate Court, directing certain persons to be made parties to the suit, erroneously remanded it under section 351 for the trial of a particular issue,—*Held* that, if the case went back under section 351, inasmuch as the error, by restricting the Court of first instance to that particular issue and thus leaving the finding of the lower Appellate Court on other portions of the case final, might have produced error in the lower Appellate Court's decision on the merits, the

SPECIAL OR SECOND APPEAL—*continued.*

5. OTHER ERRORS OF LAW OR PROCEDURE—*continued.*

(*j*) REMAND—*continued.*

Order of remand irregularly made—*continued.*

decision should be reversed and the lower Appellate Court directed to remand the case under section 354. GUJRAJ SINGH *v.* BIJAI SINGH . **6 N. W., 114**

265. ——— Irregularity in remanding case.—*Civil Procedure Code, 1859, ss. 352, 354.*—Where a Judge, instead of remanding a case under section 352 of Act VIII of 1859, when the Munsif had not disposed of the case upon any preliminary point, ought to have disposed of it under section 354, keeping the case on his own file, and ordering the Munsif, after taking the necessary evidence and deciding any issue fixed by him, to send up his finding with the evidence to his Court, and then proceeding to try the case as an appeal,—*Held* that the irregularity was not one which affected the merits of the case or the jurisdiction of the Court, so as to justify interference with the Judge's decision in special appeal. GUNGA MONEE DOSSEE *v.* ISSUR CHUNDER SHAHA . . **17 W. R., 465**

266. ——— *Error in trial of case.*—In a suit for a pottah, the Deputy Collector having failed to take the evidence of certain witnesses produced by the plaintiff for examination, the lower Appellate Court remanded the case with a view to the evidence being taken. This was done, and the case was re-tried by the Deputy Collector, who again dismissed the plaint. On appeal the decision was reversed. *Held* that the Judge may have been so far in error, in that while remanding the case he did not direct the lower Court to send the case back to him with the additional evidence; yet, as the error did not interfere with the merits of the case or the jurisdiction of the Court (the evidence having been before the Judge in appeal), it would not warrant interference with his decision in special appeal. NUSSUROODDEEN HOSSEIN CHOWDHRY *v.* LALL MAHOMED PURAMANICK **[13 W. R., 234**

267. ——— Improper dealing with remanded case.—*Re-hearing and decision of case on remand for particular purpose.*—The Court of Appeal directed a remand to try the issue on a plea of payment. The lower Court determined the whole case over again. *Held* that it had no power to do more than try the issue referred, and that, on this ground, its decision might be set aside on special appeal. MOLTAN ALLEE *v.* SHEW BUKSH **[Marsh., 603**

(*k*) REVIEW.

268. ——— Order granting review.—*Order admitting review to correct error or omission.*—Where a lower Court with materials before it comes to the conclusion that a review which has been applied for is necessary to correct an evident error

SPECIAL OR SECOND APPEAL—*continued.*

5. OTHER ERRORS OF LAW OR PROCEDURE—*continued.*

(*k*) REVIEW—*continued.*

Order granting review—*continued.*

or omission or for the ends of justice, and grants the application accordingly, the order admitting the review is not open to be questioned in special appeal. SAHEBJAN BIBEE *v.* SUFDUR ALI . **22 W. R., 288**

But when a review is admitted on no grounds the order is open to question. KOLEEMOODDEEN MUNDUL *v.* HEERUN MUNDUL . . **24 W. R., 186**

269. ——— *Admission of review on improper grounds.*—Where a review has been granted without proper ground, the High Court on special appeal can set aside the order and restore the former judgment. CHUNDER CHURN AUGGRODANY *v.* LOODUNRAM DEB . . **25 W. R., 324**

270. ——— *Grant of review on improper or insufficient grounds.*—Where a Court has granted a review the High Court will not interfere on appeal, though the grounds for granting the review were improper or insufficient. GURUMURTTI NAYUDU *v.* PAPPA NAYUDU **[1 Mad., 164**

See FUZZUL HOSSEIN *v.* ENAYET ALI KHAN **[2 W. R., 268**

271. ——— Reviewing predecessor's judgment and reversing it on insufficient grounds.—Where a District Judge, as the lower Appellate Court, reviewed his predecessor's judgment and reversed his decision, and the High Court in special appeal saw no ground on which it could rightly disturb the judgment in question, it set aside the review and restored the judgment. PARBUTTY CHURN DOSS *v.* PROTAP CHUNDER SEN **[23 W. R., 275**

272. ——— Order reviewing judgment of predecessor.—*Order on insufficient grounds.*—Though a Judge ought not to admit (merely on the facts and without any new evidence being adduced) a review of judgment passed by his predecessor, yet his doing so is not *per se* a ground of special appeal. GHOLAM HOSSEIN *v.* OKHOY COOMAR GHOSE . . **3 W. R., Act X, 169**

273. ——— Omission to correct error in decree on review.—When the parties neglect to get an error of law in a decree of the High Court corrected by a review, the High Court will decline to correct it when the case comes up before them again in a subsequent special appeal. SAKHO NARAIN KHANDALKAR *v.* NARAYAN BHIKAJI KHANDALKAR **[6 Bom., A. C., 238**

AKBUR ALI *v.* MULLICK MUKHDOOM BUKSH **[25 W. R., 63**

(*l*) VALUATION OF SUIT.

274. ——— Error in valuation.—*Error not affecting decision or jurisdiction of Court.*—

SPECIAL OR SECOND APPEAL—*continued.*

5. OTHER ERRORS OF LAW OR PROCEDURE—*continued.*

(*l*) VALUATION OF SUIT—*continued.*

Error in valuation—*continued.*

An error of valuation, which does not affect the jurisdiction of the Courts in which a suit is tried, and does not lead to a defect in the decision on the merits, is not sufficient ground for interference in special appeal. KISTO CHURN MOJOOMDAR *v.* DWARKA NATH BISWAS . . . **10 W. R., 32**

275. ——— *Increase of costs to defendant.—Semble,*—That an error in the valuation of the plaintiff's claim, on account of which error the defendant is compelled to pay more costs than he would otherwise have to pay, is not in general a ground of special appeal. NANDRAM SUNDARJI NAIK *v.* BALAJI VITHAL . **5 Bom., A. C., 153**

276. ——— *Dismissal of appeal for improper valuation.*—The Civil Judge dismissed an appeal on the ground that the appellant fraudulently presented a stamp insufficient to cover the stamp duty properly payable by him on appeal, although the appellant offered to supply additional stamps to make up the proper amount. On special appeal, the proper stamp duty having been paid, the High Court held that the course taken by the Civil Judge amounted to such a substantial error in the investigation of the case as called for the interference of the High Court, and remanded the case for investigation on the merits. AMBALA RAMASAWMY IYENGAR *v.* MAHAMADALLI RAVUTAN . **5 Mad., 330**

(*m*) WITNESSES.

277. ——— **Refusal to summon plaintiff as witness.**—*Discretion of Court.*—It is within the discretion of a Judge to refuse to summon a plaintiff whom defendant desires to have before the Court as his witness, and that discretion will not be interfered with in special appeal unless shown to have been exercised illegally. INDRO LOCHUN GHOSE *v.* GRISH CHUNDER ROY CHOWDHRY **[10 W. R., 134**

278. ——— **Order as to party refusing to attend.**—*Civil Procedure Code, 1859, s. 170.—Discretion of Court.*—Under section 170, Act VIII of 1859, it is discretionary with a Court to pass such orders as it thinks proper in regard to a party who disobeys its orders to attend, and its directions do not form a ground of special appeal. NARAIN DOSS *v.* MAHARAJAH OF BURDWAN. NARAIN DOSS *v.* MAHTAB CHUNDER . . . . **10 W. R., 174**

279. ——— **Dismissal of suit on refusal of plaintiff to answer questions.**—*Civil Procedure Code, 1859, s. 170.*—The High Court will not interfere on appeal with the decree of the lower Court dismissing a plaintiff's suit (under section 170, Act VIII of 1859), on the ground of his refusing to answer a question material to the case when duly required to do so. *Semble,*—It might be otherwise

SPECIAL OR SECOND APPEAL—*continued.*

5. OTHER ERRORS OF LAW OR PROCEDURE—*continued.*

(*m*) WITNESSES—*continued.*

Dismissal of suit on refusal of plaintiff to answer questions—*continued.*

had plaintiff since decree endeavoured to purge his contempt. JESHTA RAMJI SHETT *v.* AWAKER MULLANDEAGATA KUNHI . . **3 Mad., 293**

280. ——— **Improper procedure in summoning party as witness.**—*Civil Procedure Code, 1859, s. 170.*—When a plaintiff was summoned as a witness and did not attend, and the first Court, instead of enforcing his attendance or proceeding to pass a decree against him under section 170, Act VIII of 1859, tried the case on the merits and gave the plaintiff a modified decree,—*Held* that the lower Appellate Court, instead of reversing the decision and dismissing the plaintiff's claim on the ground of non-attendance, should have again summoned the plaintiff and then acted under section 170. KISTO COOMAR CHOWDHRY *v.* GOBIND COOMAR **[W. R., 1864, 133**

281. ——— **Improper interference on appeal with order of lower Court on refusal of party to attend as witness.**—*Civil Procedure Code, 1859, s. 170.*—The first Court having decreed against the special respondent on the ground of his refusal to come forward and give evidence after being summoned by the special appellant, the lower Appellate Court was not authorised by law (with reference to section 170, Act VIII of 1859) to come to a contrary decision, without insisting on the absentee's evidence being recorded, or giving any reasons for dispensing with it. BUKHSOOR *v.* HARUK CHAND SAHOO . . . . **1 W. R., 114**

282. ——— **Omission of witness to appear.**—*Auction-purchaser at sale in execution.*—In a case wherein lands were sold in execution, notwithstanding intervention, under section 246, Code of Civil Procedure, by a plaintiff who claimed under a hibba, which was held by the lower Courts to be false, the High Court refused to interfere merely because the auction-purchaser had not appeared to give evidence. ABDOOL HUQ *v.* AMBUR ALI . **[8 W. R., 422**

283. ——— **Refusal of Munsif to fine recusant witness.**—The refusal of a Munsif to inflict a fine upon recusant witnesses is no ground for special appeal. PRAN KRISTO DEO *v.* KALEE DOSS DEO . . . . . **7 W. R., 460**

284. ——— **Refusal to allow witness to be called.**—*Discretion of Court.*—It is in the discretion of a Court of first instance, after the plaintiff's case is closed, to allow him to call further witnesses. There is no right of special appeal upon the point. RAKHAL DOSS MUNDUL *v.* PROTAP CHUNDER HAZRAH . . . **12 W. R., 455**

285. ——— **Omission to record evidence of witnesses.**—To enable an appellant in

SPECIAL OR SECOND APPEAL—*continued.*

5. OTHER ERRORS OF LAW OR PROCEDURE—*continued.*

(*m*) WITNESSES—*continued.*

Omission to record evidence of witnesses—*continued.*

special appeal to succeed on the ground that the depositions of his witnesses were not recorded, he must show that application was duly made that they should not be summoned, or that being present, application was duly made for their examination. SURM RAE *v.* UBHMAN RAE . **2 N. W., 209**

286. ——— Refusal of lower Courts to send back commission after its return unexecuted.—Where a commission to examine a witness on behalf of defendant had been returned unexecuted, and the defendant's petition to have it sent a second time was refused both by the first Court and the lower Appellate Court, the High Court in special appeal remanded the case for the issue of the commission, holding that the lower Appellate Court's refusal had been based on insufficient grounds. JHOTEE SINGH *v.* GOPAL SINGH . **23 W. R., 457**

(*n*) MISCELLANEOUS CASES.

287. ——— Final order in regular appeal.—*Civil Procedure Code, 1859, ss. 342, 372.—Question of fact.—Exercise of discretion.—Error in law.*—The term "decisions passed in regular appeal" in section 372, Act VIII of 1859, might embrace orders rejecting or dismissing an appeal, although such orders were passed before an appeal was heard on the merits, and might not necessitate the preparation of a decree. GOPAL KHUNDEE RAO *v.* DEOKEE NUNDUN . . . **6 N. W., 173**

288. ——— Appeal dismissed on default of appearance.—*Refusal of postponement.*—Where an appellant is refused postponement, and his appeal is dismissed in his absence, the case must be looked upon as one of default, even though the Judge looked into the facts and found the appeal was not to be upheld. The appellant in such a case might apply for a re-hearing or for a review of judgment, but is not entitled to a special appeal. BULDEO MISSER *v.* AHMED HOSSEIN. **[15 W. R., 143**

289. ——— Refusal to give decree on terms.—*Discretion of Court.*—Though it would have been more satisfactory if the lower Appellate Court, instead of declining to give plaintiffs a decree for possession of certain mortgaged lands on the ground that the sum tendered by them was insufficient to liquidate the mortgage-debt, had made a decree in favour of plaintiffs, contingent upon their paying such sum as should be found due, yet the plaintiffs had no strict right to such a decree, and it cannot be said that the lower Appellate Court had committed an error in law in refusing to make such a decree. BOISTUB DOSS KOONDOO *v.* HURO NARAIN HALDAR . . . **17 W. R., 408**

SPECIAL OR SECOND APPEAL—*continued.*

5. OTHER ERRORS OF LAW OR PROCEDURE—*continued.*

(*n*) MISCELLANEOUS CASES—*continued.*

290. ——— Omission to apportion to every part of the land its own rent.—*Suit for enhancement of rent.*—In a suit for enhancement the omission of the Ameen or Judge to appropriate to every portion of the land which varies in quality its own rent is no ground of special appeal. GOOROO-DOSS ROY *v.* HURRONATH ROY . **W. R., 1864, 61**

291. ——— Irregularity in exercise of jurisdiction.—*Absence of error in decision.*—A Collector's decree, which is right on the merits, cannot be set aside on appeal, merely because of an irregularity in the exercise of the jurisdiction which he had in the case. CHUNDER KANT CHUCKERBUTTY *v.* ELIAS . . . . **5 W. R., Act X, 29**

292. ——— Giving relief inconsistent with plaint.—*Plaint wrongly framed.*—A reversioner sued to set aside alienations made by an heiress in possession, but framed her plaint wrongly, asking for immediate possession, to which she was not entitled. The Court declared the alienations good only for the life of the alienor, and gave a decree only for such relief as the plaintiff was entitled to. *Held* that there was no error or defect in the investigation of the case with which the Court would interfere in special appeal. BAMA SOONDUREE DOSSEE *v.* BAMA SOONDUREE DOSSEE . . . **10 W. R., 133**

293. ——— Refusal to examine plaintiff's title on erroneous ground.—*Civil Procedure Code, 1859, s. 372.—Defect in law in procedure.*—Where the Courts below have avowedly abstained from examining into a plaintiff's claim of title to land, the subject of the suit, on the ground that the plaintiff was a party to the deed under which the defendant claimed, when in fact the deed showed he was no party to it, this constitutes a defect "in the procedure and investigation of the case producing error in the decision of the case upon the merits" within Act VIII of 1859, section 372, and a special appeal will lie. ABDOOZ SALAM *v.* IMRALOONISSA BEBEE **[Marsh., 6: 1 Hay, 28**

294. ——— Failure to obtain certificate of administration after adjournment of case for that purpose.—*Dismissal of case.—Debt due to deceased person.—Suit by legal representative.—Act XXVII of 1860.*—The plaintiffs in this suit sued the defendants on a bond, claiming as the heirs of the deceased obligee. The defendants denied that the plaintiffs were the heirs of the deceased obligee and contended that they should have obtained a certificate under Act XXVII of 1860 before suing. There being good reason to doubt the validity of the title of the plaintiffs, the lower Appellate Court postponed the decision of the case for a certain time in order to give the plaintiffs an opportunity of obtaining such certificate. The plaintiffs failing to avail themselves of this opportunity, the lower Appellate Court dismissed the case. The High Court, on

SPECIAL OR SECOND APPEAL—*continued.*

5. OTHER ERRORS OF LAW OR PROCEDURE—*continued.*

(*n*) MISCELLANEOUS CASES—*continued.*

Failure to obtain certificate of administration after adjournment of case for that purpose—*continued.*

second appeal, refused to disturb the lower Appellate Court's decision. BATASI *v.* MAHESH [I. L. R., 5 All., 555

6. PROCEDURE IN SPECIAL APPEAL.

295. ——— **Filing memorandum of appeal.**—*Copy of decree.—Civil Procedure Code, 1877, ss. 541 and 587.*—The Code of Civil Procedure, Act X of 1877, does not require the appellant in second appeal to file a copy of the decree of the Original Court with the memorandum of appeal. PIRATHI SINGH *v.* VENCATRAMANAYYAN [I. L. R., 4 Mad., 419

296. ——— **Extension of time for presentation of appeal.**—*Power of High Court.*—The High Court has the power of extending the time for the presentation of an application for the admission of a special appeal (*dissentiente*, TREVOR, *J.*). KASHINAUTH ROY *v.* MYNOODDEEN CHOWDHRY [W. R., F. B., 146

On due cause being shown for delay. FLOWEST *v.* KOOTUB HOSSEIN [Agra, F. B., 100 : Ed. 1874, 75

297. ——— **Recording findings unnecessary for disposal of case.**—*Appellate Court.—Judgment.—Findings unnecessary for disposal of case.—Appeal by successful party.—Civil Procedure Code, 1882, s. 203.*—When a suit has been dismissed on the merits in the Court of first instance, and that decision is upheld by the District Judge on appeal, *merely* on the ground of non-joinder, the District Judge should not record any findings in the appellant's favour on the merits of the case; and, if he does so, such findings will, on second appeal to the High Court, be expunged from the record. NANDA LAL RAI *v.* BONOMALI LAHIRI . I. L. R., 11 Calc., 544

298. ——— **Objections by respondent.**—*Civil Procedure Code, 1859, s. 348 (1882, s. 561).*—Section 348, Act VIII of 1859, was as applicable to special as to regular appeals. NARAYAN AYYAR *v.* LAKSHMI AMMAL . . . 3 Mad., 216

299. ——— *Right of respondent to urge objections under s. 348, Civil Procedure Code, 1859.*—In a special appeal, as well as in a regular appeal, it is competent for the respondent to show that points decided against him ought to have been decided in his favour. In an appeal in a suit for enhancement of rent, where the tenant is appellant and seeks to reduce the amount, the respondents may show, on other points of law, that it ought to have been enhanced beyond that which the decree gave him. HILLS *v.* ISHORE GHOSE [Marsh., 151

SPECIAL OR SECOND APPEAL—*continued.*

6. PROCEDURE IN SPECIAL APPEAL—*continued.*

Objection by respondent—*continued.*

S. C. ISHORE GHOSE *v.* HILLS . W. R., F. B., 48 [1 Ind. Jur., O. S., 25 : 1 Hay, 350

Contra, MAKUDU RAVULLAN *v.* MASTAN SAHIB [1 Mad., 102

300. ——— **Changing issues on special appeal.**—A party was not allowed on special appeal to go behind the issues by which he was content to abide in the lower Court. AHMED MUNDUL *v.* SONAOOLLAH . . . . 8 W. R., 5

301. ——— **Direction of trial of issue.**—*Right of respondent to take objection.—Civil Procedure Code, 1859, s. 372, and Act XXIII of 1861, s. 25.*—Where an issue has been directed, and the finding and evidence returned, a special appellant cannot take an objection going to the merits which otherwise would not properly be open upon special appeal. Section 25 of Act XXIII of 1861 gives no rights inconsistent with section 372 of Act VIII of 1859. NILAYATATCHI *v.* VENKATACHALAM MUDALI [1 Mad., 250

302. ——— **Omission to determine material issue.**—*Civil Procedure Code, 1877, s. 565,—Applicability of.*—Where a Court of first appeal omits to determine a material issue of fact, the High Court as a Court of second appeal is not competent, under section 565 of the Civil Procedure Code, to determine such issue itself, but should refer it for determination to the Court of first appeal. SHEO RATAN *v.* LAPPU KUAR . I. L. R., 5 All., 14

303. ——— **Payment of stamp duty where not tendered in Court below.**—Where an appellant has not tendered the stamp duty and penalty on a document which the Courts below have held to be insufficiently stamped, the High Court will not allow him to do so in special appeal. RAM KRISHNA GOPAL *v.* VITHU SHIVAJI . 10 Bom., 441

304. ——— **Ground taken for first time on appeal.**—*Ground arising out of facts alleged and admitted.*—In special appeal a new ground may be taken if it manifestly arises out of the facts alleged and admitted, whether pressed or not before the lower Appellate Court. KALIMOHAN CHATTERJEE *v.* KALI KRISHTO ROY CHOWDHRY [2 B. L. R., Ap., 39 : 11 W. R., 183

305. ——— **Plea taken for first time on appeal.**—*Facts stated in plaint necessary to support it.*—A plea may be taken in special appeal though not set out in the plaint, if the plaint did set out all the facts necessary to support the plea, and there was no omission calculated to mislead the Court. JUDOONATH MULLICK *v.* KALEE KRISTO TAGORE . . . . . 22 W. R., 73

306. ——— **Argument on point not before raised.**—*Civil Procedure Code, 1859, s.*

SPECIAL OR SECOND APPEAL—*continued.*

6. PROCEDURE IN SPECIAL APPEAL —*continued.*

Argument on point not before raised—*continued.*

374.—The High Court ought not, under section 374, Act VIII of 1859, to allow a point of law to be argued in special appeal when it was not distinctly raised in the first Court, nor alluded to in the lower Appellate Court. LALLA JOWAHIR LALL PANDEY *v.* COURT OF WARDS . . . **17 W. R., 214**

307. ——— Objection on appeal not raised before remand.—*Question of law.*—The High Court is bound to notice an argument on a point of law raised in special appeal, even though it was not raised before the Court on a previous occasion, when it passed an order of remand. DARIMBA DEBIA *v.* NILMONEE SINGH DEO . **15 W. R., 180**

308. ——— Setting up new case.—*Pleas and objections raised for first time in special appeal.*—Parties are not entitled in special appeal to set up a new case, involving an argument entirely different from that raised in the Courts below, and a state of facts entirely inconsistent with their statements there. BUNSEE LALL *v.* AOLADH AHSAN **[22 W. R., 553**

309. ——— *Raising new issue.—Changing original allegations.*—A party cannot be permitted to change in special appeal the allegations on which he went to trial in the Courts below, and to raise altogether a new issue. SHIU DAS NARAYAN SINGH *v.* BHAGWAN DUTT **[2 B. L. R., Ap., 15: 11 W. R., 10**

310. ——— *Changing ground of action.*—A plaintiff suing for redemption, on the ground of holding in right of dower, cannot in special appeal claim to redeem on the ground of being heir to the mortgagor. RAHOMAN *v.* FUZULOONISSA . . . . **W. R., 1864, 326**

311. ——— *Changing ground of action.*—A claim as heir to a widow cannot be heard on special appeal when the plaintiff did not sue on that ground in the Court below. KRIPANATH MOJOOMDAR *v.* SARODA CHOWDHRAIN **[1 W. R., 283**

312. ——— *Changing ground of action.*—When a plaintiff has ineffectually sued for a declaration that certain property was his own self-acquired property, he cannot in special appeal ask for a declaration of his title to a moiety of the property as a member of a joint Hindu family. DHUN KRISTO ROY *v.* HURO CHUNDER ROY **[5 W. R., 197**

313. ——— *Claim through widow in right of dower.—Allegation of right by inheritance.*—The defendants in the Court below unsuccessfully claimed to retain possession of some land under a kobala from a Mahomedan widow, who was alleged by them to have been absolutely entitled thereto under her right of dower. *Held* that the defendants could not, in special appeal, set up for the first time that the widow was entitled to a share by inheritance, if not as denmohur, no case of that kind having been made in the Courts below, and no inquiry asked for into the state of the family, or whether any and what share came to the widow. AMBIKA CHARAN DUTT *v.* NADIR HOSSEIN **[2 B. L. R., A, C., 258**

S. C. UMBIKA CHURN DUTT *v.* NADIR HOSSEIN **[11 W. R., 133**

314. ——— Rules for special appeal.—*Sufficiency of evidence on the record, Question as to.*—A case which is tried in special appeal is subject to all rules provided for regular appeals so far as the same may be applicable. The question whether evidence on the record is legally or reasonably sufficient to support the findings of the lower Appellate Court may be dealt with in special appeal without a remand or re-hearing. JOY RAM ROY *v.* OMRAO ROY . . . . . **12 W. R., 431**

315. ——— Omission after favourable finding of law to appeal against adverse finding of fact in lower Court.—*Power of High Court reversing judgment on law to decide on fact without remand.*—The Court of first instance found against the defendant on a matter of fact but decreed in his favour on a point of law; and on appeal by the plaintiff, the defendant omitted to file a memorandum of objections to the adverse finding of fact of the Court of first instance. The Appellate Court, without going into the question of fact, confirmed the decree of the Court of first instance on the point of law. *Held* that the High Court, in special appeal, could under these circumstances give judgment in favour of the plaintiff without a remand. WAIGANKAR *v.* WADEKAR . **5 Bom., A. C., 194**

316. ——— Power of High Court to draw inference of fact from evidence.—The High Court is not at liberty in a special appeal to draw any inference of fact from the evidence in the case. DWARKADAS LALUBHAI *v.* ADAM ALI SULTAN ALI . . . . **3 Bom., A. C., 1**

317. ——— Mode of obtaining record of facts where ground of appeal is misconduct of Judge in not hearing a pleader.—The Court on special appeal is bound to take the facts from the Judge's statement. Where therefore a party desires or intends to make the misconduct of a Judge a ground of appeal to the High Court, he ought always to draw the Judge's attention to that matter, either by presenting a petition or otherwise, so that a proper record may be at once made of the facts which he desires to establish in appeal. RAM KOOMAR KYBURTO DASS *v.* SONATUN DASS PORAMANICK . . . **3 C. L. R., 23**

SPECIAL OR SECOND APPEAL—*continued.*

6. PROCEDURE IN SPECIAL APPEAL —*continued.*

318. ——— Treatment by High Court of finding of fact.—*Suit for wrongful dismissal.*—The finding of the lower Courts upon a question of whether there was sufficient ground for the dismissal of a pagoda hereditary servant by the dharma karta must be treated by the High Court on special appeal as a conclusive finding upon a matter of fact, unless it be supported by no evidence whatever. KRISTNASAMY TATACHARRY *v.* GOMATUM RANGACHARRY . . . . **4 Mad., 63**

319. ——— Power of High Court as to facts.—*Appeal from order of remand.—Civil Procedure Code, 1877, s. 562, and s. 588, cl. 28.*—On an appeal from an order under section 562 of the Civil Procedure Code remanding the case, the High Court cannot consider the facts on which the lower Appellate Court passed the order of remand. All that it can do under section 588, clause 28, is to consider whether, on the findings of fact by the lower Appellate Court, that Court was right in remanding the case. NOIMOLLAH PRAMANICK *v.* GRISH NARAIN MOONSHEE . . **I. L. R., 8 Calc., 674**

320. ——— Effect on special appeal of recording further evidence by Appellate Court.—*Right to appeal on facts.*—A special appeal is not converted into a regular appeal because the Judge, sitting as a Court of Appeal, recorded further evidence under section 356, Act VIII of 1859, or pronounced a judgment on the evidence recorded, which had not been considered by the first Court as described in section 353. LALLA HEERA LAL *v.* GOUREE BYJNATH PERSHAD . **4 W. R., 43**

321. ——— *Civil Procedure Code, 1882, 568.—Right to go into facts on appeal.* The provision in section 568 of Act XIV of 1882 as to an Appellate Court recording its reasons for admitting additional evidence, is directory merely and not imperative. Where the first Court of Appeal has admitted additional evidence, the hearing in the second Court of Appeal will not be treated as a first appeal, so as to allow the pleaders to go into the facts. GOPAL SINGH *v.* JHAKRI RAI **[I. L. R., 12 Calc., 37**

322. ——— *Right to examine evidence taken by lower Appellate Court under s. 355, Civil Procedure Code, 1859.*—The High Court is not entitled in special appeal to examine the evidence of a witness summoned by the lower Appellate Court under Act VIII of 1859, section 355, which was not before the first Court, nor treat the appeal as a regular appeal. MAHOMED KAMIL *v.* ABDOOL LUTEEF . . . **23 W. R., 51**

Reversing decision in ABDOOL LUTEEF *v.* MAHOMED KAMIL . . . . **22 W. R., 369**

323. ——— Right to go behind order of remand.—*Omission to apply for review of order.*—Where a suit was remanded for assessment of mesne profits on the principle laid down in a certain case, if the plaintiff was himself found to have cultivated the lands, and the first Court finding that to be the fact, assessed the mesne profits on the principle laid down in that case, but the Judge reversed the decision on the ground of a later ruling as to mesne profits, the High Court on special appeal held that the special respondent, if dissatisfied with the order of remand, ought to have applied for a review, and not having done so he was not entitled to ask the Court to go behind that order and consider whether it was wrong with reference to the later case. NURSINGH ROY *v.* ANDERSON **[19 W. R., 125**

See RAMKUVARBAI *v.* DAMODHAR NARBHERAM **[6 Bom., A. C., 146**

324. ——— Power of High Court to deal with evidence.—*Necessity for remand.—Evidence of existence of legal necessity.—Held* by PEACOCK, *C. J.*, that the High Court has the power in special appeal, before remanding a case, to see whether there is any evidence on the record which would warrant a contrary finding to that already come to by the Judge below; and that it would be worse than useless to remand the present case to the Judge to find whether any necessity existed for the sale, when the Court sees that there is no evidence on the record to prove the existence of such necessity, and when the Judge has found that there was no necessity: if he were to come to a contrary finding upon the evidence as it stands, his judgment would be reversed upon special appeal as being a finding without any evidence in support of it. *Held, contra,* by BAYLEY, *J.*, that, under section 372, Act VIII of 1859, the Court in special appeal cannot try facts on the evidence on the record, or whether the evidence is sufficient to enable the Court to come to a conclusion of fact on the question of legal necessity, and that the case should be remanded to the Judge for a clear finding on that question. RAM PERSHAD SOOKUL *v.* RAJUNDER SAHOY . **6 W. R., 262**

325. ——— *Civil Procedure Code, 1882, ss. 565, 566.—Determination of case by High Court.*—In a suit for pre-emption, based on the wazib-ul-urz of a village, the Court of first instance dismissed the claim on the ground that no right of pre-emption had been proved to exist in the village. The lower Appellate Court, dissenting from this opinion, reversed the first Court's decree, and remanded the case under section 562 of the Civil Procedure Code for a decision on the remaining question of fact, *viz.*, the amount of the consideration for the sale. On appeal from the order of remand, the High Court, on the 3rd January 1884, observed that it was not disposed to interfere with the finding of fact that the plaintiffs had a right of pre-emption, and accordingly dismissed the appeal, but added that the Judge was in error in remanding the case under section 562 of the Code; that his order must so far

SPECIAL OR SECOND APPEAL—*continued.*

6. PROCEDURE IN SPECIAL APPEAL —*continued.*

Power of High Court to deal with evidence—*continued.*

be set aside; and that he should proceed under section 565 or section 566 as might be applicable. The Judge, on receipt of this order, replaced the case on his file, remitted an issue to the Court of first instance, under section 566, as to the amount of consideration, and, accepting the first Court's finding upon that issue, decreed the plaintiff's claim. In second appeal by the defendants the High Court was of opinion that the Judge had disposed of the case upon a condition of things which the plaintiffs had never asserted, inasmuch as he had treated the right of pre-emption which was in issue as one arising from custom, and not, as alleged by the plaintiffs, as arising from a contract between the ancestors of the parties. All the evidence necessary to the determination of the case was on the record. *Held per* PETHERAM, *C. J.*, and OLDFIELD and TYRRELL, *JJ.*, that the High Court was competent, in second appeal from the Judge's decree, to look into the evidence already on the record for the purpose of finding whether a right of pre-emption existed in fact in the village, if the evidence for answering this question was already on the record, and that, in such a case, the question need not be referred to the Court of first appeal. *Bal Kishen* v. *Jasoda Kuar, I. L. R., 7 All., 765,* referred to. *Per* STRAIGHT and BRODHURST, *JJ., contra. Bal Kishen* v. *Jasoda Kuar, I. L. R., 7 All., 765,* referred to. DEOKISHEN *v.* BANSI . . . . **I. L. R., 8 All., 172**

326. ———— Power of High Court to look into ground for admitting appeal after time.—It is competent to the High Court in special appeal to look into the grounds which a Judge has given for admitting an appeal after the lapse of the prescribed time. On appeal to the High Court against the decree of a subordinate Court, everything which preceded that decree as an act of Court, is open to revision. MOWRI BEWA *v.* SURENDRA NATH ROY . **2 B. L. R., A. C., 184: 10 W. R., 178**

327. ——————— *Limitation Act (XV of 1877), s. 5, sch. i.*—The High Court, sitting on second appeal, has power to look into the grounds which a Judge has given for admitting an appeal after the lapse of the period allowed by the Limitation Act. *Mowri Bewa* v. *Surendranath Roy, 2 B. L. R., A. C., 184,* followed. CHUNDER DOSS *v.* BOSHOON LALL SOOKUL **[I. L. R., 8 Calc., 251: 11 C. L. R., 177**

328. ———— Power of High Court to vary order for execution.—*Giving relief not asked for.*—The High Court in second appeal should not vary the order for execution which had been passed in such a way as to give the decree-holder relief for which he did not ask. PROTAP CHUNDER DOSS *v.* PEARY CHOWDHRAIN **[I. L. R., 8 Calc., 174: 9 C. L. R., 453**

SPECIAL OR SECOND APPEAL—*continued.*

6. PROCEDURE IN SPECIAL APPEAL —*continued.*

329. ———— Decrees made without jurisdiction.—*Suit cognisable by Small Cause Court.—Order sending case on terms to Small Cause Court.*—Where the decisions of the lower Courts were found, in special appeal, to have been without jurisdiction, and the suit to be cognisable by the Small Cause Court, the High Court made an order sending the plaint to the Small Cause Court for trial, upon the appellant (plaintiff) paying within three months all the costs of the litigation. DHUN MONEE CHOWDHRAIN *v.* WOOMA CHURN ROY **[23 W. R., 445**

SPECIAL COMMISSIONERS.

———— Jurisdiction.—*Beng. Reg. III of 1828.—Release of resumed lands.—Mesne profits.*—In 1855 the Privy Council decided against the right of the Bengal Government to resume and reassess the ghatwalli lands in the zemindari of Kurruckpore. In 1860 the Sudder Court, acting as Special Commissioners under Regulation III of 1828, at the instance of the zemindar, directed the release of the resumed lands, but did not decide as to the right to the mesne profits which the Government had received from the ghatwals during the period of resumption, deeming this question beyond their competency as Special Commissioners. The zemindar having appealed to the Privy Council, complaining of the omission, and contending that the mesne profits should have been wholly adjudged to him,—*Held* that the Special Commissioners had jurisdiction to decide upon the true title to the whole money in dispute, and to direct the payment and disposition of the same with interest. LEELANUND SINGH *v.* GOVERNMENT OF BENGAL. **1 W. R., P. C., 20: 9 Moore's I. A., 479**

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SPECIFIC PERFORMANCE.

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SPECIFIC PERFORMANCE—*continued.*

1. GENERAL CASES.

1. ——— **Remedies for breach of contract.**—*Suit for damages.*—A party failing to perform his contract may be sued, at pleasure of the other party, either for specific performance or for damages. MUNNEE DUTT SING *v.* CAMPBELL
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2. ——— **Requisites to entitle party to specific performance.**—*Ability of plaintiff to perform his part of agreement.—Absence of default.*—A Court of Equity will not decree specific execution of an agreement in favour of a party who is not competent to perform his part of the agreement. To entitle a party to specific performance he must show that there has been no default on his part, and that he has taken all proper steps towards performance on his own part. BUNGSEEDHUR MULLICK *v.* CALCUTTA AUCTION COMPANY . . 1 Hyde, 45

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3. ——— *Readiness to carry out agreement.*—One who asks the Court for a decree for specific performance of an agreement must show that he is willing and able to carry it out in all its material parts so far as he is concerned, and also that no act of his own in relation to the agreement has in any material degree damnified his opponent. He cannot select one part of the agreement for breach and another for performance. He must be prepared to carry out the entire of his own part of the contract before he can call upon his adversary, through the instrumentality of the Court, to specifically execute the latter part of the agreement. VISHVANATH ATMANARAM *v.* BAPU NARAYAN . 1 Bom., 262

4. ——— *Absence of delay in coming before the Court.*—Parties seeking specific performance of a contract should come to the Court for relief within a reasonable time. SAM *v.* APPUNDI IBRAHIM SAIB . . . 6 Mad., 75

5. ——— *Absence of laches—Right to damages.*—A suit for specific performance of a contract to sell land will not lie if the plaintiff neglects to enforce his rights for a long time (in this case three years) after his rights under the contract for sale accrued, and if he does not act up to a condition precedent to the sale to him. If he has any claim at all it would be for damages against the person breaking the contract for loss sustained by the non-fulfilment thereof. PUREEAG SINGH *v.* KHEER SINGH . . . . . 8 W. R., 280

6. ——— **Right to specific performance.**—*Lapse of time.—Agreement to compensate for mesne profits due.—Surrender of land charges.*—The result of a long-pending litigation was that the defendants were directed to pay wasilat for certain lands which they had possessed under an invalid lakhiraj claim. They subsequently entered into a compromise with the plaintiff, their zemindar, and agreed that if they defaulted in rent, or if the lands

SPECIFIC PERFORMANCE—*continued.*

1. GENERAL CASES—*continued.*

Right to specific performance—*continued.*

became khas of the zemindar, or were by any means to be alienated, the defendants would point out the lands, or, on failure to do this, would pay damages for the loss of the same. *Held* that lapse of time and surrender of the lands were no impediment to the Court granting relief to the plaintiff in the shape of a decree for specific performance. PROTAP CHUNDER SINGH *v.* GOOROO DOSS ROY. PROTAP CHUNDER SINGH *v.* CHUNDER COOMAR ROY [W. R., 1864, 76

7. ——————— *Delay in bringing the suit.—Specific Relief Act, s. 22.—Joinder of a person not a party to the contract of which specific performance is sought.*—A plaintiff sued on the 28th February 1881 for specific performance of a contract entered into on the 1st March 1878 by defendant No. 1, and joined in that suit as a defendant a third person, who alleged that he was the owner of the property the subject of the contract, seeking to obtain possession and other relief as against such third person, stating that he was a benamidar of defendant No. 1. On second appeal such third person contended that the discretion given to the Court under section 22 of the Specific Relief Act ought not to be exercised, as the plaintiff had slept on his rights for nearly three years. *Held* that, although the principle of the objection, as to the delay of the plaintiff in bringing his suit, was an important one, and one which ought to be considered by the Courts, in the exercise of their judicial discretion under section 22 of the Specific Relief Act, yet the point not having been taken in the Courts below, and there being nothing on the record to lead the Court to presume that the ordinary rule applicable to suits of this nature had been disregarded in the Courts below, the objection ought not under the circumstances to be allowed to prevail in second appeal. MOKUND LALL *v.* CHOTAY LALL . . I. L. R., 10 Calc., 1061

8. ——————— *Performance of portion of agreement.—Per* PONTIFEX, *J.*—It is of the essence of specific performance that part only of an agreement should not be performed. CUTTS *v.* BROWN . . . I. L. R., 6 Calc., 328

S. C. in lower Court. BROWN *v.* CUTTS [5 C. L. R., 487

and on appeal. CUTTS *v.* BROWN [7 C. L. R., 171

9. ——————— *Specific performance of part of contract and damages.—Power of High Court.*—The High Court could, under the Charter and Act VIII of 1859, grant specific performance of part of a contract and give damages for the breach of the remainder. In a suit for specific performance of a contract the cause of action is sufficiently shown by a statement of the terms of the contract, followed by the averment of the refusal of the defendant to perform it, with a readiness and willingness of the plaintiff to do his part in it. UNUNTORAM DOSS *v.* RAMLOCHUN AITCH . . 14 W. R., O. C., 15

SPECIFIC PERFORMANCE—*continued.*

1. GENERAL CASES—*continued.*

Right to specific performance—*continued.*

10. ——————— *Ascertainment of damages.—Civil Procedure Code, 1859, s. 192.—Specific performance as applied to partnerships.*—The ascertainment of the amount of damages was a necessary preliminary to a decree under Act VIII of 1859, section 192, for specific performance of a contract and payment of damages as an alternative in case of non-performance. The application of the doctrine of specific performance to partnerships is governed by the same rules as those which govern it in other cases. There are only two classes of cases in which specific performance of an agreement to enter into a partnership has been decreed: first, where the parties have agreed to execute some formal instrument which would confer rights that would not exist unless it was executed; secondly, where there has been an agreement which has come to an end to carry on a joint adventure, and the decree that the agreement is valid, prefaced by the declaration that the contract ought to be specifically performed, is made merely as the foundation of a decree for an account. VIRDACHALA NATTAN *v.* RAMASAVAMI NAYAKAN [1 Mad., 341

11. ——————— *Discretion of Court to give relief.—Vendor selling land to third parties in breach of his contract.*—The fact that, subsequently to, and in breach of, his contract to sell, the vendor has sold the same land to third parties having notice of the contract, and that, if relief is refused to the plaintiff, the land may remain in possession of such third parties, does not affect the question as to the propriety of the exercise by the Court of its discretionary power to enforce the contract. GURUSAMI *v.* GANAPATHIA . . I. L. R., 5 Mad., 337

2. SPECIFIC PERFORMANCE ALLOWED.

12. ——— **Agreement to purchase and payment of part of purchase-money.**—*Right of purchaser.*—When there is an agreement to sell, and a part of the consideration-money has been received, the stipulating purchaser is entitled to specific performance on paying down the rest of the said money. SHIB KISHEN DOSS *v.* ABDOOL SOBHAN CHOWDHRY . . . . 3 W. R, 103

But *see* RAMTONOO SURMAH SIRCAR *v.* GOUR CHUNDER SURMAH SIRCAR . 3 W. R., 64

13. ——— **Contract in respect of adjustment subsequent to decree.**—*Act XXIII of 1861, s. 11.*—A suit lay for specific performance of a contract in respect of an adjustment subsequent to, and for property beyond, the decree, notwithstanding section 11 of Act XXIII of 1861, which applied only to subject-matters relating to the decree. RAM LOCHUN BUBRA *v.* MADHUB CHUNDER BUBRA [3 W. R., 118

14. ——— **Re-sale on purchase-money being unpaid.**—*Delay in payment where no time is fixed.*—When the purchaser of an estate paid

SPECIFIC PERFORMANCE—*continued.*

2. SPECIFIC PERFORMANCE ALLOWED —*continued.*

Re-sale on purchase-money being unpaid —*continued.*

earnest-money, and no time was fixed for the payment of the balance, and the vendor resold the property within a week,—*Held* that the vendor was bound to have waited a reasonable period; that the second purchaser took nothing; and that the first purchaser was entitled to a decree for specific performance. MUTHUK ALI *v.* SHEO SAHOY SINGH **[W. R., 1864, 281**

15. ——— Agreement to exchange land. —*Remedy of seller on refusal to give land.*—Where a piece of land was sold in consideration of receiving in exchange another piece of land which was not given, —*Held* that the seller's remedy having regard to the terms of the contract made was not by a suit to get back the land sold but by a suit for damages for breach of contract, or by a suit for the specific performance of the contract or so much of it as was left unperformed. NASIR ALI *v.* GOVERNMENT **[3 Agra, 394**

16. ——— Contract for lands for which others were to be exchanged.—*Suit for damages.*—Where plaintiff had contracted with defendant to purchase from him a share of certain landed estates, excluding from the contract certain land in those estates situated within a defined boundary, defendant binding himself to make over to plaintiff other lands in exchange,—*Held* that if defendant failed to make over the lands last mentioned, plaintiff might sue him for specific performance or for damages, but could not sue for the excepted lands. KISHOREE DEBIA *v.* JUGUNNATH ACHARJEE **[9 W. R., 269**

17. ——— Refusal to act wholly on deed of partition.—*Suit for rights as they existed before deed.*—Where a partition deed has been made and partly acted upon, and nothing is asserted against it in the way of undue influence,—*Held* that the proper course for the plaintiff was to sue to enforce performance, and not for her rights as they may have existed previously. BHOWANEE KOONWER *v.* THAKOOR DASS **[2 Agra, 277**

18. ——— Agreement to re-unite after partition.—*Absence of money consideration.*—Certain puttidars applied for a butwara under the provisions of Regulation XIX of 1814. At the time of the butwara, it was stipulated between the puttidars of 6 and 7 annas shares that, in the event of a particular village falling by division wholly to either of them, they would re-unite and hold the 13 annas share joint as before. One party having resiled from this agreement, it was held that the other party was entitled to sue for specific performance, and such a suit would lie only in the Civil Court. *Held* that the absence of mention of any money consideration in the agreement was no bar to its being enforced, as the parties thereto had waived all objection on the score of the particular village named, or any other, falling wholly

SPECIFIC PERFORMANCE—*continued.*

2. SPECIFIC PERFORMANCE ALLOWED —*continued.*

Agreement to re-unite after partition— *continued.*

or in part to their respective shares. NUKCHAD SINGH *v.* HUNOOMAN DUTT SINGH . . **10 W. R., 69**

19. ——— Contract for appointment of arbitrators under Land Acquisition Act. —In the matter of land acquisition proceedings under Act VI of 1857 a notice was, on the 28th of November, served upon the defendants, signed by the Collector, stating that he had appointed an arbitrator on behalf of Government, and requiring the defendants to appoint a second arbitrator to determine the amount of compensation for the land (describing it) required by the B. B. and C. I. Railway Company. The defendants' secretary wrote in reply, that the defendants had appointed an arbitrator on their behalf to determine the amount of compensation for their land required for the B. B. and C. I. Railway Company. *Semble,*—That a contract was entered into by the last-mentioned notice and letter of reply to it, of which specific performance could be enforced. KHARSHEDJI NASARVANJI CAMA *v.* SECRETARY OF STATE FOR INDIA IN COUNCIL **[5 Bom., O. C., 97**

20. ——— Agreement for renewal of lease.—*Agreement by husband alone.*—*Non-concurrence of mortgagee.*—Immoveable property situate in the island of Bombay was conveyed in 1859 to *N.* and his wife (Parsis), their heirs, executors, administrators, and assignees, and was subsequently mortgaged by *N.* and his wife, but the mortgagee did not enter into possession. In 1861 *N.* alone entered into an agreement with the plaintiff to give them a lease of that property for five years, the plaintiffs being willing to accept that lease with such title as *N.* could confer. *Held* that, notwithstanding the non-concurrence of the mortgagee and of *N.'s* wife, *N.* must specifically perform his contract. The non-concurrence of the mortgagee could not prevent the right of the plaintiff to specific performance by *N.* of the agreement, because *N.* should either himself redeem the mortgage or permit the plaintiff to do so. NAOROJI BERAMJI *v.* ROGERS . **4 Bom., O. C., 1**

21. ——— Contract requiring registration.—*Failure to register.*—*Unregistered document.*—The plaintiff contracted with the defendant for the purchase of a piece of land, and paid him part of the purchase-money, it being agreed that the balance should be paid after registration of the bill of sale. The defendant kept the document with him, but failed to get it registered. In a suit by the plaintiff to enforce specific performance,—*Held* the suit would lie. TRIPURA SUNDARI *v.* RASIK CHANDRA KANUNGUI **[6 B. L. R., Ap., 134 : 15 W. R., 189**

See RAHMATULLA *v.* SARIUTULLA KAGCHI **[1 B. L. R., F. B., 58 : 10 W. R., F. B., 51**

TULSI SAHU *v.* MAHADEO DAS **[2 B. L. R., A. C., 105 : 10 W. R., 483**

SPECIFIC PERFORMANCE—*continued.*

2. SPECIFIC PERFORMANCE ALLOWED —*continued.*

Contract requiring registration—*continued.*

FATI CHAND SAHU *v.* LILAMBER SINGH DAS [9 B. L. R., 433 : 14 Moore's I. A., 129 16 W. R., P. C., 26

PRABHURAM HAZRA *v.* ROBINSON [3 B. L. R., Ap., 49 : 11 W. R., 398

22. ——— **Unregistered contract.**—*Agreement.*—The plaintiff lent defendant R20,000, and received a document in the following terms: "On demand we promise to pay *S. V. M. R. C.* and *C. T. A C. C.* the sum of rupees twenty thousand, value received. Memo. For the above promissory note, the grant of the dockyard and offices to be deposited in three days, and a proper agreement drawn out. The time of credit to be one year or eighteen months, the interest at R1-10 per cent. per mensem." In a suit to compel specific performance and for damages for breach of the agreement contained in the above memo.,—*Held* that the memo. contained an agreement of which a Court of Equity would grant specific performance, had not defendant rendered specific performance impossible. CURRIE *v.* MUTU RAMEN CHETTY . 3 B. L. R., A. C., 126 : 11 W. R., 520

23. ——— *Registration Act (III of 1877), ss. 48, 49, and 50.—Oral agreement, Evidence of.—Effect of oral agreement as against subsequent registered conveyance.*—*A.*, by an oral agreement, agreed to grant two mokurrari leases of certain properties upon certain terms to *B.*, and thereupon executed two mokurrari leases in favour of *B.* which were not, however, registered. Afterwards *A.* granted two mokurrari leases of the same mouzahs, upon terms more favourable to himself, to *C.* and *D.* who, at the time of such grant, had notice of *A.'s* previous agreement with *B.* *Held*, in a suit for specific performance brought by *B.* against *A.* and to which *C.* and *D.* were added as defendants, that, notwithstanding the provisions of sections 49 and 50 of Act III of 1877, *B.* could obtain a decree for specific relief, and a declaration that the leases to *C.* and *D.* were void as against him. NEMAI CHARAN DHABAL *v.* KOKIL BAG [I. L. R., 6 Calc., 534: 7 C. L. R., 487

24. ——— **Bill of sale.**—*Agreement to transfer share of property in consideration of advances for suit for its recovery.—Damages for breach of contract.*—Where it was agreed between *A.* and *B.* that, in consideration of certain proceedings to be instituted jointly by *A.* and *B.* and payments to be made by *B.*, for the recovery of certain property claimed by *A.* against *C.*, *A* would make over the half of the property recovered to *B.*; but *A.*, contrary to the terms of the agreement, without the consent of *B.*, compromised his claim with *C.*, and obtained possession. *Held*, the agreement did not operate as a transfer of the property to *B.*; she could not sue to eject *A.* *Semble*,—*B.'s* proper remedy was a suit for specific performance or for damages for breach of the contract, to support which it would have been necessary to allege performance of her part of the contract,

SPECIFIC PERFORMANCE—*continued.*

2. SPECIFIC PERFORMANCE ALLOWED —*continued.*

Bill of sale—*continued.*

or at least readiness and willingness to perform, but prevention by *A.* BHOBOSOONDREE DASSEAH *v.* ISSUR CHUNDER DUTT [11 B. L. R., P. C., 36 : 18 W. R., 140

25. ——— **Agreement for mutual refusals before giving up dwelling-house.**—*Condition precedent.—Limitation Act, 1877, art. 113.*—Two brothers, *V.* and *R.*, in 1861 agreed together that part of their house should be divided and part enjoyed in common. Each brother was to occupy an assigned division and have the use in common of the rest. If either wished to leave the house, he was bound to offer his share to the other at a fixed price; or if he wished to purchase the share of the other and the other refused to sell, then the party refusing to sell at a fixed price was bound to buy the share of the other brother who wished to purchase. *V.* called upon *R.* in 1877 either to pay R418 or give up the house. *Held* that this was an agreement enforceable by law; that until demand no cause of action arose, and limitation only began to run from the demand; that specific performance should be granted in the alternative. *Venkappa Chetti* v. *Akku*, 7 *Mad.*, *219*, distinguished. VIRASAMI MUDALI *v.* RAMASAMI MUDALI . . I. L. R., 3 Mad., 87

26. ——— **Contract for sale of land by Receiver.**—*Misdescription.—Purchaser having personal knowledge.—Title to land between high and low water mark.*—The defendant, who for twelve years had occupied land as tenant, purchased the land at a sale by the Receiver, but refused to complete the purchase on the ground of material misdescription in the advertisement of sale, in that a road and ghât, comprised within the boundaries mentioned in the advertisement, were not the property of the parties whose land the Receiver purported to sell; and also that, to make up the quantity of land as stated in the advertisement, *viz.*, 20 bighas by estimation, land lying between high and low water mark had been taken into calculation. The owners of the property sold having brought a suit against the defendant for specific performance, the defendant contended that the Receiver was a necessary party to the suit, and that the sale had been rescinded by a statement of the Receiver that he would forfeit the deposit in the event of the defendant not carrying out his contract. In support of his objection to quantity, the defendant relied on a Collectorate chitta as showing that the area of the land sold was only 9 bighas, 8 cottahs, 10¾ chittaks; the same chitta, however, in giving the eastern boundary of the property, described it as lying "on the west of the low water of the Ganga." *Held* that there had been no rescission of the contract; that the plaintiffs, being owners of the land down to low-water mark, were entitled to all subsequent accretions, and were, therefore, entitled to include in their measurement all land down to low-water mark; and having regard to the fact that the defendant was personally acquainted with the property sold, it was not open to him to

SPECIFIC PERFORMANCE—*continued.*

2. SPECIFIC PERFORMANCE ALLOWED —*continued.*

Contract for sale of land by Receiver— *continued.*

repudiate the contract on the ground of misdescription. The plaintiffs were entitled, therefore, to a decree for specific performance. GANGADHAR SIRKAR *v.* KASINATH BISWAS . . **9 B. L. R., 128**

27. ——— Agreement to sell land at a valuation.—*Land of peculiar character.—Construction of agreement in a pottah.—Assignment of pottah.—Rights of assignees against original lessors.*—The owners of ancestral village lands gave a mokurrari pottah of land in a mouzah to the proprietor of a neighbouring colliery "for quarrying coal, for building stores, for garden, for orchard, for road-making, and for other uses." The pottah, besides the above, contained the following, as translated: "You will build a factory according to any plan you choose, and possess the same. Within that aforesaid mouzah we will not give settlement to anybody. If you take possession, according to your requirements, of extra land over and above this pottah, we shall settle such land with you at a proper rate. Thereat we shall make no objection." The lessee, after being in possession for some years under the pottah, assigned it to the plaintiffs, who afterwards took possession of the whole of the extra land, and demanded a pottah therefor from the defendants, and made a contract advantageous to themselves to sell it to third persons. The defendants refused to grant them a pottah. In a suit for specific performance,—*Held* in the High Court that where a contract is made to sell land at a fair valuation, and there is no difficulty in ascertaining what a fair valuation would be, the Court will take the usual means of ascertaining it, and decree performance of the contract accordingly. But when, having regard to the peculiar character of the property, as in the case of land supposed to contain coal, or valuable minerals, the value of the land must be to a great extent a matter of guess and speculation, the Court will not decree specific performance, as it has no means of ascertaining by the ordinary methods what price the plaintiff should pay. *Held* by the Privy Council, on the construction of the pottah, that if the lessee, or his assigns, had required additional land for the purpose of carrying out the objects for which the pottah was granted, then the lessors would have been bound to settle so much of the adjoining land with them as might have been necessary for such requirements. *Held* also that the plaintiffs, the assignees, were not entitled to compel the defendants to grant them a pottah of the extra land, even at a reasonable rate, merely for the purpose of selling it. *Semble.*—In a suit for specific performance of an agreement to sell land, the fact that on account of the extraordinary character of the property, as its containing coal or other valuable minerals, there is considerable difficulty in fixing a reasonable rate for it, is not a sufficient reason for refusing a decree. NEW BEERBHOOM COAL COMPANY *v.* BULAKAM MAHATA

[I. L. R., 5 Calc., 175, 932
L. R., 7 I. A., 107

SPECIFIC PERFORMANCE—*continued.*

2 SPECIFIC PERFORMANCE ALLOWED —*continued.*

28. ——— Lease savouring of champerty.—*Loan of money to carry on litigation.*—Specific performance decreed of a lease, though the lease formed part of an arrangement whereby, as a consideration for the lease, the plaintiff was to lend the defendant money to enable him (*inter alia*) to commence legal proceedings against the then tenant of the subject-matter of the intended lease. PITCHAKUTTI CHETTI *v.* KAMALLA NAYAKKAN

[1 Mad., 153

29. ——— Compromise made under alleged concealment of fact.—*Husband and wife.—Armenian Christians.*—Specific performance decreed of an agreement in the English form made between husband and wife (Armenian Christians) in the nature of a family compromise respecting the wife's separate property. In the answer of the wife it was alleged that property purchased by the husband had been concealed by him from her when she executed the agreement. *Held*, under the circumstances, that that fact, even if proved, was not sufficient to entitle the wife to treat the agreement as a nullity. *Held*, also, that if the property said to have been concealed by the husband, had been purchased by him out of moneys belonging to the wife's separate estate which was clothed with a trust for the children of the marriage, the wife's remedy was to enforce her own and children's rights by bill to compel a settlement of any property improperly withheld by the husband at the date of the execution of the agreement. GREGORY *v.* COCHRANE

[8 Moore's I. A., 275

ARRATHOON *v.* COCHRANE . **4 W. R., P. C., 66**

3. SPECIFIC PERFORMANCE NOT ALLOWED.

30. ——— Party entitled to damages for breach of contract.—*Right to specific performance.—Injunction.*—A plaintiff who sues for damages, and is entitled to them, cannot likewise be entitled to specific performance, or to an injunction against the further breach of the agreement. ASHRUFOONISSA BEGUM *v.* STEWART . **7 W. R., 303**

31. ——— Contract to give in marriage.—*Hindu marriage and betrothal.—Damages for breach of contract.*—The Court will not order the father of a Hindu girl, in a suit to which the girl is not a party, to specifically perform the marriage of his daughter with a person to whom the daughter has been betrothed. It will, however, award damages against the father for breach by him of the contract of betrothal. UMED KIKA *v.* NAGINDAS NAROTAMDAS . . . . . **7 Bom., O. C., 122**

32. ——— *Hindu law.*— *Ceremonies of betrothal.—Per* GLOVER, *J.*—A suit for specific performance of a contract to give in marriage will not lie: the remedy is an action for damages for breach of the contract. The ceremony of betrothal does not, by Hindu law, amount to a

SPECIFIC PERFORMANCE—*continued.*

3. SPECIFIC PERFORMANCE NOT ALLOWED —*continued.*

Contract to give in marriage—*continued.*

binding irrevocable contract of which the Court would give specific performance. IN THE MATTER OF GUNPUT NARAIN SINGH . I L. R., 1 Calc., 74

S. C. GUNPUT NARAIN SINGH *v.* RAJUN KOER [24 W. R., 207

33. ——— *Suit to enforce betrothal of marriage.—Suit for damages.*—The plaintiff, on behalf of her infant son, sued the father and guardian of *M. B.*, to recover possession of *M. B.*, alleging that *M. B.* had been betrothed to her son, and that, under the Hindu law, betrothal was the same as marriage, and could not be repudiated, and that the defendant had on demand refused to give up *M. B.* The defendant pleaded *inter alia* that the betrothal had been repudiated a sthe family to which the plaintiff belonged had been guilty of female infanticide, and that it would be illegal, according to Hindu law, to enter into relationship with it. The ceremonies necessary to effect a betrothal had not been performed, though some ceremonies had been gone through. *Held* that, assuming the ceremonies, which are said to have taken place, to have constituted a contract to marry, and taking into consideration the particular cause assigned for the breach, the relief, if the plaintiff were entitled to any, should be in the shape of damages, and not by the specific performance of the alleged contract. NOWBUT SINGH *v.* LAD KOORE . . . . . 5 N. W., 102

34. ——— **Agreement by partners in absence of representative of a deceased partner.**—*Person in position of trustee.*—Surviving partners are treated as trustees of the partnership property for the benefit of the representative of a deceased partner; and an agreement entered into by such surviving partners, in the absence of the representative of a deceased partner, which agreement is inconsistent with the nature of such trust—to deal with the partnership assets only by way of sale —will not be specifically enforced. RAMLAL THAKURSIDAS *v.* LAKMICHAND MUNIRAM [1 Bom., Ap., 51

35. ——— **Stipulation in kabuliat.**—*Zemindar.—Government, Liability of.*—One of the terms of a kabuliat, equally binding on the Government and a zemindar, the parties concerned, was as follows: "The construction of bheries (small embankments), the excavation of the silt of khals, the closing (the mouths) of the khals, the construction of gungura (large embankments), &c., in connection with the salt and sweet (*i.e.*, not saline) lands of the said pergunnah, shall be made by the Government of the Honourable Company." In a suit brought by the zemindar to obtain an order upon the Government to re-excavate and clear the water-passage of a particular khal situate within the pergunnah, the subject of the kabuliat,—*Held* that the case was not one in which the Court would decree specific performance. CHUNDER SEKHUR MOOKERJEE *v.* COLLECTOR OF MIDNAPORE [I. L. R., 3 Calc., 464 : 1 C. L. R., 364

SPECIFIC PERFORMANCE—*continued.*

3. SPECIFIC PERFORMANCE NOT ALLOWED —*continued.*

36. ——— **Agreement to advance money on mortgage.**—In a suit to compel the defendant to advance R1,800 or thereabouts to the plaintiffs, the unpaid balance of a sum of R3,000 which defendant agreed to advance on mortgage, and for which a mortgage was executed and delivered to the defendant,—*Held* that the Court ought not to make a decree for specific performance of such agreement. ANAKARAN KASMI *v.* SAIDAMADATH AVULLA [I. L. R., 2 Mad., 79

37. ——— **Suit for execution of fresh instrument on retention of first one by defendant.**—*Specific Relief Act (Act I of 1877), ss. 12, 21, 22.—Suit to restore terms of lost instrument.* —The plaintiffs, alleging that the defendants, having executed in their favour and delivered to them a bond, the consideration for which was money due to them for rent of land and on a former bond, had received it back for registration, and, refusing to register it, had retained it, sued the defendants to have a similar bond executed and registered. *Per* MAHMOOD, *J.*—That it was doubtful whether the suit could be regarded as a suit for specific performance of a contract, and whether the only remedy open to the plaintiffs was not a suit for the money. It was only on the hypothesis that the mere writing of the original bond, in the absence of registration and final delivery, did not amount to a performance of the contract, that the suit was entertainable at all. That, assuming the suit to be one for specific performance of a contract, the plaintiffs were not entitled to the specific relief which they sought, since they could obtain their full remedy by suing for the money in respect of which the fresh bond was sought to be executed; and they had failed to prove the exact terms of the original bond. Observations on the nature of the evidence required to prove a contract of which specific performance is sought. *Per* STUART, *C. J.*—That the suit was bad in form and substance, and there was no ground for the remedy by specific performance of a contract. If the alleged bond were in existence, a suit simply and directly for the recovery of the money claimed by the plaintiffs would have sufficed, for in such a suit facts relating to the loss or concealment of the bond might have been proved, and under the circumstances secondary evidence at least of the terms of the bond might have been admissible, or the plaintiffs might have found themselves in a position to make out their claim by other evidence; but if the plaintiffs considered it material to their case to have their claim on the bond, the loss or destruction of which could not be doubted, their proper course of proceeding was by a suit to restore the terms of the lost bond, or, as it was said in Courts of Equity in England, by suit to obtain the benefit of the lost deed or instrument; and that, if the suit could be taken to be one affording such a remedy, it contained no sufficient materials to warrant it being held that the bond was of the tenor and in the terms alleged by the plaintiffs. MAYA RAM *v.* PRAG DAT . . I. L. R., 5 All., 44

SPECIFIC PERFORMANCE—*continued.*

3. SPECIFIC PERFORMANCE NOT ALLOWED —*continued.*

38. ——— Contract for sale and purchase.—*Proposal made in letters.—Earnest-money.*—The defendant in the name of his wife wrote to the plaintiffs a letter, the material portions of which was as follows: "The value of your house, No. 10, Rutton Mistry's Lane, has been fixed through the broker at R13,125; agreeing to that value I write this letter. Please come over to the house of my attorney between 3 and 4 this day with the title-deeds of the house, and receive the earnest. There shall be no doing otherwise." The plaintiffs through their manager wrote in answer to the defendant's wife: "You having agreed to purchase our house for R13,125 have sent a letter through the broker, and we are agreeable to it, and we will be present between 3 and 4 this day at your attorney's and receive the earnest." The plaintiffs and defendants met at the attorney's office in the absence of the attorney, and no inspection of title-deeds or payment of the earnest-money therefore took place. *Held*, in a suit for specific performance of the above contract, that the first letter contained no absolute proposal or undertaking to purchase, but merely fixed the price to be given for the house, leaving the inspection of title-deed and the payment of earnest-money to be settled at the meeting asked for. That both parties having treated the payment of earnest-money as an element in the contract, the contract could not be completed till the amount of earnest-money had been ascertained. KOYLASH CHUNDER DOSS *v.* TARINEY CHURN SINGHEE . . **I. L. R., 10 Calc., 588**

39. ——— *Agreement to sell land by guardian of minor contingent upon the permission of the Court.—Specific Relief Act (I of 1877), s. 26.*—A certificated guardian of certain minors entered into an agreement with the plaintiff to sell certain land belonging to them for a fixed price contingent upon the leave of the Court, which was necessary, being obtained to the transaction, and a portion of the purchase-money was paid by the plaintiff. The Court sanctioned the sale but at a higher price than that agreed on between the plaintiff and the guardian, and the latter sold to a third party. The plaintiff thereupon sued the minors by their guardian as next friend and the third party for specific performance of the agreement to sell to him at the price mentioned in the agreement. *Held*, that the contract was not one which could be specifically enforced, and that section 26 of the Specific Relief Act did not apply. The contract as it stood was never a complete contract at any time, as it was contingent upon the permission of the Court, and the permission of the Court did not extend to the whole contract as agreed upon between the parties. NARAIN PATTRO *v.* AUKHOY NARAIN MANNA **[I. L. R., 12 Calc., 152**

40. ——— Contract as to obtaining share of putni lease.—*Partial performance.*—In a suit against *K.*, *H.* and *G.* (a minor), to recover possession of an 8-anna share of a putni talook, and to have a conveyance executed in plaintiff's favour

SPECIFIC PERFORMANCE—*continued.*

3. SPECIFIC PERFORMANCE NOT ALLOWED —*continued.*

Contract as to obtaining share of putni lease—*continued.*

on the allegation that one of the defendants, *K.*, had agreed that the putni should be bid for at the sale advertised by the zemindar, and, if purchased, should be taken in the name of *K.*, who should convey half to the plaintiff, the cause of action was stated to be that defendants had fraudulently got a putni lease executed in their names and had taken possession, and refused to make over the stipulated share or take the balance of the consideration-money. The defendant *K.'s* substantial plea was that the mehal had been sold in one lot along with others, and taken by the head member of the family without knowledge of the agreement, and that plaintiff had himself through an agent competed for the putni at the sale: consequently that the event contemplated had not happened, and that plaintiff had himself avoided the agreement. *H.* pleaded that he was not privy to the agreement, and the minor that he was not bound. The lower Appellate Court found that both parties had abandoned and avoided the agreement. *Held* that, even if the agreement were binding on *K.*, the Court could not compel a partial performance, which was all that could take place; for as plaintiff claimed half the putni, and *K.'s* share was at most one fourth, plaintiff could be entitled to one eighth only. A specific performance could not be decreed, for plaintiff could have resisted an action brought by the present defendants for fulfilment of contract, as he could not have been compelled to buy what he had not agreed to. NUFFUR CHUNDER CHUNDER *v.* KHOODERAM PORAMANICK . **24 W. R., 434**

41. ——— Giving lease with possession to another than plaintiff.—*Suit for possession where remedy is suit for damages.*—*D.*, after having given a kutkina pottah of a certain village to *M.*, granted another kutkina pottah of the same land to *R.*, who obtained possession under his pottah. *M.* then sued *D.* and *R.* for ejectment and to recover possession. *Held* that *M.'s* remedy lay in an action for damages, and that he could not claim specific performance unless *R.* raised no objection to giving up possession. BUJRUNGEE DUTT PATTUCK *v.* MOORAD ALI . . . . . **22 W. R., 7**

42. ——— Conveyance to other parties after previous conveyance to one unregistered.—*Remedy of prior vendee.*—Where the executants of a deed of conveyance (kobala) omit to have it registered, and the property is sold to a third party who takes it *bonâ fide* for valuable consideration, the party in whose favour the conveyance was executed should seek his remedy against the executants, not in a suit for specific performance but in an action for damages. NUND KISHORE LALL *v.* MOHUN LALL . . . . . **22 W. R., 164**

43. ——— Refusal of specific performance where suit for damages is proper remedy.—*Held*, under the circumstances of the case, that there was not such a contract on consideration

SPECIFIC PERFORMANCE—*continued.*

3. SPECIFIC PERFORMANCE NOT ALLOWED —*continued.*

Refusal of specific performance where suit for damages is proper remedy— *continued.*

received as to make this a case where a suit for specific performance rather than a suit for damages should be held to be the correct form of action. BAL GOBIND MUHTOON *v.* LUTAFUT HOSSEIN [7 W. R., 142

44. ——— Agreement extending lease on conditions.—*Right to possession under former lease expired.—Agreement extending lease on conditions.—Right to compensation for being kept out of possession.*—The defendant's father was engaged in litigation for the purpose of obtaining possession of a zemindari under a lease for ten years, given by the zemindar, commencing in 1857. While the suit was pending the defendant's father sold five-eighths of his interest under the lease to the plaintiff, and agreed to give plaintiff possession, in consideration of certain sums of money paid and certain liabilities undertaken by the plaintiff. The defendant's father obtained possession in 1865, but refused to put the plaintiff's agents in possession, on the ground that the plaintiff had not complied with the terms of the agreement. In giving a decree for the defendant's father against the lessor, the Privy Council reserved to the zemindar leave to institute a suit for redemption upon payment to the defendant of all sums advanced to him. In a suit instituted by the zemindar for redemption in 1866, a razinamah was signed by the plaintiff and defendant in the suit, by which the term of the original lease was extended to the year 1875 for the considerations therein contained. In 1867 the plaintiff brought a suit for possession, and claimed the benefit of the stipulations contained in the razinamah, or for damages. *Held* that the plaintiff was not entitled to possession, on the ground that defendant was not in possession under the old lease, inasmuch as the effect of the razinamah of 1866 was not to extend the former old lease, but plaintiff was entitled to recover damages for loss of profits during the defendant's father's possession under the old lease. FONDCLAIR *v.* VINAITHEETHAN CHETTY [5 Mad., 251

4. MISCELLANEOUS CASES.

45. ——— Failure to give possession under agreement.—*Suit for specific possession.*—A purchaser of property of which possession was contracted to be given, but which contract the vendor is unable to fulfil, is at liberty to rescind the contract and sue for repayment of the purchase-money, and is not obliged to sue for specific performance. MOHUN LAL *v.* BEHAREE LAL . 3 N. W., 336

46. ——— Agreement to pay money or in default to execute bond.—*Suit to recover money.*—By an agreement it was contracted that the defendant should pay to the plaintiff R4,000 within six months, and that in default of payment within such period, he should execute a bond to secure payment with interest within a further period of six months. The money not having been paid and no bond having been executed, more than twelve months after the date of agreement, the plaintiff sued to recover the amount due under the agreement with interest. *Held* that the suit was rightly brought, and that the plaintiff was not bound to have sued for specific performance of the agreement to execute a bond. ROHIMUNISSA BEGUM *v.* MOHAMED MIRZA [10 C. L. R., 103

SPECIFIC PERFORMANCE—*continued.*

4. MISCELLANEOUS CASES—*continued*

Agreement to pay money or in default to execute bond—*continued.*

47. ——— Agreement for assignment of rents.—*Suit for consideration-money.—Damages.*—The plaintiff having agreed to assign certain arrears of rent due to him to the defendant for a consideration, brought this suit in which he tendered the kobala of assignment and claimed the consideration-money with interest. *Held* that the plaintiff had misconceived the shape in which his suit was brought, and, as his claim was purely for money, he should have sued for damages for breach of contract, especially as it was found as a fact that the subject assigned was now worthless. *Held*, also, that as in a former suit brought by the present defendant for specific performance of the same contract, the present plaintiff (as then defendant) had resisted successfully and without qualification, he could not now treat the contract as subsisting. SHEO PERGAH ROY *v.* INJORE TEWAREE . . . 21 W. R., 433

48. ——— Agreement by Government to pay moneys in lieu of tora garas hak.—*Jurisdiction of Civil Courts.—Pensions Act, XXIII of 1871, s. 4.*—A suit against Government, upon an alleged agreement by Government to pay moneys from its treasury in lieu of tora garas haks, falls within the prohibition, in section 4 of Act XXIII of 1871, to Civil Courts to entertain any suit relating to any grant of money made by the British Government, whatever may have been the consideration for such grant, and whatever may have been the nature of the payment, claim or right for which such grant may have been substituted. Observations on the cessation of the collection of tora garas by Government. *Quære,*—Whether Government bound itself to act perpetually as agent of the garasias in the collection of tora garas. *Quære,*—Whether the Civil Courts would compel the specific performance of such an agreement. MAHARVAL MOHANSANGJI *v.* GOVERNMENT OF BOMBAY . . . I. L. R., 4 Bom., 437

SPECIFIC RELIEF ACT.

See INJUNCTION—SPECIAL CASES—EXECUTION OF DECREE. [I. L. R., 4 Calc., 380

——— s. 9 (Act XIV of 1859, s. 15).

See COSTS—SPECIAL CASES — SUMMARY SUIT FOR POSSESSION . 15 W. R., 268

See PARTIES—PARTIES TO SUITS—PRINCIPAL AND AGENT. [I. L. R., 5 Bom., 208

SPECIFIC RELIEF ACT, s. 9—*continued.*

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—NATURE AND EFFECT OF DECISION . . . **20 W. R., 12**

See RES JUDICATA—JUDGMENTS ON TECHNICAL POINTS . **I. L. R., 6 Bom., 477**

See TITLE—EVIDENCE OF TITLE. **[5 C. L. R., 278**

This section corresponds with section 15 of the Limitation Act of 1859. The following are cases decided on that section:—

1. ——————— *Criminal Procedure Code, 1861, ss. 318, 319.—Dispossession.*—The object and effect of section 15 of Act XIV of 1859 considered, and the bearing of sections 318 and 319 of the Code of Criminal Procedure with regard to cases of dispossession and the jurisdiction of the Civil Courts, illustrated. ENAETOOLLAH CHOWDHRY *v.* KISHUN SOONDUR SURMA . . . **8 W. R., 386**

2. ——————— *Object of section.—Wrongful dispossession.—Onus of proof.*—Section 15 did not affect the general law on the matters to which it related, but provided a special remedy for a particular kind of grievance,—*e.g.*, to replace in possession a person who had been evicted by a wrongful act from landed property of which he had been in undisturbed possession, and to prevent a powerful person from thus shifting the evidence of proof from himself to another less able to support it. KALEE CHUNDER SEIN *v.* ADOO SHAIKH . **9 W. R., 602**

3. ——————— *Possessory actions by persons wrongfully dispossessed.—Civil Procedure Code, 1859, s. 230.*—Section 230 of the Civil Procedure Code of 1859, which related to possessory actions by persons wrongfully dispossessed in execution of decrees, did not apply to a case determined under section 15 of Act XIV of 1859. GOBIND CHUNDER BAGDEE *v.* GOBIND GHOSE MUNDUL **[7 W. R., 171**

4. ——————— *Suit to enforce right of way.*—Section 15 of Act XIV of 1859 was not applicable to a suit to enforce a mere right of way. HARO DYAL BOSE *v.* KRISTO GOBIND SEIN **[17 W. R., 70**

5. ——————— *Nature of possession necessary for suit.—Possession as trespasser.—Semble,*—Mere possession as a trespasser was not sufficient to entitle a plaintiff to recover in a suit brought under section 15 of Act XIV of 1859. There must be in the plaintiff juridical as opposed to mere physical possession. DADABHAI NARSIDA *v.* SUB-COLLECTOR OF BROACH . . . **7 Bom., A. C., 82**

6. ——————— *Warrant of execution.—Seizure of immoveable property not described in decree.—Illegal possession.*—Where a warrant was issued to the Sheriff to seize certain specific immoveable property not coming within the description in the decree, it was held that possession under such warrant would not be an illegal possession under the meaning of section 15. JADUB CHUNDER CHECHKY *v.* HEERALOLL SAHA **[1 Ind. Jur., N. S., 21: Bourke, O. C., 384**

SPECIFIC RELIEF ACT, s. 9—*continued.*

7. ——————— *Tenants illegally ejected.*—A tenant in possession after expiry of his lease can only be ejected by due course of law; and if illegally dispossessed he was entitled, under section 15, Act XIV of 1859, to sue and recover possession, notwithstanding a pottah set up by defendant. SOFAOLL KHAN *v.* WOOPEAN KHAN . **9 W. R., 123**

8. ——————— *Time within which suit must be brought.*—The suit must be brought within six months of the alleged ouster, otherwise anterior possession would be of no avail to the plaintiff. AMEER BIBEE *v.* TUKROONISSA BEGUM **[7 W. R., 332**

Upheld on review in TUKROONISSA BEGUM *v.* MOGUL JAN BIBEE . . . . **8 W. R., 370**

AMEEROONNISSA KHATOON *v.* WISE **[24 W. R., 435**

The plaintiff is entitled to recover notwithstanding any other title. DOE D. KULLAMMAL *v.* KUPPU PILLAI . . . . . **1 Mad., 85**

9. ——————— *Trial of question of dispossession.*—Plaintiff having sued under section 15, Act XIV of 1859, for possession of a parcel of land of which he alleged himself to have been dispossessed by defendants building a hut upon it, the Court of first instance determined that as the land was part of a village, and plaintiff had not sued for possession of the village, it could neither declare his possession of the entire village nor of the particular parcel. *Held* that there was no reason why the Court should not try whether the plaintiff was dispossessed as alleged, and whether he should not have possession. OMARCHAND MAHATA *v.* NAWAB NAZIM OF BENGAL . . . **11 W. R., 229**

10. ——————— *Right under decree for possession.*—A party recovering possession of land in virtue of a decree under section 15, Act XIV of 1859, recovered the land with the crop growing upon it, and was fully entitled to cut the same. SHIRAJDEE PRAMANICK *v.* EMAM BUKSH BISWAS **[13 W. R., 104**

11. ——————— *Suit to set aside award under section.*—The defendant having had an award under section 15, Act XIV of 1859, the plaintiff's allegation of possession and dispossession by the defendant required him specifically to prove those facts before the defendant could be called upon to prove his case. JUGGURNATH DEB *v.* MAHOMED MOKEEM . . . . **17 W. R., 161**

12. ——————— *Suit to set aside award under section.*—Although in a suit to set aside an award made under section 15, Act XIV of 1859, plaintiff had to establish his own title before the party in possession could be required to make good his case, a Judge should look into the summary case itself, and ascertain if there had been a proper inquiry and trial in that case. SURBO MOHUN ROY *v.* SURUT CHUNDER ROY . . . . **16 W. R., 34**

13. ——————— *Decree for possession.—Evidence.*—A decree for possession in a suit under

SPECIFIC RELIEF ACT, s. 9—*continued.*

section 15 of Act XIV of 1859, was *primâ facie* evidence that the plaintiff in that suit was entitled to recover from the defendant therein, mesne profits for the period of dispossession. RADHA CHARAN GHATAK *v.* ZAMIRUNISSA KHANUM

[2 B. L. R., A. C., 67: 11 W. R., 83

Reversing S. C. ZUMURUDOONISSA *v.* RADHA CHURN GHUTTUCK . . 9 W. R., 590

14. ——————— *Mortgagee in possession.—Dispossession by mortgagor.—Suit for possession.—Fraud.*—It is no answer to a suit for possession under section 9 of the Specific Relief Act, brought against a mortgagor by a mortgagee who has been forcibly dispossessed by the mortgagor, to allege that the mortgage and possession under it were obtained by the fraud of the mortgagee. The mortgagor's proper remedy is by way of a suit to set aside the mortgage and recover possession. SAYAJI BIN NIMBAJI *v.* RAMJI BIN LANGAPA

[I. L. R., 5 Bom., 446

15. ——————— *Partial dispossession.—Suit for possession.*—A possessory suit lies under section 9 of the Specific Relief Act, when plaintiff's possession has been partially as well as when it has been wholly disturbed. SABAPATHI CHETTI *v.* SUBBAYA CHETTI . . . I. L. R., 3 Mad., 250

16. ——————— *Civil Procedure Code, 1877, s. 103.—Re-hearing.—Review.*—Section 9 of the Specific Relief Act does not prohibit a re-hearing under section 103 of the Code of Civil Procedure. A re-hearing differs widely from a review. ANTHONY *v.* DUPONT . . . I. L. R., 4 Mad., 217

——————— s. 18.

See VENDOR AND PURCHASER—MISCELLANEOUS CASES . . 2 C. L. R., 382

——————— s. 19.—*Suit for declaration under a mokurrari pottah.—Alternative relief.—Civil Procedure Code (Act X of 1877), s. 28.*—A suit to have a mokurrari pottah enforced as against one co-sharer granting it, and other co-sharers who repudiate it, and in the alternative to have the salami paid for the mokurrari pottah returned, is in substance a suit to enforce a contract to place the plaintiff in possession of the land under the pottah, and to declare his rights to it as against all the defendants; and under section 19 of the Specific Relief Act the plaintiff is entitled to ask for compensation as against the defendant granting the pottah. Under section 28 of the Civil Procedure Code, such an alternative claim may be allowed against one or more of the defendants. RAJDHUR CHOWDHRY *v.* KALIKRISTNA BHATTACHARJYA

[I. L. R., 8 Calc., 963: 11 C. L. R., 330

1. ——————— s. 21.—*Agreement to refer to arbitration.—Refusal to refer.—Pleading.*—A contract to sell goods contained the following clause: "That any dispute arising hereafter shall be settled by the selling broker, whose decision shall be final." In a suit to recover damages for breach of the contract, the defendant pleaded that the dispute should have

SPECIFIC RELIEF ACT, s. 21—*continued.*

been referred to the decision of the selling broker, and that the suit was therefore barred under section 21 of the Specific Relief Act, the latter clause of which provides that "save as provided by the Code of Civil Procedure no contract to refer a controversy to arbitration shall be specifically enforced; but if any person, who has made such a contract, and has refused to perform it, sues in respect of any subject which he has contracted to refer, the existence of such contract shall bar the suit." *Held* that, before that section could be relied upon, it must be shown that the plaintiff had refused to refer to arbitration; and that the filing of the plaint was not such a refusal. KOOMUD CHUNDER DASS *v.* CHUNDER KANT MOOKERJEE

[I. L. R., 5 Calc., 498: 5 C. L. R., 264

2. ——————— *Agreement to refer to arbitration.—Award.—Suit in respect of matter referred barred.*—The parties to a suit applied for an adjournment of it on the ground that they had agreed to refer the matters in difference between them in such suit to arbitration. The Court accordingly adjourned the suit, and the matters in difference therein were referred to arbitration by the parties, and an award was made thereon disallowing the plaintiff's claim. *Held* that, under these circumstances, the further hearing of such suit was barred. SALIG RAM *v.* JHUNNA KUAR

[I. L. R., 4 All., 546

3. ——————— *Agreement to refer to arbitration.—Refusal to refer.—Suit in respect of matter agreed to be referred.—Pleadings.*—One of the parties to a contract to refer a controversy to arbitration brought a suit for part of the subject-matter referred. The defendants pleaded the bar of section 21 of the Specific Relief Act, but did not allege in their answer to the plaint that the plaintiff refused to perform his contract. *Held* that the mere act of filing the suit on the part of the plaintiff was not tantamount to a refusal to perform his contract in the sense of section 21 of the Specific Relief Act. The contract, the existence of which would bar a suit under the circumstances contemplated by section 21 of the Specific Relief Act, must be an operative contract, and not a contract broken up by the conduct of all the parties to it. TAHAL *v.* BISHESHAR

[I. L. R., 8 All., 57

——————— s. 26.

See EVIDENCE—PAROL EVIDENCE—VARYING OR CONTRADICTING WRITTEN INSTRUMENTS . I. L. R., 4 Bom., 594

See SPECIFIC PERFORMANCE — SPECIFIC PERFORMANCE NOT ALLOWED.

[I. L. R., 12 Calc., 152

——————— s. 27.

See VENDOR AND PURCHASER—NOTICE.

[I. L. R., 10 Calc., 710

1. ——————— cl. (b).—*Misjoinder.—Joinder of causes of action.—Multifariousness.*—The plaintiffs sued to enforce an agreement for the execu-

SPECIFIC RELIEF ACT, s. 27, cl. (b) —*continued.*

tion of a conveyance of certain immoveable property, and for the possession of such property, making the party to such agreement and the persons who had, subsequently to the date of the same, purchased such property in execution of decree, defendants in the suit, on the allegation that such persons had purchased in bad faith and with notice of the agreement. *Held*, with reference to section 27 of Act I of 1877, that, under such circumstances, there was not necessarily a misjoinder of causes of action. GUMANI *v.* RAM CHARAN . **I. L. R., 1 All., 555**

2. ——————— *Agreement to convey the mortgaged property in case of default.—Suit for specific performance of contract.—Mortgage.—First and second mortgagees.*—On the 7th February 1873, *F.* mortgaged the equity of redemption of a certain estate to *B.* and *G.* On the 7th August 1877 he mortgaged such estate to *P.*, agreeing that, if he failed to pay the mortgage-money within the time fixed, he would convey such estate to *P.*, and that, if he failed to execute such conveyance, *P.* should be competent to bring a suit "to get a sale effected and a deed of absolute sale executed." On the 6th October 1877 *F.* mortgaged such estate to *B.* and *D.* By this mortgage the lien created by the mortgage of the 7th February 1873 was extinguished. In December 1877 *B.* and *D.* obtained a decree against *F.* on the mortgage of the 6th October 1877, and in June 1878, in execution of that decree, such estate was put up for sale and was purchased by *D.* In February 1880 *P.* sued *F.* and *D.* for the execution of a conveyance of such estate to him in accordance with *F.'s* agreement of the 7th August 1877. *Held* that the mortgage of the 7th August 1877 was not in the nature of a mortgage by conditional sale, and there was no necessity for *P.* to take proceedings to foreclose the mortgage, and the suit was maintainable. Also that, assuming that *D.* had no notice of the agreement of the 7th August 1877, it was very doubtful whether under section 27 (*b*) of Act I of 1877 *D.* could claim that specific performance of that agreement should not be granted, inasmuch as the contest lay between a prior and subsequent lien created upon the same property, which had passed to the transferee under a sale in execution of a decree for the enforcement of the subsequent lien. BADRI PRASAD *v.* DAULAT RAM . **I. L. R., 3 All., 700**

——— **s. 30.**

See LIMITATION ACT, 1877, ART. 113.
[I. L. R., 5 All., 263

——— **s. 31.**—*Landlord and tenant.—Rectification or alteration of contract of tenancy.—Specific Relief Act (I of 1877), s. 31.*—Where a party to a contract of tenancy desires to have it rectified or altered, the suit should be brought under section 31 of the Specific Relief Act. ANARULLAH SHAIKH *v.* KOYLASH CHUNDER BOSE
[I. L. R., 8 Calc., 118

S. C. KOYLASH CHUNDER BOSE *v.* ANARULLAH SHEIKH . . . . **9 C. L. R., 467**

SPECIFIC RELIEF ACT—*continued.*

——— **s. 35.**

See CONTRACT ACT, s. 23—ILLEGAL CONTRACTS—AGAINST PUBLIC POLICY.
[I. L. R., 3 Mad., 215

——— **s. 39.**

See DECLARATORY DECREE, SUIT FOR—SUITS CONCERNING DOCUMENTS.
[I. L. R., 7 Calc., 736

See LIMITATION ACT, 1877, ART. 91.
[I. L. R., 5 All., 322

——— **s. 40, and Chap. IV, ss. 35-38.**—*Impossibility arising after execution of contract to perform a portion.—Suit to cancel such portion.*—A contract was entered into between the plaintiff and the defendant by which the plaintiff agreed to cultivate indigo for the defendant for a specified number of years, in certain specified lands situated in different villages, with respect to portion of which lands the plaintiff was a sub-tenant only. During the continuance of the contract the plaintiff lost possession of those lands through his immediate landlord having failed to pay the rent, and having been in consequence ejected therefrom by the owner,—In a suit to have so much of the contract as related to those lands cancelled on the ground that it had become impossible of performance through no neglect on his part,—*Held* that Chapter IV (sections 35-38) of Act I of 1877 (Specific Relief Act) did not apply to such a case, but that the plaintiff was entitled to the relief he sought under section 40 of that Act, inasmuch as the contract was evidence of different obligations,—*viz.*, to cultivate indigo in different villages. INDER PERSHAD SINGH *v.* CAMPBELL
[I. L. R., 7 Calc, 474: 8 C. L. R., 501

——— **s. 42.**

See CASES UNDER DECLARATORY DECREE, SUIT FOR—

See JURISDICTION OF CIVIL COURT—REVENUE COURTS—PARTITION.
[11 C. L. R., 533

See RIGHT OF SUIT—CHARITIES.
[I. L. R., 8 All., 31

See RIGHT OF SUIT—SALE IN EXECUTION OF DECREE . **I. L. R., 7 All., 583**

SPLITTING CAUSE OF ACTION.

See CO-SHARERS — SUITS BY CO-SHARERS WITH RESPECT TO THE JOINT PROPERTY.
[7 B. L. R., Ap., 42

See CASES UNDER RELINQUISHMENT OR OMISSION TO SUE FOR PORTION OF CLAIM.

See SMALL CAUSE COURT, PRESIDENCY TOWNS—JURISDICTION—GENERALLY.
[I. L. R., 2 Bom., 570

SPLITTING OFFENCE.

See CRIMINAL PROCEEDINGS.
[I. L. R., 4 Calc., 18

STAKEHOLDER.

See INTERPLEADER SUIT.
[2 Ind. Jur., N. S., 113

See PRINCIPAL AND AGENT—LIABILITY OF AGENTS . . 4 Bom., O. C., 125

STAMP.

	Col.
1. BENGAL REGULATIONS . . .	5817
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2. BOMBAY REGULATIONS . . .	5817
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See CASES UNDER COURT FEES ACT.

See CASES UNDER VALUATION OF SUIT.

1. BENGAL REGULATIONS.

——— **Ben. Reg. XII of 1826.**—*Receipt for Government paper.*—Under the old Stamp Law (Regulation XII of 1826, which was not registered by the Supreme Court) agreements not on stamped paper executed in Calcutta *bonâ fide* by parties residing or carrying on business therein, when there was no intention of pleading such documents in the mofussil Courts, were held to be good and binding. GOURY CHURN MOOKERJEE *v.* JOGENDRONATH MOOKERJEE . . . . W. R., 1864, 289

——— **Beng. Reg. X of 1829.**

See STAMP ACT, 1879, SCH. I, ART. 49.
[I. L. R., 7 Calc., 594

——— **Beng. Reg. X of 1829, s. 31.**—*Stamp Act (Act X of 1862).—Mirasi pottahs.*—Mirasi ryoti pottahs were not required either by the old (Act X of 1829, section 31) or new Stamp Law (Act X of 1862) to be written on stamped paper. MOHEEOODDEEN AHMED *v.* PRANNATH ROY CHOWDHRY . . . . 3 W. R., Act X, 142

2. BOMBAY REGULATIONS.

——— **Bom. Reg. XVIII of 1827.**—*Will.*—Regulation XVIII of 1827 did not require a will to be stamped during the testator's lifetime. WEBBE *v.* LESTER . 2 Bom., 55: 2nd Ed., 52

1. ——— **s. 10.**—*Construction of section.*—An objection to the validity of a document under Regulation XVIII of 1827, as distinguished from its inadmissibility in evidence, or from a prohibition to Courts of Justice or public officers to act upon it, was an objection on the merits under act VIII of 1859. Where two documents were executed in the Island of Bombay, respectively under date the 29th August 1851 and 4th August 1852, and did

STAMP—*continued.*

2. BOMBAY REGULATIONS—*continued.*

Bom. Reg. XVIII of 1827, s. 10—*continued.*

not appear to have been originally expressly intended to operate within any of the zillahs subordinate to the Presidency of Bombay,—*Held* that they did not come within the scope of Regulation XVIII of 1827. That Regulation, being an enactment imposing stamp duties upon the subject, must be strictly construed, and although the High Court believed that those documents were actually intended to operate, so far as the particular property in question in the suit was concerned, in the zillah of Tanna, the High Court declined to hold "expressly" to mean the same as "actually," as nothing appeared on the face of the documents to show where the property mentioned in them was situated. GIRDHAR NAGJISHET *v.* GANPAT MOROBA . 11 Bom., 129

2. ——— *Signed account.—Evidence when unstamped.*—A signed account showing a balance up to date, and containing a promise to pay interest upon the consolidated balance, cannot be made use of in evidence to support a claim to interest on that balance, unless it be stamped; but it may be used as a samaduskut or simple admission of a balance due, although not stamped. DHONDU JAGANNATH *v.* NARAYAN RAMCHANDRA
[1 Bom., 47

3. ——— **cl. 3.**—*Mortgage.—Lease.—Counterpart.*—Where an agreement between a mortgagor and mortgagee contained a stipulation that the mortgagor should, at the time of redemption, make good the losses arising to the mortgagee from the default of tenants, which it had been agreed the mortgagee might put in, in case the mortgagor made default in payment of the rent agreed upon for the term of the mortgage; such an agreement was not a lease, or the counterpart of a lease, within the meaning of Regulation XVIII of 1827, section 10, clause 3, but was a contract of indemnity against losses to be incurred after the determination of the lease, which, not having any operation so long as the lease was in existence, was, therefore, not exempt from stamp duty under that Regulation. Where an appellant has not tendered the stamp duty and penalty on a document which the Courts below have held to be insufficiently stamped, the High Court will not allow him to do so in special appeal. RAM KRISHNA GOPAL *v.* VITHU SHIVAJI . . . 10 Bom., 441

——— **s. 12, cl. 2.**—*Suit to recover possession of immoveable property.—Practice.*—In a suit by plaintiff to recover possession of certain immoveable property under a deed of sale executed to him by the defendants' father while Regulation XVIII of 1827 was in force upon one-anna stamp paper, a question having arisen as to what stamp duty the deed should bear for the purposes of the suit, it was referred to the High Court. *Held* that the deed was sufficiently stamped under clause 2, section 12 of Regulation XVIII of 1827; but the plaintiff could not obtain on it a judgment for a sum or value beyond what was covered by that stamp unless he paid an additional stamp duty and penalty

STAMP—*continued.*

2. BOMBAY REGULATIONS—*continued.*

Bom. Reg. XVIII of 1827, s. 12, cl. 2—*continued.*

which the Court might allow him to do. MULJI BECHAR *v.* JETHA JESHANKAR [I. L. R., 10 Bom., 239

1. ——— **s. 13.**—*Intention to defraud revenue.*—On documents insufficiently stamped under Regulation XVIII of 1827 the question did not properly arise, under section 13 of that Regulation, whether the intention of the parties in not sufficiently stamping them was to defraud Government of its revenue. That question was rendered important, first, by section 13 of Act XXXVI of 1860, and subsequently, in a more explicit manner, by section 15 of Act X of 1862. KASTUR BHAVANI *v.* APPA [I. L. R., 5 Bom., 621

2. ——— *Right to have document stamped.—Intention to evade stamp duty.*—A party has a right to have stamped, on payment of the prescribed penalty, an instrument executed while Regulation XVIII of 1827 was in force, and it should not be rejected on the ground of intention by the party to evade the stamp duty. ANTAJI NILKANTH *v.* JANARDAN VASUDEV . . . 10 Bom., 358

——— **ss. 13 & 14.**—*Bond stamped after death of grantor.*—A bond or other writing, stamped after the death of the grantor, is valid against his heirs. The personal representatives, or other persons claiming as heirs and kindred of a deceased grantor, stood, with regard to sections 13 and 14 of Regulation XVIII of 1827, in the same position as the deceased grantor would, and were not third parties within the meaning of section 14. The previous decisions of the late Sudder Court to the contrary overruled. RAGHIA *v.* DHARMA JHATU [1 Bom., 52

1. ——— **s. 14, cl. 1.**—*Deed of sale of property given in gift from what time operative.*—A donee of the grantor was a third party within the meaning of Regulation XVIII of 1827, section 14, clause 1, and, therefore, as against him a deed of sale of the property given in gift was only valid from the date on which it was stamped. Precedents on this point questioned but followed. JAGANNATH VITHAL *v.* APAJI VISHNU . 5 Bom., A. C., 217

2. ——— *Purchaser at sale in execution of decree.—Validity of mortgage-deed.*—The purchaser at a Court-sale of the right, title, and interest of the judgment-debtor is a third party within the meaning of section 14, Regulation XVIII of 1827, clause 1, and therefore, as against him a mortgage-deed passed by the latter to a mortgagee is valid—not from the date of its execution, but from that on which it was stamped. *Jagannath Vithal* v. *Apaji Vishnu, 5 Bom., A. C., 217,* followed. NARAYAN DESHPANDE *v.* RANGUBAI [I. L. R., 5 Bom., 127

STAMP—*continued.*

3. MADRAS REGULATIONS.

——— **Mad. Reg. XIII of 1816.**—*No provision for payment of penalty.—Secondary evidence of unstamped document.*—In a suit to redeem a mortgage of 1833, executed upon an unstamped cadjan, liable to stamp duty under Regulation XIII of 1816 secondary evidence of the contents of this document was tendered on payment of a penalty,—*Held* that the evidence could not be admitted. KOPASAN *v.* SHAMU . I. L. R., 7 Mad., 440

STAMP ACT, XXXVI OF 1860.

——— **Security bond given to abkari renter.**—A security bond executed by a third party to the abkari renter is not exempt from stamp duty. RAMASVAMI CHETTI *v.* PAPPA REDDI [1 Mad., 190

——— **s. 14.**—*Bond executed on optional stamp.*—No larger sum could be recovered under section 14, Act XXXVI of 1860, upon a bond executed on an optional stamp than that optional stamp covers, and no amount of penalty can make up the deficiency in the stamp. KERAMUT ALI *v.* ABDOOL WAHAB [17 W. R., 131

1. ——— **sch. A., and s. 14.**—*Promissory note containing agreement to waive jurisdiction.*—A promissory note containing an agreement by the maker that, in case of any dispute or difference arising concerning the payment of the note or the subject-matter thereof, the same shall and may be sued in the Supreme Court, and "to the jurisdiction of which I hereby waive and agree to waive all pleas," properly stamped as a promissory note, did not require an additional stamp as an agreement under Act XXXVI of 1860, schedule A, and section 14. RAKHALDASS SINGHEE *v.* ROY CHUNDER DUTT [1 Ind. Jur., O. S., 124

2. ——— **sch. A., cl. 4.**—*Promissory note.*—An instrument to the following effect: "On the 14th December 1861, we, *A.* and *C.*, bind ourselves to pay, with interest to you, *B.* and *C.*, R566-10, being the balance of dealings held with your firm, and the amount received this day from you in cash on account of stamp,"—*Held* to be neither a bond nor a hundi, but to be in the nature of a promissory note and to come within the description in clause 4., schedule A of Act XXXVI of 1860. HUTUMAN SAHIB *v.* HUSAIN SAHIB . . . . . 1 Mad., 152

3. ——— **sch. A., cl. 20.**—*Partnership agreement.*—An agreement on a R24 stamp paper between *A.*, who had obtained from Government the abkari farm of a certain talook, and *B.*, stipulating that, in consideration of R2,000 advanced by *B.* for payment of deposit, the whole management should reside in *B.*, that the parties should each have a half share and be respectively entitled and liable to profit and loss in respect of his share; that they should account with one another for the sums laid out by *B.*, and should settle annually the accounts of profit and loss upon the half share,—*Held* to be a partnership agreement, and to be sufficiently stamped under Act

STAMP ACT, XXXVI OF 1860, sch. A., cl. 20—*continued.*

XXXVI of 1860, clause 20, schedule A. In determining the stamp to be affixed to a document, the state of things at its execution is alone to be regarded. CHINNAIYA NATTAN *v.* MUTTUSVAMI PILLAI [1 Mad., 226

[P ACT, X OF 1862.

——— s. 3.

See GENERAL CLAUSES CONSOLIDATION ACT, 1868, s. 6 . . 7 Mad., Ap., 9

1. ——— *Offence under section.—Engrossing deed on unstamped paper.*—The mere engrossing of a deed on unstamped paper was not an offence under section 3 of Act X of 1862, nor did the signing such deed as a witness constitute any such offence. REG. *v.* JETHA MOTI. REG. *v.* VIRJI KUVARJI . . 2 Bom., 135: 2nd Ed., 129

REG. *v.* JOTI BIN SATU . . 1 Bom., 37

2. ——— *Penalty.—Attesting witnesses and persons drafting documents.*—The words in section 3 of Act X of 1862, "unless in any case in which a higher penalty is imposed," and "not exceeding," apply both to the penalty of R100, and one higher than ten times the value of the omitted stamp. Attesting witnesses and persons who draft documents and note the fact with their signatures at the foot do not come within the words, "make, execute, sign, or be a party to," used in the section, and are therefore not punishable under it. ANONYMOUS [3 Mad., Ap., 27

3. ——— **and s. 52.**—*Omission to get sanction of Collector.*—A prosecution under section 3, Act X of 1862, not having been authorised by the Collector of the Stamp Revenue for the district or any other officer specially authorised by the Government in that behalf was held to be, under section 52 of that Act, irregular. QUEEN *v.* ADJOODHYA PERSHAD . . . . . 2 N. W., 188

1. ——— **s. 14.**—*Documents improperly stamped.—Evidence, Admissibility in.*—Documents not bearing proper stamps under Act X of 1862 are not admissible in evidence even to show the terms of the deed as against the party producing the same. OOMRAO SINGH *v.* METHAB KOONWER [3 Agra, 103a

2. ——— *Act XXXVI of 1860.—Bond stamped after suit.*—A bond stamped subsequently to the institution of a suit is valid, under the provisions of the Civil Procedure Code and of the Stamp Acts of 1860 and 1862, provided it be properly stamped when produced at the first hearing of the suit and when the Court is asked to receive it in evidence. ATMARAM GULABRAI *v.* AMIRCHAND RUPCHAND . . . . . 3 Bom., A. C., 92

3. ——— *Calculation of stamp duty.—Nature of instrument.*—In determining the stamp required for any particular instrument, regard must be had to the real nature of the instrument, and not to the title which may have been given to it by the parties, if the contents of the instrument show that the title is a misnomer. PENDSE *v.* MALSE [3 Bom., A. C., 94

STAMP ACT, X OF 1862, s. 14—*continued.*

4. ——— *Single document containing two contracts and bearing one stamp.—Allowance of value of stamp.*—Where a document contained two distinct contracts requiring separate stamps, but the whole was impressed with one insufficient stamp, it was held that this stamp might be taken into account in making up the aggregate of the stamps required. BALAJI MAHADEV *v.* KRISHNAJI BIN CHIMNAJI . . . . 6 Bom., A. C., 95

5. ——— *Copies of record of criminal trial.—Liability to stamp duty.*—With the exception of the depositions of the witnesses and the documentary evidence and copies of the final sentences or orders passed by Criminal Courts, which parties desirous of appealing from such sentence were required by section 416 of the Code of Criminal Procedure, 1861, to file with their petitions of appeal, when the party who was desirous of appealing was in confinement under the operation of the sentence or order at the time that he applied for a copy of the same, it was held that copies of any part of the record of a criminal trial could only be furnished to applicants on stamp paper. ANONYMOUS [4 Mad., Ap., 58

6. ——— *Transfer of tenure.—Admissibility in evidence.*—The transfer of an undertenure, endorsed upon the back of the tenant's pottah, is not admissible in evidence, unless it be stamped as though it were a separate deed. TETAI ABOM *v.* GAGAI GURA CHAWA . 3 B. L. R., Ap., 30

S. C. PITAYE AHUNG *v.* GIRGHEE KOER AJOOAH [11 W. R., 365

7. ——— *Surrender of equity of redemption.—Unstamped endorsement.*—Where the defendant executed in favour of the plaintiff what purported to be a deed of absolute sale, but an ikrar executed contemporaneously reserved the right of redemption to the defendant, and the plaintiff alleged he had surrendered it by returning the ikrar,—*Held* that as the original deed was, on the face of it, an absolute sale, and as the effect of it was merely controlled by the ikrar, the return of the latter extinguished the equity of redemption. A separate document requiring a separate stamp was unnecessary. RAJ COOMAR SINGH *v.* RAM SUHAYE ROY [11 W. R., 151

——— **s. 15, cl. 6.**—*Application for remission of stamp duty in pauper suits.*—It is not the duty of a Civil Court to receive and submit to the Board of Revenue an application from a pauper plaintiff for remission or mitigation of penalty under the stamp law; the pauper should himself make timely application under clause 6, section 15, Act X of 1862. GOLAM GUFFOOR *v.* EKRAM HOSSEIN CHOWDHRY [10 W. R., 358

——— **s. 17.**

See APPEAL—ACTS—STAMP ACT, 1862. [3 Bom., O. C., 153

STAMP ACT, X OF 1862, s. 17—*continued.*

1. ——————— *Insufficient stamp.*—Section 17 of Act X of 1862 only applied to the reception of documents under section 15, which had been insufficiently stamped, not to documents on which there was no stamp. Such documents should not be received at all. LALJI SINGH *v.* AKRAM SEB [3 B. L. R., A. C., 235 : 12 W. R., 47

2. ——————— *Intention to evade stamp laws.*—A bond executed between a plaintiff who sued upon it and the defendants, contained the following clause: "And inasmuch as we (the defendants) are urgently in want of money, and are unable to procure a stamp at the moment, we have executed the bond on plain paper. Should it be necessary for you (plaintiff) to bring a suit against us, whatever penalty you may have to pay shall be made good by us, with interest." The Small Cause Court Judge, before whom the case was tried, considered the above clause in the bond to be evidence of an intention between the parties to avoid the stamp laws, and refused to receive evidence to the contrary. He also refused to admit the bond in evidence. *Held*, on reference to the High Court, that the clause in question did not amount to an agreement to evade the stamp laws. The Judge might have inferred from it that it was the intention of the parties to evade the stamp laws, but in that case he should have heard evidence to the contrary. SASHI BHUSHAN BANERJEE *v.* TARACHAND KAR . 3 B. L. R., A. C., 329 : 11 W. R., 553

3. ——————— *Intention to evade payment of duty.*—A Court to which a document is tendered in evidence under this section ought not to reject it, unless it clearly appears that there was an intention to evade the payment of stamp duty. ROYAL BANK OF INDIA *v.* HORMASJI KHARSEDJI [3 Bom., O. C., 153

4. ——————— *Permission to pay penalty where document is lost.*—*Quære.*—Whether permission to pay the stamp duty and penalty can be given in the case of a lost instrument. ARUNACHELLUM CHETTY *v.* OLAGAPPAH CHETTY . 4 Mad., 312

5. ——————— *Hundi.*—*Inadmissibility in evidence for want of stamp.*—The plaintiff brought a suit against three defendants under the following circumstances: The third defendant was the tenant of a village under the second defendant, the first defendant being the agent and manager of the second defendant. The third defendant owed the second defendant a sum of money on account of rent, and drew a hundi on the plaintiff for R1,000 to be paid to the first defendant or order, and containing these words: "For which amount I shall deliver over to you grain in that village and its hamlets, and for which the Dewan (first defendant) will issue an order to the above effect." The hundi was upon a one-anna stamp. Plaintiff on receipt of this hundi drew upon the back of it another hundi upon his mother-in-law, in the following terms: "On demand please pay to Mahomed Radhamatulla Shaib, Dewan of Venkatagiri (first defendant), or to his order, the within-mentioned amount for grain to be supplied me by Mr. Ward (third defendant) on the order of the said Mahomed Radhamatulla Shaib, the Dewan of Venkatagiri." This was signed by the plaintiff, and beneath his signature was that of the first defendant. The amount mentioned in the hundi was paid to the first defendant; the second hundi was unstamped. The plaintiff's case was, that the first defendant entered upon a binding engagement with him to deliver, or permit the delivery, of grain of the value of R1,000, and that he failed to fulfil his engagement. The Civil Judge decreed for the plaintiff. On appeal,—*Held* by the High Court, reversing the decision of the Civil Court, that the second hundi was not admissible in evidence, not being stamped, and that there was no evidence of such an agreement as that relied on by the plaintiff. MAHOMED RAHAMATULLA *v.* WARD . . . 5 Mad., 391

STAMP ACT, X OF 1862, s. 17—*continued.*

6. ——————— and s. 15.—*Intention to evade payment of duty.*—*Jurisdiction.*—In a suit brought in a Small Cause Court to recover money, being a debt secured by a hissab entered on a leaf of a khattah book, where the defendant objected to the admission of the leaf as evidence, because it did not bear a proper stamp,—*Held* that, under sections 15 and 17, Act X of 1862, it was competent to the Judge to find, on the facts before him, whether the absence of the stamp was owing to an intention to evade payment of the stamp duty, and that no question arose for reference to the High Court. RAJ CHUNDER SHAHA *v.* GOBIND CHUNDER KOOLAL [13 W. R., 102

7. ——————— *Insufficiently-stamped document.*—*Procedure.*—*Admissibility in evidence.*—The plaintiff sued his elder brother for a share in certain family property. The defendant raised a question of family custom, and relied on a certain deed of release which he said the plaintiff had given him, but the existence of which the plaintiff denied. That document was not stamped, though on the face of it it stated that it was to be stamped. No objection was taken on that score to the document before the first and the lower Appellate Courts, who considered that the document was a genuine document executed by the plaintiff. After its production, it had an insufficient stamp of two annas put upon it. The High Court, on appeal, left the deed as part of the evidence in the case, but qualified its effect and the extent of its operation by making it a deed of release, releasing so much of that which the plaintiff might otherwise claim as would be covered by the insufficient stamp of two annas. *Held* that the High Court might either have refused to admit the document for want of a stamp, or—which would be more correct—it might have required it to be properly stamped and the penalty paid into Court; but the course taken was entirely without precedent, without principle, and without authority. MANTAPPA NADGOWDA *v.* BASWANTRAO NADGOWDA. [15 W. R., P. C., 33 ; 14 Moore's I. A., 24

1. ——————— s. 22.—*Promissory note.*—*Interest.*—A promissory note is sufficiently stamped if the stamp covers the principal sum named in the note without reference to the interest. GOMEZ *v.* YOUNG [2 B. L. R., O. C., 165 : 12 W. R., O. C., 1

STAMP ACT, X OF 1862, s. 22—*continued.*

2. ——————— *Promissory note.—Admissibility in evidence.—A. B.*, by an instrument in writing, dated 6th August, promised to pay *C. D.*, "on demand," R4,310-13-3. In the margin of the instrument was written "due 30th August," and annexed to *A. B.'s* signature was the following memo.: "The sum of R4,310-12-6 only, forty-five days from the 5th of August." *Held* that the instrument was properly stamped as a promissory note payable on demand, and ought to have been admitted in evidence. *Per* PEACOCK, *C. J.*—A promissory note payable on demand ought to be stamped as such, notwithstanding there may be a collateral agreement between the parties that the holder will not present it for a given time, or if paid on demand that the maker shall be entitled to discount. CHANDRAKANT MOOKERJEE *v.* KARTIKCHARAN CHAILE

[5 B. L. R., 103: 14 W. R., O. C., 38

3. ——————— *Promissory note.—Ambiguity.*—Where the wording of a promissory note bearing a one-anna stamp appears to be ambiguous as to whether it is payable on demand, the Court will take the evidence of the parties as to the intention, and will then decide whether it is properly stamped. Under such circumstances the Court will take evidence of usage. BANK OF HINDUSTAN, CHINA, AND JAPAN, *v.* SEDGWICK . **1 Ind. Jur., N. S., 107**

——— **s. 26.**

See COMPROMISE—COMPROMISE OF SUITS UNDER CIVIL PROCEDURE CODE.

[1 Mad., 127
12 W. R., 376

——————— *Refund of stamp duty.—Commencement of suit.—Held* that, for the purpose of refund of half stamp duty under section 26 of Act X of 1862, the hearing of a suit in a Small Cause Court commenced when proof of the service of the summons was taken on the day appointed for the hearing; and where proof of the service of the summons had been previously taken, it must be considered as taken at the commencement of the proceedings on the day appointed for hearing. AMIRCHAND JAMNADAS *v.* MAGGAN AMTHU . **4 Bom., A. C., 176**

——— **s. 27.**—*Right to recover on contract only amount covered by stamp where stamp is optional.*—Where a written contract liable to an optional stamp is put in evidence by the defendants, the plaintiffs cannot recover a larger amount under it than (if stated) the optional stamp upon the instrument would have been sufficient to cover. In a suit for the recovery of money due under a written contract the defendants admitted that a sum of R6,328-4-0 was due to the plaintiffs, subject to certain deductions which they claimed to be entitled to set off against the plaintiffs' claim. The defendants put in evidence the written contract, the stamp upon which was only sufficient to cover the sum of R5,000. *Held* that, notwithstanding the admission of the defendants, the plaintiffs could only recover R5,000 in the suit. KISTNASAMY PILLAY *v.* MUNICIPAL COMMISSIONERS FOR THE TOWN OF MADRAS . . **4 Mad., 120**

STAMP ACT, X OF 1862—*continued.*

——— **s. 32.**—*Appeal on valuation of claim.*—Under section 32, Act X of 1862, an appeal relating to the valuation of a claim can be entertained by the High Court. BASOO MAD FUROSH *v.* HUREE PANDEY . . . . . **11 W. R., 479**

——— **s. 50, cl. 2.**—*Jurisdiction of Collector.—Offence under Criminal Procedure Code (Act XXV of 1861), ss. 169, 171.*—An application was made to a Collector under section 50, clause 2, Act X of 1862, to replace a damaged stamp by a new one. As it appeared that the stamp had been tampered with for fraudulent purposes, the Collector made over the parties to the Magistrate for trial. *Held* that the document not having been given in evidence in any proceeding in Court, the Collector was not bound to proceed under sections 169, 171, of the Criminal Procedure Code. QUEEN *v.* GOUR MOHAN SEN

[3 B. L. R., A. Cr., 6: 11 W. R., Cr., 48

——— **sch. A., cl. 1.**—*Promissory note for payment of grain.*—An instrument in the form of a promissory note for grain should be stamped, under article 1 of schedule A of Act X of 1862, with a stamp of the value of one rupee. LACHIKAM JAYA SANGJI *v.* RAMJI BIN SHIVAJI . **6 Bom., A. C., 107**

——————— **cl. 3.**—*Petition for a lease.*—In a suit for payment of rent for use and occupation of land, where the basis of plaintiff's claim was for a kabuliat, the agreement produced as evidence of the contract, not being the deed of contract itself, was held to be not liable to be stamped under article 3, schedule A, Act X of 1862. CHOONEE MUNDUR *v.* CHUNDEE LALL DASS . . . **14 W. R., 334**

Affirming on review S. C. . **14 W. R., 178**

1. ——————— **cl. 4.**—*Agreement.—Bond.*—In a suit for breach of contract to cultivate and deliver indigo, for recovery of the amount specified in the contract,—*Held*, the stamp duty depended on the amount of consideration for the undertaking. DOYLE *v.* MUNDAREE MUNDUL

[5 W. R., S. C. C. Ref., 10

2. ——————— **and cl. 15.**—*Agreement to supply cotton.*—An agreement to supply cotton in consideration of a sum of money received should be stamped under article 4 and not under article 15, schedule A, Act X of 1862. SAMSUDDIN SULTAN *v.* RAMJI BHIKA . . . **5 Bom., A. C., 151**

1. ——————— **cl. 10.**—*Promissory note.—Bond.*—A promissory note, attested by a witness, does not require to be stamped as a bond under Act X of 1862, schedule A., clause 10. The words in that clause, "not being a bond, instrument, or writing bearing the attestation of one or more witnesses," referred only to the preceding words, "other order or obligation for the payment of money." Also the words "bearing the attestation of one or more witnesses" apply only to the words "instrument or writing," and not to the word "bond." GLADSTONE *v.* SADOO CHURN DUTT . **2 Ind. Jur., N. S., 203**

STAMP ACT, X OF 1862, sch. A., cl. 10 —*continued.*

2. ——————— *Promissory note.*—In a suit, brought by a joint-stock company in liquidation against a former director of the company, for R27,30,000 on a promissory note, dated the 1st of March, and purporting to be paid on demand; but with the words in pencil "due 4th June" put on it, the same day it was signed, in accordance with an understanding between the defendant and the other directors that they would not press him for payment before the latter date, and signed by the defendant some days after the day it bore date,—*Held* that a one-anna stamp was not sufficient, under schedule A, clause 10 of Act X of 1862. EASTERN FINANCIAL ASSOCIATION *v.* PESTANJI CURSETJI **[8 Bom., O. C., 9**

3. ——————— *Written direction by master to servant for payment of money.*—A written direction given by a master to a servant for the payment of money belonging to the former in the hands of the latter was held to be not an order for the payment of money within the scope of the terms used in clause 10, schedule A, Act X of 1862, as amended by Act XXVI of 1867. PUTBULWANT RAO *v.* FUTTEHOODDEEN . **1 N. W., Ed. 1873, 143**

1. ——————— **art. 12.**—*Security bonds for costs of appeal to Privy Council.*—Security bonds for costs of appeal to the Privy Council come within article 12, schedule A, Act X of 1862, and ought to be executed on a stamp as therein specified. SOONJHAREE KOONWUR *v.* RAMESSUR PANDEY **[5 W. R., Mis., 47**

2. ——————— **cl. 12.**—*Solehnamah admitting satisfaction of decree.—Petition.—Agreement.—Act XXVI of 1867, art. 10.*—In a suit upon a bond for R40 with interest, the defendant filed a solehnamah admitting that the amount due from him was R25, and agreeing to pay that sum by instalments. *Held* that the solehnamah was not a petition within the meaning of article 10, Act XXVI of 1867, but an agreement within the meaning of schedule A of Act X of 1862, and was liable to a stamp duty of 2 annas as for an instalment bond. MANICK CHUNDER ROY *v.* LALLMON SHEIKH. PUNCHANUN SIRCAR *v.* GUNESH MUNDUL **[8 W. R., 214**

——————— **cl. 15.**

See SCH. A, CL. 4 . **5 Bom., A. C., 151**

——————— **cl. 18.**—*Penalty.—Obligation for payment of money.*—Where the parties to an agreement added to the stipulations which it contained a provision whereby a sum of money was made payable by way of fine or penalty, in the event of the non-performance, at the appointed time, of the work contracted to be done, such a provision was held to be in the nature of an obligation for the payment of money, and for the due execution of work within the meaning of article 18 of schedule A of the Stamp Act, X of 1862, and required an optional stamp. COLLINS *v.* DEWAN SINGH . . **2 N. W., 465**

STAMP ACT, X OF 1862, sch. A.—*continued.*

——————— **cl. 42.**—*Lease.—Instrument purporting to create relation of landlord and tenant.*—Where a written instrument purported to create the relation of landlord and tenant for five years, the plaintiff's (lessor's) tenure being that of a mirasidar, that is, an hereditary tenancy under Government, determinable on default in payment of the proportion of the Mothee Faisal assessment payable for the land,—*Held* that the written instrument was a lease, and was not liable to be stamped, by virtue of the exemption of article 42, schedule A, of Act X of 1862. SAMINATHAIYAN *v.* SAMINATHAIYAN **[4 Mad., 153**

1. ——————— **cl. 43.**—*Sanad to gomashta to collect rents.*—A sanad, which authorised a gomashta to collect rents, and to sue for them, requires to be stamped. Such a sanad required a four-rupee stamp under article 43, schedule A, of Act X of 1862. RAGHU NANDAN THAKUR *v.* RAMCHARAN KAPALI **[1 B. L. R., F. B., 55: 10 W. R., F. B., 39**

2. ——————— *Instrument operating as power of attorney.*—*J. M.* executed in favour of *P.* an instrument authorising *P.* to recover, by suit or otherwise, from Messrs. *W.* and *N.*, a sum of R22,500 (or thereabouts) which contained this clause: "From whatever sum *P.* may recover from *W.* and *N.* he is to pay himself the sum of R8,640 which is due to himself, and also the expenses he may incur in making recovery, and he is to hand over the surplus to me." *Held* that the above instrument operated as a power of attorney and not as an assignment, and was properly stamped under Act X of 1862, schedule A, article 43, with a stamp of R4. PESTANJI MANCHARJI WADIA *v.* MATCHETT **[7 Bom., A. C., 10**

——————— **cl. 54.**—*Deed of partition.—Each sharer's copy of an instrument.*—Under Act X of 1862, schedule A, article 54, each sharer's copy meant each sharer's part as exemplification of an instrument executed in duplicate, triplicate, &c. Where a document, bearing the date June 1863, and purporting to be a deed of partition between two brothers, was unstamped,—*Held* that it should be stamped as each sharer's copy of an instrument under Act X of 1862, schedule A, article 54. NARAYAN RAGHUNATH *v.* KASHINATH **[I. L. R., 8 Bom., 299**

1. ——————— **sch. B, cl. 11.**—*Suit for declaration of title to portion of land paying revenue to Government.—Interest in land.*—A suit for the declaration of title to a fractional share in a zemindari paying revenue to Government is not a suit "for lands forming one entire mehal or a specific portion thereof with a defined jumma:" such share being "an interest in land" should be valued according to the provisions of note (*e*), clause 11, schedule B, Act X of 1862. RAJ CHUNDE ROY *v.* CHUNDEE CHURN NAIK . . . . . **8 W. R., 437**

2. ——————— *Time for obtaining copy of decree.*—The rule of Circular No. 31,

STAMP ACT, X OF 1862, sch. B., cl. 11— *continued.*

dated 3rd October 1864, that the time allowed for obtaining a copy of judgment or decree shall not begin to count till the whole of the requisite pieces of stamp paper are put in, was held to extend also to plain paper filed under the general rule at end of schedule B, Act X of 1862, when the copy cannot be comprised within the stamp paper put in. CHUMUN CHOWDHRY *v.* ALI AZIM . **9 W. R., 138**

3. ——————— *Suit for resumption.—"Revenue."*—A suit to resume lands as lakhiraj fell in respect of stamp duty, under clause (*d*), section 11, schedule B of Act X of 1862. The term "revenue" in clause (*d*) must be read as meaning revenue or rent, whether to Government or to a zemindar. GOPEE MOHUN MOJOOMDAR *v.* MACKINTOSH . . . . . **9 W. R., 395**

STAMP ACT, XXVI OF 1867.

1. ——— **Practice.**—*Filing petitions.*—Petitions of appeal might be filed on several stamps sufficient to make up the full amount required by law, even though the petition was written on one paper. TABINEE CHURN NYABA CHUSPUTTY *v.* TARANATH GOOHO . . . . . **12 W. R., 449**

DAWD ALI *v.* NADIR HOSSEIN . **16 W. R., 153**

2. ——————— *Mode of making up stamp duty.—Case where one stamp of full value is available.*—When a stamp of the full value is available, parties ought to use as small a number of stamps as they can. KHAJOOROONISSA *v.* ROHIMOONISSA . . . . . **[16 W. R., 152**

3. ——————— *Plaint.—Insufficient stamp.*—There is no illegality in the reception of a plaint engrossed on insufficient stamp paper, if the full amount of the stamp duty has been paid at the time. GOBIND KUMAR CHOWDHRY *v.* HARGOPAL NAG . **3 B. L. R., Ap., 72: 11 W. R., 537**

4. ——————— *Appeal presented before Act came into force but returned for irregularity.*—Where, owing to an irregularity, a petition of appeal was returned before the Stamp Act, XXVI of 1867, came into force, and the appeal was not filed until after that Act came into force,—*Held* that the appeal must be filed on a stamp of the amount prescribed by the new law. ARAHDUN DEY *v.* GOLAM HOSSEIN MALOOM . . . . . **7 W. R., 461**

See FAGAN *v.* CHUNDER KANT BANERJEE **[7 W. R., 452**

IN THE MATTER OF THE PETITION OF SREENATH ROY CHOWDHRY . . . **7 W. R., 462**

5. ——————— *Copy of decree and order for execution.—Certificate of amount remaining due.*—Act XXVI of 1867 required that copies of the decree and of the order for execution should be stamped; the certificate as to any sum remaining due under a decree required no stamp. VEN KATA SUBIA *v.* SIVARAMAPPA . . . . . **4 Mad., 331**

6. ——————— *Copies of documents for purpose of appeal in criminal case.*—The exemption

STAMP ACT, XXVI OF 1867.—Practice.— *continued.*

of the Government of India, dated the 19th September 1870, cannot be extended to copies of the statement of evidence and grounds of conviction. Persons desirous of obtaining copies of such documents for the purpose of appeal must furnish stamped paper on which the copies are to be written. ANONYMOUS **[6 Mad., Ap., 12**

——— **sch. B, cl. 6, art. 10.**—*Applications for copies of decree.*—Applications to the High Court for certified copies of the decree and judgment might be engrossed on a stamp of one anna, under clause 6, article 10, schedule B, of Act XXVI of 1867. IN THE MATTER OF THE PETITION OF TURIF BISWAS . . . . . **7 W. R., 455**

1. ——————— *Razinama admitting satisfaction of decree.—Petition.*—After instituting a suit on a bond for R32 with interest, the plaintiff filed a razinama stating satisfaction of his claim and withdrawing the suit,—*Held*, the razinama was rather of the nature of a petition than of an agreement. PUNCHANUN SIRCAR *v.* GUNESH MUNDUL. MANICK CHUNDER ROY *v.* LALLMON SHEIKH **[8 W. R., 214**

2. ——————— *Petition setting forth terms of parol agreement.*—A document in the shape of a petition to a Court setting forth an arrangment come to between the parties in a suit, may be received in evidence in support of a fresh suit founded upon the agreement recited in such petition, although only stamped as a petition, it not appearing that the agreement recited was made in writing. RAMDYAL *v.* DHOOBEY JHAUNNAN LAL . **3 N. W., 14**

——— **cl. 11.**

See CASES UNDER VALUATION OF SUIT.

1. ——————— *Petition of special appeal to High Court, appellate side.*—Petitions of special appeal to the High Court at Bombay, on its appellate side, had to be stamped according to the scale contained in clause 11 of schedule B of Act XXVI of 1867. EX PARTE DESAI KALYANRAI HAKUMATRAI . . **4 Bom., A. C., 145**

2. ——————— *Notice of cross-appeal.*—Though a notice of a cross-appeal may be lodged with the Registrar of the High Court previously, the objection itself had, under section 348, Act VIII of 1859, to be taken at the hearing of the appeal, and to bear the stamp required by section 6, Act XXVI of 1867. LULEET SINGH *v.* ALI REZA **[8 W. R., 322**

RASHOMONEE DOSSEE *v.* CHOWDHRY JUNMOJOY MULLICK . . . **9 W. R., 356**

ABDOOL GUNNEE *v.* GOUR MONEE DEBIA **[9 W. R., 375**

3. ——————— *Notice of objections by respondent.*—When the appeal of an appellant was against the whole of the decision of the lower Court, and upon the full value of the original suit, no additional stamp duty was required in respect of the

STAMP ACT, XXVI OF 1867, sch. B., cl. 11—*continued.*

respondent's objection under section 348, Act VIII of 1859. ANUND MOHUN CHATTERJEE *v.* SUTTO RAM MOZOOMDAR . . . . . **8 W. R., 124**

4. ——————— **art. 11 cl. c.**—*Objections by respondent.—Pauper respondent.*—Note (*e*) to article 11, schedule B, Act XXVI of 1867, contained no reservation as to the stamp duty to be levied on a petition of objection under section 348, Act VIII of 1859, filed by a pauper respondent. RASHOMONEE DASSEE *v.* CHOWDHRY JUNMOJOY MULLICK . . . . . **9 W. R., 356**

5. ——————— *Plaint.*—The object of the note to article 11, schedule B of Act XXVI of 1867, was to prevent appeals only where the question merely related to the amount of stamp to be impressed upon the plaint. COLLECTOR OF SYLHET *v.* KALI KUMAR DUTT

[7 B. L. R., F. B., 663 : 16 W. R., F. B., 10

Contra, MADHUSUDAN CHUCKERBUTTY *v.* RYMANI DASI

[7 B. L. R., 664, note : 13 W. R., 415

6. ——————— *Application under Act VIII of 1859, s. 230.*—*A.* had been dispossessed of certain land, in execution of a decree, which *B.* had obtained in a suit against *C.* under section 15, Act XIV of 1859. *A.* applied, under section 230, Act VIII of 1859, to recover the land. *Held,* no stamp was necessary on *A.'s* application. BRAHMA MAYI DEBI *v.* BARKAT SIRDAR . **4 B. L. R., F. B., 94**

7. ——————— *Act X of 1859, s. 25, Petition under.*—An application under section 25, Act X of 1859, for the assistance of the Collector in ejecting a ryot, was not a suit; and therefore the Revenue Courts could receive such petitions engrossed on a stamp paper of the value of 8 annas. PYARI MOHAN MOOKERJEE *v.* KINA BEWA

[2 B. L. R., A. C., 226

S. C. PEARY MOHUN MOOKERJEE *v.* KENA BEWAH . . . . . **11 W. R., 90**

8. ——————— *Document, Description of.—Civil Procedure Code, 1859, s. 40—Held* that the description of a document delivered to the Court, under section 40 of the Code of Civil Procedure, 1859, was neither a petition nor an application liable to duty within the meaning of the Stamp Act. CHOTALAL AMRITLAL *v.* BOMBAY, BARODA AND CENTRAL INDIA RAILWAY . **5 Bom., A. C., 101**

9. ——————— *Complaint preferred by Munsif under s. 168 of Criminal Procedure Code, 1861.*—A complaint preferred by a Munsif under section 168 of the Criminal Procedure Code, 1861, need not, though it did not bear the seal of the Munsif's Court, be on stamped paper. REG. *v.* SAJJAN VALAD VITHU . . . **5 Bom., Cr., 104**

STAMP ACT, XVIII OF 1869.

See GENERAL CLAUSES CONSOLIDATION ACT (I OF 1868), s. 3 . **7 Mad., Ap., 9**

STAMP ACT, XVIII OF 1869—*continued.*

1. ——————— *Insufficiency of stamp.*—The Civil Court is authorised, under Act XVIII of 1869, to receive the proper amount of stamp which should have been affixed on a plaintiff's pottah under the law in force when it was executed. MAHOMED KIJAH *v.* COLLECTOR OF CHITTAGONG . **6 B. L. R., Ap., 117 : 15 W. R., 116**

2. ——————— *Agreement executed both in England and India.—Liability to stamp duty.—Admissibility in evidence.*—An agreement was first executed in England by *D.* and *E.*, and by *A.*, the senior partner in the firm, and stamped with the stamp required by English law for agreements executed in England, and it was subsequently executed in India by *B.* and *C.*, the other two partners, but not stamped with an Indian stamp. *Held* that the agreement was liable to Indian stamp duty, and was not admissible in evidence unless and until the proper stamp duty and penalty under Act XVIII of 1869 were paid. OAKES *v.* JACKSON

[I. L. R., 1 Mad., 134

3. ——————— *Orders on tenants to pay rent to person to whom landlord has executed release.*—Orders upon tenants to hold themselves responsible to a particular person to whom a release has been made by their landlord, are not documents which the law requires to be stamped, and ought not to be rejected as evidence on the ground of their not being stamped. BUKSHEE KUNNEE LALL *v.* THAKOORNATH SAI . . . . . **25 W. R., 80**

1. ——————— **s. 3, art. 5.**—*Bond.—Definition of bond.*—The definition of the word "bond" in the Stamp Act of 1869 is not exhaustive; the word "includes" in article 5 of section 2 has an extending force, and does not limit the meaning of the term to the substance of the definition. IN THE MATTER OF THE PETITION OF NASIBUN. NASIBUN *v.* PREOSUNKER GHOSE . . **I. L. R., 8 Calc., 534**

2. ——————— *Entry of loan in account books.*—Entries of loans in account books cannot be treated as bonds within the meaning of article 5, section 3 of Act XVIII of 1869. QUEEN *v.* BULDEO . . . . . **2 N. W., 453**

1. ——————— **art. 11.**—*Conveyance.*—An instrument, which purports to convey two or more properties for a sum of money, composed of items described in the instrument as the values of those properties, is simply a deed of sale coming under the definition of "conveyance" in Act XVIII of 1869, section 3. The stamp duty, properly leviable upon such an instrument, should, therefore, be calculated upon the aggregate sum specified therein, and not upon the various items composing that sum. IN RE TUKARAM HARI ATRE . . **10 Bom., 354**

2. ——————— *Sale certificates.—Conveyance.—Mad. Act VIII of 1865, ss. 35 and 40.*—Certificates of sale issued under sections 35 and 40 of Madras Act VIII of 1865 are not conveyances subject to stamp duty. ANONYMOUS CASE

[8 Mad., 112

STAMP ACT, XVIII OF 1869, s. 3—*continued.*

1. ——————— art. 15.—*Lease.—Contract to pay sum of money in consideration of a grant.*—An engagement by a proprietor of land to pay to a superior a sum of money in consideration of a grant of the right to farm dues, in the nature of revenue, is a "lease" within the meaning of the General Stamp Act, 1869. COLLECTOR OF TANJORE *v.* RAMASAMIER . . I. L. R., 3 Mad., 342

2. ——————— *Second lease altering first stamped and registered.*—After a complete lease has been executed, stamped, and registered, if another document is prepared and executed with a view to alter the first, and substitute new terms so far as the rent is concerned, it requires, under the Stamp Act, to be itself stamped with the stamp provided for a lease. BYJNATH DUTT JHA *v.* PUTSOHEE DOBAIN . . [20 W. R., 36

——————— arts. 18 & 26, and sch. 1, art. 10.—*Mortgage.—Pledge by letters of assignment of property not in esse.*—*M.*, the manager of an indigo concern, appointed under section 243 of Act VIII of 1859, without communicating with *A.* and *B.*, mortgagees of the concern, and with only the verbal sanction of the Court, applied to the plaintiffs for money, and on the 26th April the plaintiffs wrote to *M.* that they would make advances to the extent of R50,000, upon his assigning to them and giving them a first charge on the first 250 maunds of indigo to be manufactured in the season, and they enclosed a form of assignment for *M.'s* signature, which he duly signed, and returned to the plaintiffs on the 3rd May. This document bore a 2-rupee stamp. In September and October *M.* obtained further advances from the plaintiffs in respect of other indigo, giving them similar letters of assignment, which also bore 2-rupee stamps. The indigo, when manufactured, was claimed by *A.* and *B.* under their mortgage, and their claim being resisted by *M.*, who set up against them the plaintiff's rights under the letters of assignment, *A.* and *B.* brought a suit to enforce the provisions of their mortgage-deed. In this suit the indigo was attached before judgment and sent to Calcutta for sale. The plaintiffs now sued *A.*, *B.*, *M.*, and the holders for sale to establish their first charge in respect of their advances to *M.* upon 360 maunds of the indigo on the strength of their letters of assignment. *Held, per* GARTH, *C. J.*, and MACPHERSON, *J.*, that the letters of assignment to the plaintiffs were not mortgages within the definition of the Stamp Act, XVIII of 1869, and that the proper stamp to be affixed to such documents was a stamp of 8 annas. MORAN *v.* MITTU BIBEE . . . I. L. R., 2 Calc., 58

1. ——————— art. 25.—*Promissory note insufficiently stamped.—Express contract.*—A suit on a promissory note payable on demand which was not stamped was held to have been rightly dismissed, the note being inadmissible as evidence with reference to Act XVIII of 1869, section 3, article 25,—*Held* that in such a case the plaintiff, if he recovers at all, must do so on the contract actually made and not on any implied contract. ANKUR CHUNDER ROY CHOWDHRY *v.* MADHUB CHUNDER GHOSE . 21 W. R., 1

STAMP ACT, XVIII OF 1869, s. 3, art. 25—*continued.*

2. ——————— *Promissory note.—Bond.*—The defendant having borrowed R50 from the plaintiff, gave him, on the 9th November 1878, an instrument, which was in effect as follows: "*B.* (defendant) writes this 'rukka' in favour of *A.* (plaintiff) for R50 cash received, to be repaid on the 13th November 1878: in the event of default, he shall pay interest at R1 per diem. *Held* (STUART, *C. J.*, dissenting) that such instrument was a "promissory note within the meaning of the Stamp Act of 1869, and not a "bond" or "an agreement not otherwise provided for," within the meaning of that Act. BANSIDHAR *v.* BU ALI KHAN [I. L. R., 3 All., 260

3. ——————— and sch. 2, art. 5.—*Note or memorandum acknowledging debt.—Promissory note.—Insufficiently stamped document, Admissibility in evidence of.*—The plaintiff sold and delivered certain goods to the defendant. The defendant gave the plaintiff, in respect of the price of such goods, the following instrument: "Agra, 14th November 1877. Due to *K.*, cloth merchant, the sum of R200 only, to be paid next January 1878." This instrument was stamped with a one-anna adhesive stamp. The plaintiff claimed in the present suit from the defendant R200, and interest on that amount at twelve per cent. per annum from the 14th November 1877, to the date of suit. *Held* by STUART, *C. J.*, and PEARSON, *J.*, and OLDFIELD, *J.*, and STRAIGHT, *J.*, treating the suit as one for a debt, that although such instrument was not admissible in evidence as a promissory note, as it was insufficiently stamped, it was nevertheless admissible as proof of an acknowledgment of such debt. *Per* SPANKIE, *J.*, treating the suit as based upon a promissory note, that such instrument, being insufficiently stamped, was not admissible in evidence. KANHAYA LAL *v.* STOWELL . . . I. L. R., 3 All., 581

See BENARSI DAS *v.* BHIKARI DASS [I. L. R., 3 All., 717

GOLAP CHAND MARWAREE *v.* MOHOKOOM KOOAREE . . . I. L. R., 3 Calc., 314

and AKBAR *v.* KHAN . I. L. R., 7 Calc., 256

——————— s. 4.—*Document executed in foreign territory.*—An unstamped instrument executed in foreign territory, and valid under the law of the place of execution, is admissible as evidence in Courts of British India, provided it does not affect any property situated in British India. (Act XVIII of 1869, section 4.) NARAYAN SADASHIV *v.* BAPUJI BALAL . . . . 7 Bom., A. C., 140

——————— s. 9.—*Account stated.—Interest.*—Under Act XVIII of 1869, section 9, a one-anna stamp is the proper stamp for a document containing an account stated, and stipulating for payment of interest. GIRDHAR NAHAN *v.* UMAR AJU [I. L. R., 4 Bom., 326

1. ——————— s. 18.—*Admission in written statement and evidence.—Quære.*—Although there have been decisions in the English Courts upon the Stamp

STAMP ACT, XVIII OF 1869, s. 18—*continued.*

Act which support the contention that a defendant's written statement and deposition may contain such an admission as renders it unnecessary for the plaintiff to put the written contract in evidence, yet do not the words of section 18 of Act XVIII of 1869 prevent such a contention? ANKUR CHUNDER ROY CHOWDHRY *v.* MADHUB CHUNDER GHOSE [21 W. R., 1

2. ——————— and sch. I, art. 14, and sch. II, art. 36.—*Admissibility of unstamped document for collateral purpose.*—The plaintiff, as administrator of *D.*, sued to recover from the defendants the sum of R3,000, alleging that, in February 1878, the said sum had been entrusted to defendants Nos. 1 and 2 for investment on *D.'s* account, and had been advanced by them as a loan to defendant No. 3. The defendants alleged that the money was originally the property, not of *D.* but of the plaintiff himself; that he had made it over as a gift to his daughter *P.*, by whom it had been lent to defendant No. 3, and that defendant No. 3 had duly repaid it to *P.* In the defendants' written statement it was alleged that the gift to *P.* had been made in the month of February 1878, and evidence to this effect was given at the trial. At the trial, however, the defendants also alleged that in July 1878 the plaintiff had executed an instrument of gift of R3,000 to *P.*, and they produced a document, dated 3rd July 1878, purporting to be signed by the plaintiff, whereby he made over R3,000 to *P.*, of which R1,000 was to be held by *P.* in trust for *D.* during *D.'s* life, and to be paid back to plaintiff on *D.'s* death, and the remaining R2,000 were to be the property of *P.* absolutely. When tendered in evidence the document was objected to as being unstamped, and, therefore, inadmissible. *Held* that the document, though unstamped, was admissible in evidence, on the ground that the purpose for which it was tendered was collateral to the object of the document, and that its admission did not involve giving effect to it as operative between the parties to it. RUSTOMJI EDULJEE CROOS *v.* CURSETJEE SORABJEE CROOS . . . I. L. R., 4 Bom., 349

3. ——————— *Document referred to as basis of suit inadmissible as being unstamped.*—*Admissibility of other evidence.*—Even if a document is not admissible, as being unstamped, the plaintiff might recover on such part of the case as he could make out by other evidence (provided it is recoverable with reference to the law of limitation), notwithstanding that he had in his plaint referred to such document as the basis of his suit. NOOR BIBEE *v.* RUMZAN . . . . . 24 W. R., 198

——————— s. 19.

See STAMP ACT, 1879, s. 26. [I. L. R., 3 Mad., 342

——————— s. 20.

See APPELLATE COURT — REJECTION OR ADMISSION OF EVIDENCE ADMITTED OR REJECTED BY COURT BELOW—UNSTAMPED DOCUMENTS . I. L. R., 4 Calc., 213

STAMP ACT, XVIII OF 1869, s. 20—*continued.*

See SPECIAL APPEAL—GROUNDS OF APPEAL —EVIDENCE, MODE OF DEALING WITH— ADMISSION OR REJECTION OF EVIDENCE. [10 Bom., 406.

1. ——————— *Hundi.*—*Insufficient stamp.*—*Evidence.*—*Penalty.*—Insufficiently-stamped hundis cannot be received in evidence even on payment of a penalty under section 20 of Act XVIII of 1869. MOTHOORA MOHUN ROY *v.* PEARY MOHUN SHAW [I. L. R., 4 Calc., 259: 2 C. L. R., 409

2. ——————— *Bond written partly on one and partly on another paper.*—*Deficiency in stamp.*—A bond written partly on one and partly on another stamp paper, the two aggregating the proper stamp leviable, was tendered in evidence without the certificate required by section 49 of the Stamp Act. *Held* that there was a deficiency in the stamp on the bond, and therefore a liability to the penalty under section 20. The deficiency must be calculated to be equivalent to the difference between the value of the stamp on one of the papers, and the whole value chargeable. ANONYMOUS . . . . . 7 Mad., Ap., 36

3. ——————— *Lost deed proved to be unstamped.*—In cases where a lost deed is shown not to have been stamped, the Court should require the same money to be paid, as if the deed itself were produced. HARAN CHUNDER BHOOREE *v.* RUSSICK CHUNDER NEOGY . . . 20 W. R., 63

4. ——————— and s. 22.—*Admission of unstamped document on payment of penalty.*—Where a Subordinate Judge admitted an unstamped document after payment of stamp duty and penalty under Act XVIII of 1869, section 20, and endorsed on it a certificate that the proper stamp had been levied; but found out afterwards that the original omission was owing to an intention to evade payment of stamp duty,—*Held* that the certificate was not such as was contemplated by section 20, and did not make the document admissible; and that the Judge ought, under section 22, to have impounded the document and sent it to the Collector. PROSUNNO NATH LAHIREE *v.* TRIPOORA SOONDUREE DABEE [24 W. R., 88

——————— s. 24 and ss. 29 and 144.—*Evasion of stamp law.*—*Promissory note not duly stamped.*—That which the Magistrate has to adjudicate upon, on a prosecution coming before him, under section 24 of the Stamp Act, is whether an offence against the Act has been committed, and whether the prosecution has been brought before him by the proper officer. Any person who makes himself liable by committing an offence within the terms of section 29 and the following sections, and who is prosecuted by the Collector or other officer duly empowered, may be convicted by the Magistrate under section 44. If an instrument called a promissory note or other document of that kind and as such liable to the duty imposed by the Act is not duly stamped, the person subject to penalty is the person who makes it, and not the person in whose favour it is made. The Magistrate of the

STAMP ACT, XVIII OF 1869, s. 24 and ss. 29 and 144—*continued.*

district should not himself try a case in which he instituted the prosecution as Collector. QUEEN *v.* NADI CHAND PODDAR . . 24 W. R., Cr., 1

1. ——— s. 28.—*Document requiring anna stamp.—Stamp affixed subsequently to execution of document.*—A document which by law requires a one-anna adhesive stamp to be affixed, must be received in evidence, if, at the time of its being tendered, it bears the requisite stamp, even though such stamp has been affixed subsequently to the execution of the document. BHAURAM MADAN GOPAL *v.* RAMNARAYAN GOPAL . . . 12 Bom., 208

NOOR BIBEE *v.* RUMZAN . 24 W. R., 198

KALI CHURN DAS *v.* NOBO KRISTO PAL [9 C.L. R., 272

2. ——— *Power to receive in evidence unstamped note on payment of penalty.*—Under section 28 of Act XVIII of 1869, a Court has no power to admit in evidence an unstamped promissory note (payable on demand or otherwise) upon the payment of the stamp duty, and the penalty laid down in section 20 of that Act. DOSABHAI KAVASJI *v.* KHERBADJI HORMASJI . . 7 Bom., O. C., 180

3. ——— *Promise to pay money and grain.—Promissory note.*—A document which contains a promise to pay money and a certain quantity of grain is not a promissory note for the purpose of the General Stamp Act, 1869, section 28. MUTTU CHETTI *v.* MUTTAN CHETTI [I. L. R., 4 Mad., 296

4. ——— *Promissory note.—Admissibility in evidence.*—In a suit brought on the following document, dated 25th October 1869: "Whereas I, defendant, have borrowed R1,500 from you without interest without a bond, hence I declare that I shall repay, on or before 15th Falgun, the whole amount as one sum and take back this chitta: should I fail to repay the amount in question on the above date, I will pay interest on the same," —it was objected that the document being unstamped under section 3, Act X of 1862, the Stamp Act in force at the date of its execution, it was inadmissible in evidence; and it was contended for the plaintiff that it was admissible on payment of the penalty. The Judge applied section 28, Act XVIII of 1869, and held he had no power to receive it on payment of the penalty. *Held*, the Judge was bound to comply with Act XVIII of 1869, and was therefore right in refusing to receive the document. *Held*, also, the document was a promissory note within section 28, Act XVIII of 1869. NANDAN MISSER *v.* CHATTER BATI . . 13 B. L. R., Ap., 33

S. C. NUNDUN MISSER *v.* CHITTUR BUTTEE [21 W. R., 446

5. ——— *Promissory note.—Insufficiency of stamp.*—The following document, bearing a one-anna stamp, was admitted by the Court of first instance and accepted by the lower Appellate Court as bearing a sufficient stamp: "My dear sister *M.* —Be it known that R750 on account of the former note of hand and R225 of to-day's date, amounting in all to R975, are due to you by me. I promise to pay you this sum in two months. I am already negotiating for a loan from another place. Rest assured, no harm will come to your money, and for your satisfaction and security this note of hand is given to you. Keep this as a voucher and consider the former note of no use. At the time of payment this note is to be returned to me." *Held* that the document was a promissory note and should have borne a stamp of 12 annas. The deficiency in the stamp could not have been supplied when the document was offered in evidence. MAKBUL AHMAD *v.* IFTIKHARUNNISSA BEGUM . 7 N. W., 124

6. ——— *Document on one-anna stamp.—Admissibility in evidence on payment of penalty.*—A promissory note upon a one-anna stamp, dated in August 1870, provided for the repayment of the amount mentioned in it on or before the 12th July 1871. In a suit upon the promissory note,—*Held* that it was not receivable in evidence upon payment of a penalty. CHINNA PERUMAL NAICKER *v.* ANNAMMAL . . . . 7 Mad., 361

——— s. 29.

See s. 24 . . . 24 W. R., Cr., 1

1. ——— *Prosecution by Collector.—Intention to evade payment of stamp duty.*—A Magistrate is bound, for the purpose of ascertaining whether any and what penalty should be imposed, to consider whether a person prosecuted under section 29, Act XVIII of 1869, had any intention to defraud by evading payment of stamp duty. EMPRESS *v.* DWARKANATH CHOWDHRY [I. L. R., 2 Calc., 399

2. ——— *Intention to evade payment of duty.—Donor and donee of deed of gift.*—Intention to evade payment of stamp duty is not an essential ingredient in the offence described in section 29 of Act XVIII of 1869. *Held* that the donor under a deed insufficiently stamped was properly convicted, but that the donee had committed no offence under the section. ANONYMOUS . 6 Mad., Ap., 5

——— ss. 34 & 41 and sch. II, arts. 5 & 20.—*Collateral instrument.—Policy of Insurance.—Assignment and re-transfer by endorsement.*—A policy of insurance bore three endorsements; the first, an assignment of all the right, title, and interest of the assured to the *P.* Bank; the second, a retransfer from the *P.* Bank to the assured, all claims having been satisfied; the third, an assignment by the assured similar to the first assignment to Messrs. *B. R. S. & Co.* *Held* by MARKBY and AINSLIE, *JJ.*, that the first and third endorsements were liable, as collateral instruments under schedule II, clause 20 of the General Stamp Act, to a stamp of one rupee, and that the second endorsement was not chargeable with stamp duty. *Held* by GARTH, *C. J.*, that none of the endorsements were chargeable with duty. IN THE MATTER OF THOMPSON'S POLICY . . . . I. L. R., 3 Calc., 347

STAMP ACT, XVIII OF 1869—*continued.*

——— **ss. 39-40.**—*Promissory note.—Evidence.*—A promissory note, not payable on demand, executed on unstamped paper, was brought to a Collector, under section 39 of Act XVIII of 1869, for adjudication as to the proper stamp, who, upon the payments provided in that section having been made, made the endorsement thereon provided in that section. *Held* that the irregularity of the Collector in making such endorsement did not render such promissory note inadmissible in evidence. GRIDHARI DAS *v.* JAGAN NATH . **I. L. R., 3 All., 115**

——— **s. 43.**

See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—STAMP ACT, 1869.
[I. L. R., 3 Calc., 622

See COLLECTOR . **I. L. R., 2 All., 806**

——— **s. 44.**

See s. 24 . . . **24 W. R., Cr., 1**

——— **s. 49.**

See s. 20 . . . **7 Mad., Ap., 36**

1. ——— **sch. I and sch. II, art. 11.**—*Bond for payment of money.*—The plaintiffs drafted the following letter, dated 5th June 1871, and sent it to the defendant for signature: "I have this day sold to you 500 to 700 cases of first quality of hogs' lard of my manufacture and mark, at R43 per case of eight tins of ten seers each, or two bazar maunds nett, as usual, delivery to be given and taken in all twelve months, as it is prepared, by instalments of forty to sixty cases at a time from my manufactory, commencing from this day. Cash on delivery of each lot. I engage not to sell any hogs' lard to any party besides yourselves, nor to make any shipments during the term of this contract without first obtaining your consent in writing, or I will render myself liable to yourselves to a penalty of R5,000 by way of liquidated damages, without prejudice to your other rights. Should I fail to deliver the hogs' lard to you according to this contract, and should you fail to take delivery in any month of any of the instalments of hogs' lard when ready and after I have given you notice in writing, you must render yourselves similarly liable to a penalty of R5,000 as and by way of liquidated damages." This letter was signed by the defendant, and, as the plaintiffs alleged, formed the contract between them. The letter bore a stamp of one anna. In an action for a breach of the contract, it was tendered in evidence by the plaintiffs, and objection was taken to it that it was insufficiently stamped, and that it required an *ad valorem* stamp as being a bond for the payment of money under Act XVIII of 1869, schedule I. *Held*, it was a document which required an 8-anna stamp only under article 11 of schedule II of the Act, and the document was admitted on payment of the stamp and penalty. ROBERT AND CHARRIOL *v.* SHIRCORE
[7 B. L. R., 510

2. ——— *Letter assigning chose in action out of British India.*—A letter by which a chose in action (a debt) was equitably assigned does not require a stamp where the chose in action is not in British India at the time of the assignment. MEGJI HANSRAJ *v.* RAMJI JOITA
[8 Bom., O. C., 169

STAMP ACT, XVIII OF 1869, sch. I and sch. II, art. 11—*continued.*

1. ——— **art. 15.**—*Conveyance.—Shares in public company.—"Amount."*—No *ad valorem* stamp duty is payable under Act XVIII of 1869 upon a conveyance where the consideration consists of shares in a public company made over to the vendor. The word "amount" in article 15, schedule I of that Act, signifies the sum total, or amount of money, forming the consideration, and the words "or secured" apply only to cases of mortgages and the like, not to an out-and-out conveyance. IN THE MATTER OF PORT CANNING LAND COMPANY
[16 W. R., 208

2. ——— *Conveyance.—Indemnity bond.*—Where a document, purporting to be a conveyance, and for only one consideration, contains words which merely express, though very informally, the usual covenants for title which every properly-drawn English conveyance contains, those words cannot be considered as constituting an indemnity bond, so as to render the document liable to stamp duty as an indemnity bond in addition to the stamp duty to which it is liable as a conveyance. ANONYMOUS CASE . . . . **I. L. R., 1 Mad., 133**

——— **sch. II, art. 2.**

See SCH. I . . . **7 B. L. R., 510**

1. ——— **art. 5.**—*Adjustment of account.*—An adjustment of account is not admissible in evidence unless stamped with a 1-anna stamp. TARINEY CHURN NUNDY *v.* ABDUR ROHOMAN
[2 C. L. R., 346

2. ——— *Balance of running account.*—In a running account, a balance brought forward from the close of a previous year is not to be considered a *new* balance requiring a fresh stamp; Act XVIII of 1869, schedule II, article 5, providing for one stamp only to be affixed in such a case. INDRA CHAND ASWAL *v.* KALEE DOSS MITTER
[24 W. R., 439

3. ——— *Note or memorandum balancing an account.*—On the 9th October 1875 the book containing the accounts between the plaintiff and defendant kept by the plaintiff, was examined by the parties and a balance was struck in the plaintiff's favour which was orally approved and admitted by the defendant. In a suit by the plaintiff for the amount of this balance "on the basis of the account book,"—*Held* that the entry of the balance struck, not being signed by the defendant, was not a note or memorandum of the kind mentioned in article 5, schedule II of Act XVIII of 1869, and did not therefore require to be stamped. NAND RAM *v.* RAM PRASAD . . . **I. L. R., 2 All., 641**

4. ——— *Hath-chitta.—Balance of accounts.*—A hath-chitta, drawn up by only one of

STAMP ACT, XVIII OF 1869, sch. II, art. 5—*continued.*

two parties to a money transaction, and purporting to represent the balance of accounts between them, but not assented to in any way by the other party, is not such a document as is contemplated by clause 5, schedule II of the General Stamp Act, and does not require to be stamped. KOONJO MOHUN DOSS *v.* KRISHNA CHUNDER SHAHA . 25 W. R., 361

5. ——————— *Stamp on entry in hath-chitta.*—When an account in a hath-chitta has two sides to it, the one headed "amount advanced," and the other headed "amount received;" and the amount actually due on such account varies from time to time, and depends upon the relation of the amount advanced to the amount received, and the signature or seal of the borrower is affixed to each entry showing an advance, such an entry is not a note or memorandum whereby any debt is acknowledged to be due, and does not require a stamp under article 5, schedule II of Act XVIII of 1869. BROJENDER COOMAR *v.* BROMOMOYE CHOWDHRANI
[I. L. R., 4 Calc., 885: 3 C. L. R., 520

BROJO GOBIND SHAHA *v.* GOLUCK CHUNDER SHAHA . . . I. L. R., 9 Calc., 127

——————— and art. 11.

See APPELLATE COURT—REJECTION OR ADMISSION OF EVIDENCE ADMITTED OR REJECTED BY COURT BELOW—UNSTAMPED DOCUMENTS . I. L. R., 4 Calc., 213

——————— art. 7.—*Bank memorandum.*—*Receipt.*—A bank memorandum informing one of their customers that money has been paid to his account by a third person, and has been credited to that account, does not require to be stamped under article 7, schedule II of Act XVIII of 1869. IN THE MATTER OF ACT XVIII OF 1869 AND OF THE UNCOVENANTED SERVICE BANK
[I. L. R., 4 Calc., 829: 3 C. L. R., 597

——————— art. 11.

See SCH. I . . . 7 B. L. R., 510

1. ——————— *Agreement to remunerate pleader for his services.*—Where a pleader is to receive a remuneration under a special agreement contained in his vakalatnamah, or in a separate document, the document containing the agreement must bear a stamp of adequate value. NUTHOO LALL *v.* BUDREE PERSHAD . . 3 Agra, 286

2. ——————— and s. 14.—*Agreement.*—*Bond.*—When an instrument consisted of two parts, the first containing a promise to repay with interest a sum of R12-8-0, and the second a further promise to give a quantity of grain,—*Held* that as an agreement the instrument required a stamp of 8 annas under section 14 of Act XVIII of 1869 and schedule II, clause 11; but that, as a simple money bond, it was properly stamped with a stamp of 2 annas, and that, if the promisee abandoned his claim for grain, he could recover upon it the principal sum advanced with interest. CHIMNAJI *v.* RANU . . . I. L. R., 4 Bom., 19

STAMP ACT, XVIII OF 1869, sch. II, art. 11—*continued.*

3. ——————— *Bond.*—*Agreement with covenant sounding in damages.*—An instrument containing a covenant to do a particular act, the breach of which is to be compensated in damages, is not a bond, and requires an 8-anna stamp only. Remedies on such an instrument and on a bond discussed. GISBORNE & CO. *v.* SUBAL BOWRI
[I. L. R., 8 Calc., 284: 10 C. L. R., 219

4. ——————— and sch. I, art. 5.—*Bonds for performance of contracts of public works.*—A contract taken by the Department of Public Works for the execution of works falls within article 11, schedule II, Act XVIII of 1869, and must bear a stamp of 8 annas. Where a contractor's sureties give bonds for the performance by him of his agreement, the bonds are chargeable with duty under article 5, schedule I. ANONYMOUS. 13 W. R., 353

5. ——————— *Agreement.*—A postscript to a document contained a stipulation that the defendant should return two promissory notes deposited with him when a certain house was given back to him in good order. *Held* that the document required a stamp of 8 annas under Act XVIII of 1869, schedule II, article 11. MOTILAL *v.* MUNSHOOK KURAMCHAND . I. L. R., 4 Bom., 328

6. ——————— *Receipt for money and stipulating payment of interest.*—An instrument which acknowledged receipt of a sum of money and provided for the payment of interest at a specified rate per mensem, was held to be an agreement falling within Act XVIII of 1869, schedule II, article 11. FERRIER *v.* RAM KALPA GHOSE . 23 W. R., 403

——————— art. 13.—*Power of attorney under Registration Act, 1871, s. 33.*—For a power of attorney executed under the provisions of section 33 (*a*) of the Registration Act of 1871 (Act VIII of 1871) a stamp of 8 annas is sufficient under article 13, schedule II of the General Stamp Act (No. XVIII of 1869). IN RE KESHAV KASINATH
[9 Bom., 43

——————— art. 15.—*Schedule appended to deed of sale.*—*Collateral instrument.*—A schedule appended to a deed of sale does not require to be stamped under the provisions of Act XVIII of 1869. ANONYMOUS . . . 6 Mad., Ap., 36

1. ——————— art. 32.—*Power of attorney.*—An instrument authorising a person to receive on behalf of another such sums as should become due in the course of the execution of a certain work, is not an assignment of money, but a power of attorney, and is covered by a stamp of R8 whatever may be the amount recoverable under it. BHAGVANDAS KISHORDAS *v.* ABDUL HUSEIN MAHOMED ALI
[I. L. R., 3 Bom., 49

2. ——————— *Vakalatnama.*—A vakalatnama authorising a pleader to receive, during the course of a suit which he has been empowered to conduct, money or documents receivable by his client in the ordinary course of such suit or in con-

STAMP ACT, XVIII OF 1869, sch. II, art. 32—*continued.*

sequence of the order or decree of the Court in such suit, does not require a stamp under Act XVIII of 1869. ANONYMOUS . I. L. R., 3 Calc., 767

S. C. IN THE MATTER OF ACT XVIII OF 1869 [3 C. L. R., 13

——————— art. 38.—*Instrument of transfer.*—The accused was prosecuted under Act XVIII of 1859, section 29, for executing a document on insufficiently stamped paper. The document recited that, "whereas *A.* and *B.* have sold to me 2 gundas 3 cowries of land under a kobala, dated the 9th of Jeyt 1283, in lieu of a consideration of R695, and whereas I have returned to the vendors in all 4 cottahs of land worth about R25, and whereas in lieu of the said land the said vendors have given me 4 cottahs of zerait land held by them, now I or my heirs shall have no objection or contest whatever in regard to the mutual exchange of lands between the vendors and me, the purchaser; hence I have executed this chitti by way of conveyance or deed of exchange which may be of service when required." This document bore a stamp of 8 annas, and it was executed only by the accused and presented by him for registration. *Held* that the document was an instrument of transfer within the meaning of article 38, schedule II, Act XVIII of 1869. EMPRESS *v.* DWARKANATH CHOWDHRY [I. L. R., 2 Calc., 399

STAMP ACT, I OF 1879.

——————— s. 3.

See s. 7 . . I. L. R., 2 All., 654

See s. 50 . . I. L. R., 12 Calc., 64

See SCH. I, ART. 52 . I. L. R., 6 All., 253 [I. L. R., 11 Calc., 267

1. ——————— *Hundi stamped with adhesive stamps.—Admissibility in evidence.—"Duly stamped."*—The words "duly stamped" in section 3 of the Stamp Act signify "stamped or written upon paper bearing an impressed stamp." GISBORNE & Co. *v.* SUBAL BOWRI [I. L. R., 8 Calc., 284: 10 C. L. R., 219

2 ——————— cl. 4.—*Bond.—Promissory note.*—Where an instrument bearing date the 24th September 1881, stamped with an adhesive stamp of 1 anna, and attested, recited that an account was made up of the principal and interest due on a former bond executed by the defendant to the plaintiff, and that a certain sum was found due at the date of the instrument, the defendant promising to pay interest at a certain rate on the sum thus found due and pay the principal on demand,—*Held* that the instrument was a bond within the definition given in Act I of 1879, and should be stamped accordingly. BALKRISHNA TRIMBAK *v.* GOVIND PAND NAIK . . I. L. R., 8 Bom., 297

3. ——————— (b).—*Agreement.—Bond.—Loan of grain in consideration of repaying a larger measure of grain.*—An attested instrument, in which the obligor states that he borrowed a certain quantity of grain from the obligee and agreed to repay it at a future time in greater quantity, is a bond within the meaning of section 3 (4) (*b*) of Act I of 1879, although the instrument is silent as to the money value of the grain. Where the value of such an instrument was ascertained to be less than R10, it was held to be properly stamped as a bond with a stamp of 2 annas. MAGANDAS KHEMCHAND *v.* RAMCHANDRA HIRAJI [I. L. R., 7 Bom., 137

4. ——————— and sch. I, art. 5.—*Court Fees Act, schedule II, art. 1 (b).—Petition to withdraw suit.—Agreement.—Bond.*—A petition, stamped as an agreement, having been presented to a District Court by the parties to a suit, informing the Court that they had entered into an agreement, whereby, *inter alia*, the defendant was bound to deliver to the plaintiff certain wood, and requesting that the suit might be removed from the file, the District Judge impounded it, levied a sum for insufficient stamp duty and a penalty, on the ground that it was a bond, and forwarded it to the Collector. Upon a reference made by the Board of Revenue at the instance of the Collector,—*Held* that the instrument was not a bond but a petition to the Court, requiring a court-fee stamp. REFERENCE UNDER STAMP ACT, 1879 . I. L. R., 8 Mad., 15

5. ——————— and sch. I, art. 11.—*Promissory note.—Bond.—Impressed label.—Impressed sheet.—Rule 9 (a) of the Rules of Government of India of 26th February 1881.*—By a document dated 8th March 1882, which purported to be a promissory note attested by three witnesses and written on an impressed label of 2 annas, *A.* promised to pay *B.* before a certain date R135,—*Held* that the document was a bond and must be treated as unstamped for the purposes of section 34 of the Stamp Act, 1879. By a document, dated 23rd June 1880, stamped with an adhesive stamp of 1 anna, purporting to be a promissory note attested by two witnesses, *A.* promised to pay R56 to *B.* or order, on demand,—*Held* that the document was not a bond but a promissory note. REFERENCE UNDER STAMP ACT, 1879 . ; I. L. R., 8 Mad., 87

1. ——————— cl. 9.—*Conveyance.—Transfer by trustee to cestui que trust.—Release.*—Where three executors of a will purported to convey by deed to one of them, in consideration of a sum of R10, a house to which the latter was entitled under the will,—*Held* that the deed, having been drawn in the form of a conveyance, was liable to stamp duty as such. REFERENCE UNDER STAMP ACT, 1879 . . . I. L. R., 7 Mad., 350

2. ——————— and cls. 11, and 19.—*Deed of family arrangement.*—By a deed of family arrangement, one brother conveyed a pergunnah and the sum of two and a half lakhs of rupees to a younger brother, on condition that the latter should release certain family property on which he had claims. *Held* that the deed was neither a conveyance or a

STAMP ACT, I OF 1879, s. 3, cls. 9, 11, 19 —*continued.*

settlement, nor an instrument of partition, within the meaning of Act I of 1879. IN THE MATTER OF THE MAHARAJAH OF DURBHUNGAH **[I. L. R., 7 Calc., 21**

——————— **cl. 10.**—*Unduly stamped.*—*Rule 5* (e) *of the Government of India, 3rd March 1882 (attestations of plain sheets subjoined to stamped documents, ultra vires.*—Of the rules, dated 3rd March 1882, issued by the Governor General in Council, under sections 9, 15, 17, 32, 51, and 56 of the Stamp Act, 1879, rule 5 (*e*) requires that the part of an instrument which is written on plain sheets of paper attached to the stamped paper must be attested by the parties executing, and by the witnesses to, the document,—*Held* by KERNAN, MUTTUSAMI AYYAR, and BRANDT, *JJ.* (TURNER, *C. J.*, dissenting), that the rule is *ultra vires* and inoperative for the purpose of declaring an instrument, written contrary to the provisions thereof, unduly stamped within the meaning of section 3 (10) of the Act. *Per* TURNER, *C. J.*—An instrument not written in accordance with the directions in rule 5 (*e*) is not duly stamped. REFERENCE UNDER STAMP ACT, 1879 . . . . **I. L. R., 8 Mad., 532**

1. ——————— **cl. 11.**—*Partition deed.*—*List of divided property.*—*Agreement to divide outstandings.*—In a document signed by the members of a Hindu family and attested by witnesses, which purported to be an account or list of the share of one member of the family in the family property, it was recited that the parents of the family were to enjoy certain lands, and that the outstanding debts should be divided at a future date,—*Held* that this document was not liable to stamp duty as a partition deed. REFERENCE UNDER STAMP ACT, 1879 **[I. L. R., 7 Mad., 385**

2. ——————— **and s. 29, and sch. I, art. 37.**—*Instrument of partition.*—*Computation of value of property.*—*Held* that the words "the final order" used in the definition of an "instrument of partition" in Act I of 1879 mean not the order authorising a partition to proceed, but the order passed after the partition has been made declaring the various allotments of land. Also, that the stamp duty chargeable under that Act on an instrument of partition is chargeable in respect of the entire property sought to be divided, and not merely in respect of that portion of it allotted to the applicant for partition. Also, that for the purposes of that Act, the value of the property is to be computed with reference to its market value and not with reference to the Court Fees Act, 1870. REFERENCE BY BOARD OF REVENUE . **I. L. R., 2 All., 664**

——————— **cl. 17.**

See SCH. II, ART. 15 *b.* **[I. L. R., 9 Mad., 140**

——————— **cl. 19 (b).**—*Settlement.*—*Gift.*—The word "settlement," as defined in section 3 of the Stamp Act, suggests the creation of a separate interest in favour of several persons who may

STAMP ACT, I OF 1879, s. 3, cl. 19 (b)— *continued.*

have a legal or moral claim on the settlor or for whom he may desire to make a provision. *Held*, therefore, that where, because of natural affection, a person bestowed upon his sister and her son certain land, the document was liable to stamp duty as a gift and not as a settlement. REFERENCE UNDER STAMP ACT, 1879 . . **I. L. R., 7 Mad., 349**

——————— **s. 7.**

See s. 12 . . **I. L. R., 5 Bom., 188**

1. ——————— **and s. 3, cl. 4, and sch. I, cl. 5.**—*Bond.*—*Agreement with penalty in case of breach.*—One of the clauses of an instrument by which one party to the instrument bound himself, in the event of a breach on his part of any of the conditions of the instrument, to pay the other party thereto a penalty of R5,000, being regarded as a "bond," within the meaning of Act I of 1879, such instrument, if that clause were not so regarded, being an agreement chargeable under that Act with a stamp duty of 8 annas,—*Held* (STUART, *C. J.*, dissenting) that the instrument was chargeable, under section 7 of that Act, with the stamp duty leviable on a bond for R5,000. *Per* STUART, *C. J.*—That, for the purposes of that Act, the penal clause in the instrument should not be regarded separately as a bond, but simply as one of the several clauses making up the entire agreement, and the instrument was only chargeable with a stamp duty of 8 annas. REFERENCE BY BOARD OF REVENUE **[I. L. R., 2 All., 654**

2. ——————— *Contracts for several loans of rice on a single bond.*—*Construction.*—Sixteen persons borrowed a quantity of rice from the plaintiff, and executed to him a bond for the debt, showing how much rice had been borrowed by each of them. They did not bind themselves to repay the entire debt jointly and severally. *Held* that the instrument should be regarded as comprising sixteen distinct contracts, so as to fall within the purview of section 7 of the Stamp Act I of 1879, and should be stamped accordingly. SHABUDIN MAHOMED *v.* HIRNAK RAJNAK . . **I. L. R., 10 Bom., 47**

3. ——————— **para. 2.**—*Stamp duty.*—*Lease.*—*Pottah.*—*Mortgage.*—By an instrument which recited that *A.* was indebted to *B.* in the sum of two lakhs of rupees, and that *A.* had taken a fresh loan of R2,59,000 from *B.*, the former leased certain mouzahs to the latter for a term of twenty years, at a yearly rental of R1,40,000. It was provided that, from the rent of each year, a portion should be deducted in payment of *A.'s* debt to *B.*; so that in this way the whole debt should be paid by a series of instalments extending over the term of the lease. The instrument also contained the usual clauses found in pottahs. On the question, what was the proper amount of stamp duty leviable on the document,—*Held* that though the arrangement intended to be effected was partly a lease and partly an usufructuary mortgage, yet the instrument came within the provisions of section 7, paragraph 2, of the Stamp

STAMP ACT, I OF 1879, s. 7, para. 2— *continued.*

Act, and should be stamped as a mortgage only. IN THE MATTER OF A REFERENCE FROM THE BOARD OF REVENUE UNDER S. 46 OF THE GENERAL STAMP ACT. EX PARTE HILL

[I. L. R., 8 Calc., 254: 10 C. L. R., 33

4. ——— and art. 54.—*Release.—Debts.—Annuity.*—*J.* and *S.* passed to their brother *E.* an instrument which set forth (1) that *J.* and *S.* relinquished their right to certain property in favour of *E.*; (2) that *E.* was to discharge certain debts; and (3) that *E.* was to pay to *J.* and *S.* an annuity. *Held* that the provisions in favour of *J.* and *S.* were a mere recital of the consideration moving from *E.*; that no interest was created in favour of *J.* and *S.*; and that, therefore, the instrument should be stamped as a release only. EKNATH S. GOWNDE *v.* JAGGANNATH S. GOWNDE . . **I. L. R., 9 Bom., 417**

——— s. 10.—*Hundi.*—A hundi for a sum of R380, payable otherwise than on demand, cannot be stamped with an adhesive stamp. The words "drawn or made out of British India" in clause (*b*) of section 10 of the Stamp Act of 1879 apply to the entire clause. DEVAJI *v.* RAMAKRISTNIAH

[I. L. R., 2 Mad., 173

——— s. 12 and s. 7.—*Contract by principal and surety on same stamp paper, but separately written.—Writing on the reverse of a stamp paper.—Government notifications under the Stamp Act, Force of.*—In a bond engrossed on a stamp paper of sufficient value, and dated the 19th April 1879, the contract of the principal was written first, and after his signature followed the contract of the surety, signed by the latter. The document commenced on the side other than that on which the stamp was impressed, and terminated on the side impressed with the stamp. The stamp was not in any way defaced, nor was the paper so written as to admit of the stamp being used again. *Held* that the bond constituted only one instrument, and was properly stamped, not being open to objection under sections 7, 12, 13, and 14 of the Stamp Act, 1879. The construction of the words "on the face of the instrument," used in section 12 of Act I of 1879, considered. *Quære,*—Whether certain Government notifications—to the effect that an instrument, commenced on the side of the paper other than that on which the stamp is impressed and completed on the side on which the stamp is impressed, is, under section 12 of Act I of 1879, to be treated as unstamped; and prohibiting writing on the reverse of an impressed stamped paper—are *ultra vires* as being more stringent than, and, therefore, inconsistent with, that Act? DOWLATRAM HARJI *v.* VITHO RADHOJI

[I. L. R., 5 Bom., 188

——— s. 13.—*Suit on bond.—Stamp, Sufficiency of.*—A bond stipulated that for the consideration of a loan of R80 the debtor should deliver to the creditor on a future day "800 arris of grain valued at R10 per 100 arris." The bond was engrossed on an 8-anna stamp paper. In a suit on the bond for the recovery of 800 arris at 4 arris per rupee or its price, R200,—*Held* that the bond was adequately stamped. BHAIRAB CHUNDRA CHOWDHRI *v.* ALEK JAN . . . . **I. L. R., 13 Calc., 268**

1. ——— s. 24, and sch. II, arts. 16 and 21.—*Certificate of sale of property sold by public auction under order of Court.—Sale subject to mortgage or lien.—Mortgage-debt.—Interest.—Consideration.*—Where a certificate of sale, granted to the purchaser of property sold by public auction under an order of Court, has expressly set out that such sale is made subject to the mortgage right of a third party, the principal sum (but not the interest) due at the time of the sale on such mortgage is to be deemed "part of the consideration in respect whereof the transfer is chargeable with *ad valorem* duty" under section 24 of the Stamp Act; so that the whole consideration in respect of which such sale is, under articles 16 and 21 of schedule I of that Act, liable to stamp duty, is the sum of the purchase-money and the principal money so due on the mortgage. The certificate of sale, therefore, whenever it is possible, should set out the exact amount that is due, at the time of the sale, in respect of the principal sum secured by the mortgage. *Semble,*—It is otherwise if the mortgage be only recited in the proclamation of sale, and not expressly set out, as an existing incumbrance on the property sold, in the certificate of sale. Arrears of interest due on the mortgage are to be excluded from such calculation, since section 23 of the Stamp Act—which enacts that "where interest is expressly made payable by the terms of the instrument, such instrument shall not be chargeable with duty higher than that with which it would have been chargeable had no mention of interest been made therein"—applies as much in this case as if the document of transfer, on which the stamp duty was to be calculated, had been the document itself which stipulated for the payment of interest. NAGINDAS JEYCHAND *v.* HALALKHORE NATHWA GHEESLA . . **I. L. R., 5 Bom., 470**

2. ——— and sch. I, art. 16.—*Certificate of sale.*—The stamp duty payable on a certificate of sale is governed, not by section 24, but by clause 16, schedule I of the Stamp Act, 1879. *Semble,*—That when property is merely sold subject to a mortgage it is not sold "subject to the payment" of the mortgage-debt within the meaning of section 24 of that Act. REFERENCE UNDER STAMP ACT, 1879 . . . . **I. L. R., 5 Mad., 18**

3. ——— *Stamp on sale certificate.* —*Property sold subject to a mortgage.—Interest.—Transfer of Property Act (IV of 1882), cl. 5 (d), s. 55.*—Where property is sold subject to a mortgage or other charge, the payment of such mortgage or charge forms, under ordinary circumstances, no part of the consideration-money for the purchase. The stamp duty payable on a document conveying such a property is an *ad valorem* duty on the amount of the money paid as consideration for the sale. IN THE MATTER OF ACT I OF 1879. IN THE MATTER OF A REFERENCE TO THE BOARD OF REVENUE

[I. L. R., 10 Calc., 92: 13 C. L. R., 164

STAMP ACT, I OF 1879, s. 24—*continued.*

4. ——————— *Certificate of sale.—Purchase-money.*—Claims on property admitted by the parties or established by a decree of a Court should be entered in the certificate of sale and be computed as part of the purchase-money in ascertaining the amount of the stamp duty leviable on the certificate of sale. Other claims should neither be entered in the certificate of sale nor computed as part of the purchase-money. It is the duty of the purchaser to provide the stamp. IN RE RAMKRISHNA

[I. L. R., 9 Bom., 47

——————— s. 26.—*Lease.—Amount of rent for first year unascertainable.—Stamp Act, 1869, s. 19.*—When the amount of rent payable for the first year cannot be ascertained in order to determine the proper stamp under schedule I, section 19(*b*) of the General Stamp Act, 1869, for a lease, and more rent is recovered than the stamp affixed warrants, the right to recover the rent due for the subsequent years is not affected. In such a case sufficient effect is given to section 26 of the Stamp Act, 1879, by limiting the amount recoverable for the first year to the amount which the stamp will cover. COLLECTOR OF TANJORE *v.* RAMASAMIER

[I. L. R., 3 Mad., 342

——————— s. 34.

See PROMISSORY NOTE.

[I. L. R., 8 Calc., 645

1. ——————— *Unstamped "promissory note" executed when Stamp Act, 1869, was in force.—Admissibility of, as a "bond" on payment of penalty.*—An instrument which comes within the definition of a promissory note in the General Stamp Act, 1869, and is not duly stamped according to that Act (which was in force at the date of its execution) cannot be admitted in evidence upon payment of penalty under section 34 of the Stamp Act, 1879, on the ground that it falls within the definition of a bond in the latter Act. The levy of a penalty authorised under proviso (1) of section 34 of the Stamp Act, 1879, implies a punishment for neglect in failing to affix the proper stamp at the time of execution. The word "chargeable" in the above proviso means chargeable under the Act in force at the date of the execution of the instrument. NARAYANAN CHETTI *v.* KARUPPATHAN

[I. L. R., 3 Mad., 251

2. ——————— *Unstamped transfer of mortgagee's interest, Effect of.—Re-transfer of interest.—Award, Effect of, on transfer.—Unstamped instrument, Admissibility of, in evidence.—Finding of fact based on conjecture.—Fraud.*—On the 17th September 1866 *G.* gave *Z.* an usufructuary mortgage of certain immoveable property to secure the repayment of R7,101, purporting to be advanced by *Z.* As a fact only R2,301 of that amount were actually advanced by *Z.*, the balance, R4,800, being advanced by *R.* In 1868 *Z.* sold the mortgagee's interest in the deed of mortgage to *R.* for R2,301, the transfer being by endorsement and not being stamped. In April 1869 *G.* transferred a portion of the mortgaged property to *A.* In September 1869

STAMP ACT, I OF 1879, s. 34—*continued.*

R. sued to have such transfer set aside, claiming in virtue of the deed of mortgage and the transfer endorsed thereon. On the 23rd September 1871 the Court of first instance refused to receive the transfer by endorsement in evidence and to proceed with the suit, because such transfer was not stamped. On the 20th April 1872 *Z.* executed a stamped transfer of the mortgagee's interest in the deed of mortgage in favour of *R.* *R.*, treating the order of the 23rd September 1871 as an interlocutory one, presented the instrument of the 20th April 1872, to the Court, and prayed that it would proceed with the suit. The Court proceeded with the suit and gave *R.* a decree. This decree was reversed by the Court of first appeal, on the ground that that instrument did not cure the defect of the transfer by endorsement, and that the order of the 23rd September 1871 was final. The decree of the Court of first appeal was affirmed by the High Court in June 1873. Thereupon *R.* made a criminal charge against *Z.* of cheating, in respect of the transfer by endorsement. This charge was eventually dropped, and was followed by a reference to arbitration by *R.* and *Z.* According to the agreement to refer, which was dated the 17th August 1874, the dispute between the parties was whether *R.* should return the deed of mortgage to *Z.*, and *Z.* return the R2,301 to *R.* or not. The arbitrators made an award, which was dated the 18th August 1874, which directed, *inter alia*, that *R.* should return the deed of mortgage to *Z.* and *Z.* return the R2,301 to *R.* The deed was returned to *Z.*, but the money was not returned to *R.* In 1875 *Z.* applied, under Regulation XVII of 1806, to foreclose the mortgage. In 1880 the mortgage having been foreclosed, *S.*, as *Z.'s* representative, sued for proprietary possession of the mortgaged property. The lower Courts held that all the acts of *R.* and *Z.* subsequent to the disposal of *R.'s* suit of 1869 were fraudulent and collusive, and done with a view to evade the stamp law, and the person actually interested in the deed of mortgage was *R.* and not *S.*, and on this ground, as well as on other grounds, dismissed *S.'s* suit. *Per* STRAIGHT, *J.*—That the transfer by endorsement of the deed of mortgage, notwithstanding such transfer was not stamped, transferred to *R.* the mortgagee's interest in the deed; that such interest could not be re-transferred to *Z.* except by a formal instrument stamped according to law, inasmuch as any other mode of re-transfer would leave *Z.* under the same disabilities as regards the stamp law as *R.*, as any suit instituted by *Z.* would, strictly speaking, be based, not on the deed of mortgage, but on the re-transfer; and that therefore, under those circumstances, and having regard to the fact that *Z.* had not returned the R2,301 to *R.*, *S.* actually, though not ostensibly, based his suit upon a re-transfer of the mortgagee's interest in the deed of mortgage, which was not stamped, and for which he had not given any consideration, and consequently his suit was not maintainable. Also, that the award could not alter the effect of the transfer by endorsement. *Per* MAHMOOD, *J.*—That the lower Courts were not justified in their findings as to the fraudulent and collusive nature of the acts of *R.* and *Z.* after the disposal of *R.'s* suit of 1869, or in finding that the

STAMP ACT, I OF 1879, s. 34—*continued.*

person actually interested in the deed of mortgage was *R.*, and not *Z.*, such findings being based upon pure conjectures. That the unstamped transfer by endorsement was inadmissible to show that *Z.* had transferred his interest in the deed of mortgage to *R.*, whether *R.* or the mortgagor wished to use it in order to show that fact, and consequently *Z.* must be still regarded as the person interested in the deed, and *S.* was therefore entitled to maintain the suit. SHANKAR LAL *v.* SUKHRAN

[I. L. R., 4 All., 462

3. ——————— *Promissory note.—Acknowledgment.*—The plaintiff sued on two documents, signed by the defendant, each bearing a 1-anna stamp, in one of which a sum of R203 was stated to be "due to you, and payable on the 16th July;" and in the other a sum of R515 was mentioned "for which I give you this writing, the whole amount of which will be paid up in full on the 3rd August." *Held* that the documents were not mere acknowledgments, but promissory notes, and being payable otherwise than on demand, were not sufficiently stamped, and consequently not admissible in evidence under section 34, Act I of 1879. MANICK CHUND *v.* JOMOONA DOSS . . I. L. R., 8 Calc., 645

S. C. MANICK CHUND *v.* JOMONA DASS

[7 C. L. R., 88

4. ——————— *Admissibility in evidence.—Evidence as to time when stamped.*—When a document, which under the stamp laws requires to be stamped, is tendered in evidence, the only question for the Court is whether it bears a proper stamp at the time when it is tendered. The Court is not bound, nor is it at liberty, to allow the parties to go into evidence to shew at what time the document was stamped. KALI CHURN DAS *v.* NOBO KRISTO PAL

[9 C. L. R., 272

NOOR BIBEE *v.* RUMZAN . 24 W. R., 198

BHAURAM MADAN GOPAL *v.* RAMNARAYAN GOPAL

[12 Bom., 208

1. ——— s. 37, and s. 40.—*Arbitration.—Award.—Evading payment of stamp duty.*—Six persons acted as arbitrators in a dispute between two of their fellow-villagers, and delivered their award in writing. Subsequently the award was filed in evidence by one of the disputants in the civil suit in the Court of the Munsif of Cuttack, who, on the ground that the document bore no stamp, impounded it and forwarded it to the Collector, who ordered the writer to be prosecuted. The Deputy Magistrate, to whom the case was referred, summoned the six persons who had acted as arbitrators, and fined them R25 each. On a reference to the High Court by the District Magistrate,—*Held* that the conviction was illegal, and should be set aside. *Held*, also, that the procedure laid down in section 37 of the Stamp Act must be strictly followed; and that, before a prosecution can be instituted under section 40, the Collector is bound to form an opinion as to whether the offence was committed with the intention of evading payment of the proper duty. EMPRESS *v.* SODDANUND MAHANTY

[I. L. R., 8 Calc., 259: 10 C. L. R., 365

STAMP ACT, I OF 1879, s. 37, and s. 40—*continued.*

2. ——————— *Duty and penalty on document insufficiently stamped, Determination of.*—Under the provisions of the Stamp Act, 1879, the duty chargeable on an insufficiently-stamped document must be decided with reference to the Act in force at the date of the execution of the document, but the penalty leviable is determined in all cases by section 37 (*b*) of the Stamp Act, 1879. REFERENCE UNDER STAMP ACT, 1879 . I. L. R., 5 Mad., 394

——— s. 41.—*Fresh suit.—Costs.—Civil Procedure Code, 1882, ss. 13, 43.*—The plaintiff in a suit upon a certain instrument not duly stamped was compelled to pay the amount of duty and penalty. The defendant was the person bound to bear the expense of providing the proper stamp for such instrument. The plaintiff, with reference to section 41 of the Stamp Act, 1879, sued the defendant to recover such amount. *Held* that such amount could not be regarded as part of the costs in the suit in which it was paid, and a separate suit to recover it was maintainable. ISHAR DAS *v.* MASUD KHAN

[I. L. R., 6 All., 70

1. ——— s. 50.—*Power of Appellate Court as to insufficiently-stamped documents admitted in lower Court.*—Where a document has been admitted in evidence as duly stamped, such admission can only be called in question by the Appellate Court under section 50 of the Stamp Act. REFERENCE UNDER STAMP ACT, 1879 . . I. L. R., 8 Mad., 564

2. ——————— and s. 3, cl. 1.—*Unstamped document admitted by original Court on payment of duty and penalty.—Power of Appellate Court to review such admission.*—Where the Court of first instance has, on payment of the prescribed duty and penalty, admitted an unstamped document as evidence, under section 3, proviso 1 of Act I of 1879, a superior Court sitting in appeal has no jurisdiction to review the lower Court's proceedings, in so far as they concern such admission, except in the case provided for by section 50 of that Act. PUNCHANUND DASS CHOWDHRY *v.* TARAMONI CHOWDRAIN

[I. L. R., 12 Calc., 64

——— s. 51.—*Application for allowance for spoiled stamps.—Power of Collector as to inquiry.—Transfer of duty to Deputy Collector.—Charge of false evidence.—Penal Code, ss. 181, 193.*—Section 51, Chapter VI of Act I of 1879, enacts that "subject to such rules as may be made by the Governor General in Council as to the evidence which the Collector may require, allowance shall be made by the Collector for impressed stamps spoiled in the cases hereinafter mentioned, &c." According to a rule made with reference to that section, "the Collector may require every person claiming a refund under Chapter VI of the said Act, or his duly authorised agent, to make an oral deposition on oath, &c." *Held*, therefore, that the Collector himself is the officer, and no other, to whom power is given by law to make inquiries into applications for allowances for spoiled stamps, to take evidence on oath in reference thereto, and to grant or refuse such appli-

STAMP ACT, I OF 1879, s. 51—*continued.*

cations, and he cannot delegate his authority in the matter. *Held*, therefore, where a person had applied for a refund under Chapter VI of Act I of 1879, and the Collector made over the application for enquiry to a Deputy Collector, that the Deputy Collector was not entitled to put the witnesses produced by the applicant on their oaths, and consequently, in reference to the statements of such witnesses, no charge under section 181 or section 193 of the Penal Code was sustainable. EMPRESS *v.* NIAZ ALI **[I. L. R., 5 All., 17**

——— s. 61.

See ABETMENT (APPENDIX). **[I. L. R., 8 All., 18**

1. ——— and ss. 3 (10) & 57.—*Rules of Governor General, 3rd March 1882, 5 (e).—Construction.—Stamped paper.—Writing on reverse side, Effect of.*—In exercise of the powers conferred by sections 9, 15, 17, 32, 51, and 56 of the Stamp Act, 1879, the Governor General in Council made, and published by a notification dated the 3rd March 1882, certain rules, and, *inter alia*, Rule 5 (*e*), which was as follows: "When a single sheet used under this rule is found insufficient to admit of the entire instrument being written on the side of the paper which bears the stamp, so much plain paper may be subjoined thereto as may be necessary for the complete writing of such instrument, provided that in every such case the side of the sheet which bears the stamp must be covered by a substantial part of the instrument before any part of the latter can be written on the plain paper joined to such sheet. Provided, further, that the part of the instrument written on the plain paper must be attested by the signatures or marks of all the persons executing the document and the witnesses to the same." *Held* that this rule was an enabling rule, and did not make it obligatory on parties not to write on the reverse side of an impressed stamp paper, so as to make it an offence under section 61 if they did so write. REFERENCE UNDER STAMP ACT, 1879 **[I. L. R., 7 Mad., 176**

2. ——— *Promissory note.—Insufficient stamp.—"Accepting."*—The term "accepting" used in section 61 of the Stamp Act, 1879, does not mean "receiving" but "executing as acceptor." To receive a promissory note not duly stamped and put it in suit does not constitute an offence under section 61 of the Stamp Act, 1879. QUEEN *v.* GULAM HUSSAIN . **I. L. R., 7 Mad., 71**

3. ——— and s. 64.—*Receipt.—Acknowledgment by letter.*—Where the receipt of money exceeding R20, in satisfaction of a debt, is acknowledged by letter without a receipt stamp being affixed, the writer is liable to punishment under section 61 of the Stamp Act, 1879. REFERENCE UNDER STAMP ACT, 1879 . . **I. L. R., 8 Mad., 11**

4. ——— and ss. 37, 40, & 69.—*Offence under Stamp Act.—Execution of unstamped document.—Sanction by Collector to prosecute.—Procedure.—Abetment.*—*A.* executed to *B.* on plain paper an instrument which should have been executed

STAMP ACT, I OF 1879, s. 61 and ss. 37, 40, & 69—*continued.*

on a paper bearing a 4-anna stamp. *B.* filed a suit against *A.* in the Civil Court and produced the instrument in evidence. The Civil Court called upon *B.* to pay the duty and penalty, and, on *B.'s* refusal to pay, impounded the instrument and sent it to the Collector. The Collector, concurring with the opinion of the Civil Court, sanctioned the prosecution, in the Criminal Court, of both *A.* and *B.*, but without requiring the payment of the duty and penalty. The prosecution resulted in the conviction of *A.* under section 61 of the Stamp Act I of 1879 and of *B.* of abetment of *A.'s* offence. *Held* that the convictions were illegal, inasmuch as the Collector failed to allow an opportunity of paying the duty and penalty. *Held*, further, that mere receipt of an unstamped instrument did not constitute the offence of abetment of the execution of such an instrument. EMPRESS *v.* JANKI . . . . **I. L. R., 7 Bom., 82**

5. ——— and ss. 37 & 40.—*Offence against stamp law.—Sanction to prosecute.—Intention to defraud.*—A Collector is not bound to hold a formal enquiry, or to record proceedings before directing a prosecution under section 40 of the Stamp Act, 1879, for an offence against the stamp law. The law does not require intention to be proved as part of such offence. QUEEN-EMPRESS *v.* PALANI **[I. L. R., 7 Mad., 537**

——— s. 64.

See s. 61 . . **I. L. R., 7 Bom., 82**

——— and s. 69.—*Refusal to give receipt.—Sanction of Collector necessary before prosecution.—Jurisdiction, Want of.*—Prosecution for an offence committed in contravention of section 64 of the Stamp Act I of 1869 cannot be instituted unless with the previous sanction of the Collector under section 69 of the same Act. QUEEN-EMPRESS *v.* JETHMAL . . . **I. L. R., 9 Bom., 27**

——— s. 67.—*Document executed with intent to defraud revenue.*—The second clause of section 67 of the Stamp Act, 1879, is not controlled by the first clause of the section, which refers only to bills of exchange and promissory notes, but applies to all cases in which a document is executed with intent to defraud the Government of stamp duty. REFERENCE UNDER STAMP ACT, 1879 **[I. L. R., 9 Mad., 138**

——— s. 68.—*Court-fee stamps.—Sale by unlicensed person.—Stamp Act, XVIII of 1869, s. 48.—Act VII of 1870 (Court Fees Act), s. 34.*—The sale of court-fee stamps without a license was not an offence under the Stamp Act, XVIII of 1869, but is now specially made so by section 68 of Act I of 1879. EMPRESS OF INDIA *v.* JALLU **[I. L. R., 4 All., 216**

——— s. 69.

See s. 61 . **I. L. R., 7 Bom., 82**

See s. 64 . . **I. L. R., 9 Bom., 27**

See COLLECTOR . **I. L. R., 2 All., 806**

STAMP ACT, I OF 1879—*continued.*

——— sch. I, cl. 1.

See CASES UNDER STAMP ACT, 1869, SCH. II, ART. 5.

1. ——— art. 1.—*Acknowledgment.—Hath-chitta.*—Whether an account signed by a debtor in the books of his creditor amounts to an acknowledgment within the meaning of the Stamp Act (I of 1879), schedule I, article 1, is a question depending in each case upon the form and intention of the entry. BINJA RAM *v.* RAJMOHUN ROY [I. L. R., 8 Calc., 282

2. ——— *Stamp duty.—Hath-chitta.—Evidence—Acknowledgment.*—An account in a hathchitta, showing advances of money made to, and part-payment made by, the defendant, the whole amount being in the handwriting and signed by the defendant, is admissible in evidence without being stamped. *Brojender Coomar* v. *Bromomoye Chowdhrani, I. L. R., 4 Calc., 885,* followed. BROJO GOBIND SHAHA *v.* GOLUCK CHUNDER SHAHA *alias* GOLUCK SHAHA . . I. L. R., 9 Calc., 127

3. ——— *Acknowledgment.—Promise in writing.—Contract.—Contract Act, IX of 1872, s. 25, cl. 3, and s. 62, Ill. (a).*—A khata, or account stated, bearing a stamp of one anna, but containing no promise in writing,—*Held* to be a mere acknowledgment sufficiently stamped, and not a contract within the meaning of section 25, clause 3 of Act IX of 1872. CHOWKSI HIMUTLAL *v.* CHOWKSI ACHRUTLAL . . I. L. R., 8 Bom., 194

4. ——— and art. 5.—*Acknowledgment.—Admissibility in evidence.*—The defendant, in two letters to the plaintiff in respect of certain contracts to sell Government securities, acknowledged his inability to give delivery, and after calculating the amount of the differences between the contract prices and the market prices on the dates of delivery, stated that the amount in respect of the first contract "is due to you, and payable on the 16th July," and that the amount in respect of the other contract was R515, "the whole amount of which will be paid up in full on the 3rd and 4th August." Both letters were stamped with a one-anna stamp. *Held* that they were insufficiently stamped and inadmissible in evidence. MANICK CHUND *v.* JOMONA DASS . . 7 C. L. R., 88

S. C. MANICK CHUND *v.* JOMOONA DOSS [I. L. R., 8 Calc., 645

——— sch. I, art. 5.

See SCH. I, ART. 1 . 7 C. L. R., 88
[I. L. R., 8 Calc., 645

1. ——— and art. 28.—*Indemnity note given to railway company by consignee.—Agreement.*—An indemnity note, passed to a railway company by a consignee and his surety in respect of goods delivered to the consignee, and for which he is unable to produce the railway receipt—by which note they undertake to hold the railway company, its agents, and servants, harmless and indemnified in respect of all claims to the said goods

STAMP ACT, I OF 1879, sch. I, art. 5 and art. 28—*continued.*

—is not an "indemnity bond" falling under article 28, schedule I of the Stamp Act, I of 1879, but is an agreement falling under clause (*c*), article 5, schedule I of that Act, and, consequently, chargeable only with a stamp duty of 8 annas. ANONYMOUS CASE . . I. L. R., 5 Bom., 478

2. ——— (c) and art. 44 (a).—*Agreement.—Mortgage.*—In a contract for work to be performed entered into by a contractor with the Executive Engineer of a district, it was stipulated that payments should be made from time to time to the contractor as the work progressed, and that the Engineer might retain 10 per cent. on the value of the work done to cover compensation for default on the part of the contractor and as security for the proper performance of the contract. *Held* that this contract was chargeable with stamp duty as an agreement under article 5(*c*) and not as a mortgage under article 44(*a*) of schedule I of the Stamp Act, 1879. REFERENCE UNDER STAMP ACT, 1879 [I. L. R., 7 Mad., 209

——— sch. I, art. 11.

See s. 3 . . I. L. R., 8 Mad., 87

——— *Bill of exchange otherwise than on demand.—Impressed stamp.*—A bill of exchange for R500 payable otherwise than on demand, must, under article 11 of schedule I of the Act, be stamped with an impressed stamp of the value of 6 annas. RADHAKANT SHAHA *v.* ABHOYCHURN MITTER . . I. L. R., 8 Calc., 721

S. C. RADHAKANT SHUBA *v.* ABHOY CHURN MITTER . . . . 11 C. L. R., 310

——— art. 16.

See s. 24 . . I. L. R., 5 Bom., 470

1. ——— *Certificate of sale.*—The stamp duty payable on a certificate of sale is governed not by section 24 but by schedule I, article 16 of the Stamp Act, 1879. REFERENCE FROM DISTRICT JUDGE UNDER S. 49 OF STAMP ACT [I. L. R., 5 Mad., 18

2. ——— *Certificate of sale.—Purchase of equity of redemption.—Duty.*—Where the equity of redemption of an estate is sold in execution of a decree, the stamp duty leviable upon the certificate of sale must be calculated upon the amount of the purchase-money only. REFERENCE UNDER STAMP ACT, 1879 . I. L. R., 7 Mad., 421

3. ——— *Certificate of sale.—Practice.—Ad valorem stamp duty.—Sale, subject to mortgage lien, of property in several lots.—Stamp duty payable by purchaser of one lot, how calculated.*—In execution of a decree, certain immoveable property was attached and sold in eight lots to different persons, subject to a mortgage The applicant was one of the purchasers, and applied for a sale certificate. A question arose whether, in computing stamp duty, the whole amount of the

STAMP ACT, I OF 1879, sch. I, art. 16— *continued.*

principal mortgage-debt, or only a proportionate amount of it, was to be deemed a part of the consideration. On reference to the High Court,—*Held* that the whole amount of the principal mortgage debt, and not merely a proportionate amount of it, was to be added to the price, and the total amount to form the consideration upon which an *ad valorem* stamp duty was to be calculated, each purchase obtaining a separate sale certificate. IN RE THE APPLICATION OF VISHNU KESHAV SATHE [I. L. R., 10 Bom., 58

——————— **art. 21.**

See s. 24 . . I. L. R., 5 Bom., 470

1. ——————— *Conveyance by vendors under one denomination to the same person's purchasers under another denomination.*—Eight persons, the owners of a tea estate, purported to convey their rights in the estate to a company; the consideration expressed in the deed of conveyance being £43,320, payable in shares and debentures of the company taken at par. The only shareholders or debenture-holders of the company were the eight persons who purported to sell the estate to the company. *Held* that, although the conveying parties were the shareholders of the company, there was just as much a sale and transfer of the property and a change of ownership as there would have been if the shareholders had been different persons; and that the proper duty payable on the conveyance was therefore that mentioned in article 21, schedule I of the Stamp Act. IN RE KONDOLI TEA COMPANY . . . . I. L. R., 13 Calc., 43

2. ——————— **and art. 60 (cl. b).**—*Transfer of lease.—Transfer of a share of a partnership.*—Where a transaction is in substance a sale of a share in a partnership, and the transfer of a share in a lease only forms part of the subject-matter of the sale, as being a part of the partnership assets, the transaction should be regarded not as the transfer of a lease, but as the sale of a share in a partnership, and the duty payable in respect thereof should be that falling under schedule I, article 21 of Act I of 1879. IN RE MENGLAS TEA ESTATE . . . I. L. R., 12 Calc., 383

——————— **art. 27.**

See SCH. II, ART. 11. [I. L. R., 8 Mad., 14

——————— **art. 28.**

See SCH. I, ART. 5 I. L. R., 5 Bom., 478

——————— **art. 36.**—*Instrument of gift.—Endorsement at foot of document.*—On the 3rd of April 1878, on which date the Stamp Act XVIII of 1869 was in force, *A.* passed to *B.* a document on plain paper granting *B.* an annuity charged on the revenues of a village. On the 24th of April 1879, the Stamp Act I of 1879 being then in force, *A.* adopted *C.* as her son, and *C.* three days afterwards made the following endorsement upon the document: "I consent to act according to this sanad." *Held* that the instrument should be stamped with a single stamp as an instrument of gift, under article 36, schedule I of Act I of 1879. IN RE BHAVANIBAI . . I. L. R., 7 Bom., 194

STAMP ACT, I OF 1879, sch. I, art. 36— *continued.*

——————— **art. 37.**—*Partition, Instrument of.—Arbitration.—Award.*—An award directing partition of property if signed by the parties interested by way of assent to the award, becomes thereby an instrument of partition and should be stamped accordingly. AMARSI *v.* DAYAL [I. L. R., 9 Bom., 50

1. ——————— **art. 39 (b).**—*Lease.—Rent.*—A mittadar executed a perpetual lease of certain villages for R1,954 per annum. Of this, R1,554-10-7, representing the Government peshkash, the lessor directed the lessee to pay to Government and the balance R400 to himself. The lease was written on a 20-rupee stamp paper. *Held* that the sum of R1,954 represented the rent, and that the stamp duty was to be calculated thereupon. REFERENCE FROM BOARD OF REVENUE. I. L. R., 7 Mad., 155

2. ——————— **(a), (d).**—*Rent.—Premium.—Mortgage.—Lease.*—By a document purporting to be a lease, certain land was leased for four years at a rent of R15 per annum. Out of the total rent it was stipulated that R50 should be paid in advance and the balance R10 at the end of the term,—*Held* that the payment of R50 in advance was not payment of a premium or fine within the meaning of article 39(*c*) of the Stamp Act, 1879. By a document purporting to be a rent agreement, the lessee took a shop for five years, agreeing to pay R30 per annum as rent, depositing one year's rent with the lessor, which was to be credited to the rent of the last year of the term,—*Held* that the deposit of one year's rent with the lessor was not a fine or premium within the meaning of article 39(*c*) of the Stamp Act, 1879. By a document purporting to be an instrument of mortgage, the owner of certain land, being indebted in a certain sum, conveyed the land to his creditor for nine years in liquidation of the principal and interest of the debt. The creditor was to take the produce of the land, enjoy the profits or suffer the loss, and pay R35 per annum as rent. *Held*, further, that the document was a lease with a premium liable to duty under article 39(*d*) of schedule I of the Stamp Act, 1879. REFERENCE UNDER STAMP ACT, 1879 . . . I. L. R., 7 Mad., 203

3. ——————— **and sch. II, art. 13, cl. (b).**—*Kabuliat or lease of immoveable property for any purpose other than that of cultivation.—Stamp duty, Exemption from, of such lease.*—A kabuliat or lease relating to immoveable property let to a tenant for any purpose other than that of cultivation is not such a lease as is contemplated by article 13, clause (*b*), of the Stamp Act I of 1879 so as to be exempt from stamp duty, but is chargeable with such duty under schedule I, article 39, of that Act. NARAYAN RAMCHANDRA *v.* DHONDU RAGHU [I. L. R., 10 Bom., 173

STAMP ACT, I OF 1879, sch. I—*continued.*

——————— art. 44.

See SCH. I, ART. 5.

[I. L. R., 7 Mad., 209

1. ——————— cls. (a) & (b).—*Mortgage-deeds.—Covenants for quiet enjoyment.—Per Curiam.*—Clause (*a*) of article 44 of schedule I of the Stamp Act, 1879, applies only to those deeds in which possession of the mortgaged property is given, or agreed to be given, at the time of the execution of the deed, or in other words, where immediate possession of the property is given, or agreed to be given, by the terms of the deed to the mortgagees. *Per* GARTH, *C. J.*—The principle of the distinction between the two classes of mortgages named in article 44 is that, where the title to the land and the possession or immediate right to possession both pass to the mortgagee, the same duty is charged as upon a conveyance by way of sale; but when the title only passes, and possession, or the right to possession, does not, the lower duty is chargeable. *Per* MITTER, *J.*—The word "given" in clause (*a*) of article 44 points out that only those transactions are intended to be covered where the transfer of possession takes place in consequence of the agreement on the part of the mortgagor to deliver over possession as part of the security for the mortgage-money; but where the mortgagee becomes entitled to enter upon possession irrespective of the consent of the mortgagor to make over possession, clause (*a*) will not apply. *Per* FIELD, *J.*—The Stamp Act is a Revenue Act, and the rule of construction of such Acts is, that in case of a doubt, the construction most beneficial to the subject is to be adopted. The words "agreed to be given" in article 44, clause (*a*), can only apply where there is an express or implied agreement to give possession; they will not apply where there is no such agreement, express or implied, but the effect of the document is such that a mortgagee has merely a right which he can enforce in a Court of law to obtain possession. ANONYMOUS CASE . I. L. R., 10 Calc., 274

2. ——————— *Construction.*—A mortgage-deed, dated the 4th August 1883, stipulated that possession was to be given to the mortgagee after the 31st May 1818, if the mortgage loan was not entirely repaid by that date. On the question being referred to the High Court, whether clause (*a*) or clause (*b*) of article 44, schedule I, Stamp Act I of 1879, applied to the case,—*Held* that clause (*b*) applied. The intention of clause (*a*) is to cover cases of mortgage with possession, and the words "agreed to be given" are to be read as if the words "at the time of execution" immediately followed and qualified the word "given." Clause (*a*) should be read as if it were worded "when possession of the property * * * is given by the mortgagor at the time of execution, or is agreed to be *then* given, and not * * * "is *then* agreed to be given." HINGANGHAT MILL COMPANY *v.* REKCHAND

[I. L. R., 8 Bom., 310

3. ——————— *Stipulations not creating fresh obligations.*—Under the ordinary law of mortgage the mortgagor is bound, so long as the equity of redemption remains with him, to indemnify the estate against expenses incurred in protecting the title. So that where a mortgage-bond contains stipulations under which the mortgagor engages to repay to the mortgagee any costs he may incur in suits brought against him by the mortgagor's co-sharers, and also any debts charged upon the mortgaged property which the mortgagee may pay, the stipulations do not create any fresh obligation, and require no additional stamp duty. DAMODAR GUNGADHUR *v.* VAMANRAV LAKSHMAN . I. L. R., 9 Bom., 435

STAMP ACT, I OF 1879, sch. I, art. 44, cls. (a) & (b)—*continued.*

4. ——————— and s. 3 (13), sch. I, art. 29, and art. 5 (c).—*Mortgage.—Assignment of growing coffee.*—By an agreement made the first day of September 1884, *A.*, in consideration of R1,000 to be advanced to him by *B.*, assigned to *B.* the whole crop of coffee then growing upon a certain estate, upon trust, *inter alia*, to secure the repayment of the sum advanced. It was stipulated that *A.* should cultivate the crop till maturity and deliver it to *B.* *Held* that this document was a mortgage liable to duty under article 44 (*b*) of schedule I of the Stamp Act, 1879. REFERENCE UNDER STAMP ACT, 1879

[I. L. R., 8 Mad., 104

——————— art. 49.—*Policy of insurance.—Life policy.—Beng. Reg. X of 1829.—Per* BROUGHTON, *J.*—*Held* that, inasmuch as Regulation X of 1829, was not recognised by the Supreme Court, life policies of insurance issued before 1860 did not require a stamp. . RAJNARAIN BOSE *v.* UNIVERSAL LIFE ASSURANCE COMPANY

[I. L. R., 7 Calc., 594: 10 C. L. R., 561

1. ——————— art. 50.—*Court Fees Act, sch. II, art. 10 (a).—Power to vakil to obtain copies from Collector's office.—Stamp.*—A document authorising a vakil to apply for copies of records from the Collector's office is properly stamped with a court fee stamp under article 10 (*a*) of schedule II of the Court Fees Act, 1870, and does not require to be stamped as a power of attorney under article 50 (*b*) of schedule I of the Stamp Act, 1879. REFERENCE UNDER STAMP ACT, 1879

[I. L. R., 9 Mad., 146

2. ——————— cl. (b).—*Court Fees Act, sch. II, art. 10 (a).—Vakalatnama.—Power-of-attorney.*—A document was given to *P.* by thirty-six persons jointly interested in a certain sum of money authorising him to appear before a certain officer and receive payment thereof. *Held* that the document was a power of attorney, and that consequently the proper stamp duty was one rupee, leviable under the Stamp Act, 1879, schedule I, article 50 (*b*). REFERENCE UNDER STAMP ACT, 1879

[I. L. R., 9 Mad., 358

1. ——————— art. 52, and s. 3, cl. 17.—"*Sarkhat.*"—*Receipt.*—The defendant in a suit on a bond set up as a defence that the bond had been paid in part in sugar-cane juice, and as evidence of this fact produced a document called a "sarkhat," alleged to be signed by the plaintiff, acknowledging

STAMP ACT, I OF 1879, sch. I, art. 52, and s. 3, cl. 17—*continued.*

the receipt of sugar-cane juice, the price of which exceeded R20. There was nothing in this document which showed that the sugar-cane juice had been received in part satisfaction of the bond. *Held* that the document was not a "receipt," within the meaning of the Stamp Act, 1879, but a memorandum of sugar-cane juice supplied, and required no stamp. DEBI PRASAD *v.* RUPU

[I. L. R., 6 All., 253

2. ——— *Receipt.—Entry signed by creditor in debtor's book discharging debt.*—An entry made by a creditor in the khatta-book of the debtor, and signed by him for the payment of a sum of money in discharge of a debt is a "receipt" within the meaning of section 3, clause 17 of the Stamp Act, and as such must be stamped under article 52, schedule I of that Act. QUEEN-EMPRESS *v.* JUGGERNATH . . I. L. R., 11 Calc., 267

——— art. 54.

See s. 7 . . I. L. R., 9 Bom., 417

——— art. 57.—*Settlement.—Stamp duty.*—Under article 57 of schedule I of the Stamp Act, 1879, stamp duty on a settlement is to be calculated on the value of the property settled as set forth in such settlement. *Held* that these terms do not mean the value of the interest or interests created by the settlement, but refer to the value of the property settled, which, it was intended by the Legislature, should be set forth in the settlement. REFERENCE UNDER STAMP ACT, 1879

[I. L. R., 8 Mad., 453

——— art. 60.—*Transfer of estates and mining rights held under lease.*—In consideration of a sum of £87,500, two coffee estates, opened but on land held under a lease for fifty years, together with the mining rights therein, also held under lease for a term of forty-eight years, were transferred by deed for the residue of those terms. *Held* that the stamp duty payable on the transfer deed was to be regulated by the provisions of clause 60 of schedule I of the Stamp Act, 1879. REFERENCE FROM BOARD OF REVENUE UNDER STAMP ACT, 1879 . . . I. L. R., 5 Mad., 15

——— Sch. II, art. 11, and sch. I, art. 27.—*Vakil.—Entry on roll of advocates.—Exemption from duty.*—By article 11 (*a*) of schedule II of the Stamp Act, 1879 (which exempts from duty the entry of an advocate, vakil or attorney on the roll of any High Court when he has previously been enrolled in a High Court established by Royal Charter), a vakil on the roll of the High Court, Madras, who applies to be entered on the roll of advocates, is exempted from the duty prescribed by article 27 of schedule I of the said Act. IN RE PARTHASARADI

[I. L. R., 8 Mad., 14

——— art. 12 (b).—*Security bond for due accounting for "property" received by virtue of office.*—The question was whether a bond executed by the sureties of an officer of Government to

STAMP ACT, I OF 1879, sch. II, art. 12 (b)—*continued.*

secure the due execution of his office and the due accounting by him of "public moneys, deposits, notes, stamp paper, postage labels, or other property" of Government committed to his charge was or was not exempted from stamp duty by the provisions of article 12 (*b*) of schedule II of Act I of 1879 regard being had to the words "other property." *Per* STUART, *C. J.*, that such bond was one to secure the "due execution of an office" and the "due accounting for money received by virtue thereof," and nothing more, as the words "or other property" must be taken to mean property of the same kind as previously mentioned, and therefore "money" or the like of money, and such bond was therefore exempted from stamp duty by the provisions of article 12 (*b*) of schedule II of Act I of 1879. *Per* OLDFIELD, *J.*, that inasmuch as the words in article 12 (*b*) of schedule II of Act I of 1879 "or the due accounting for money received by virtue thereof" should be regarded as mere surplusage, and the "due execution of an office" and the "due accounting for money received by virtue thereof" be considered one and the same thing, and as the due accounting for property received by him by virtue of his office was the "due execution of his office" by the officer in this case, such bond was one for the "due execution of an office," and was therefore exempted from stamp duty. *Per* SPANKIE, *J.*, and STRAIGHT, *J.*, that inasmuch as the words in article 12 (*b*) of schedule II of Act I of 1879 could not be regarded as mere surplusage, and there was a distinction drawn by the Legislature between the "due execution of an office" and the "due accounting for money received by virtue thereof," such bond was not one for the "due execution of an office," and being one for the due accounting for "property" it was not one for the due accounting for "money," and therefore it was not exempted from stamp duty. REFERENCE BY BOARD OF REVENUE, N.-W. P.

[I. L. R., 3 All., 788

——— art. 13.

See SCH I, ART. 39.

[I. L. R., 10 Bom., 173

1. ——— cl. (b).—*Lease by a cultivator.—Definite term.—Annual rent.*—Clause (*b*), article 13 of schedule II of Act I of 1879, exempts all leases executed in the case of a cultivator without the payment or delivery of any fine or premium, whatever the reserved or annual rent may be, provided it be for a definite term not exceeding one year, and also whatever the term may be, provided the annual rent reserved does not exceed R100. IN RE BHAVAN BADHAR . I. L. R., 6 Bom., 691

2. ——— and (c).—*Lease granted to a cultivator.—Kabuliat.—Exemption from stamp duty.*—By the term "cultivator" in article 13, schedule II of the Stamp Act, 1879, only those persons are connoted who actually cultivate the soil themselves or who cultivate it by members of their household, or by their servants, or by hired labour, and with their own or hired stock. The class of husbandmen or actual agriculturists is meant,

STAMP ACT, I OF 1879, sch. II, art. 13, cls. (b) and (c)—*continued.*

not farmers, middlemen, or lessees, even though cultivation may be carried on to some extent by such persons in the area covered by their lease. *Held* therefore, where the land, the subject of a kabuliat (counterpart of a lease), was for a large part not cultivable or susceptible of being treated as a "cultivator's" holding in any legitimate sense of that word, that such kabuliat was not exempted from stamp duty under article 13 (*s*), schedule II of the Stamp Act, 1879. REFERENCE UNDER STAMP ACT, 1879. IN THE MATTER OF LACHMAN PRASAD

[I. L. R., 5 All., 360

——————— **art. 15 (b) and s. 3, cl. 17.**—*Receipt. — Consideration. — Barrister's fee, Honorarium not merces.*—A receipt given by a Barrister for a fee is exempted from stamp duty by article 15 (*b*) of schedule II of the Stamp Act, 1879. REFERENCE UNDER STAMP ACT, 1879

[I. L. R., 9 Mad., 140

STAMP DUTY, PAYMENT OF—

See PAUPER SUIT—APPEALS.

[I. L. R., 1 Bom., 75

STAMP DUTY, REFUND OF—

1. ——— **Remanded case.**—The stamp duty is refundable, and should not be charged to the respondent, in a case remanded. MASSEYK *v.* JUGOBUNDHOO DUTT . . . 1 W. R., Mis., 12

2. ——————— *Held* by the majority of the Court (LOCH, *J.* dissenting, and CAMPBELL, *J.*, doubting), where an appeal is remanded in part, the appellant is entitled to a return of a proportionate part of the stamp duty paid by him IN THE MATTER OF THE PETITION OF DOORGA DASS DUTT

[B. L. R., Sup. Vol., 511 : 6 W. R., Mis., 65
1 Ind. Jur., N. S., 401

IN RE PROSUNNO CHUNDER ROY CHOWDRY

[11 B. L. R., 372, note

S. C. PROSUNNO CHUNDER ROY CHOWDHRY *v.* NUBO KRISTO CHATTERJEE . 18 W. R., 434

3. ——— **Compromise pending appeal.**—No refund of stamp duty can be allowed when a suit is compromised pending the hearing of an appeal preferred. LAND MORTGAGE BANK OF INDIA *v.* MERTUS . . . . 4 B. L. R., Ap., 96

IN RE ABDUL HAMED CHOWDRY

[4 B. L. R., Ap., 96, note

4. ——— **Refund of excess of stamp duty.**—*Court Fees Act (VII of 1870), ss. 13, 14, and 15.*—The plaintiff brought a suit for declaration of his maliki right over a certain putni tenure, and he alleged that the defendants had executed a hiba in his favour in consideration of a diamond ring worth R30,000. He valued his suit at R5,600, being twenty times the malikana of R280, to which the petitioner alleged he was entitled. The Subordinate Judge held that the plaintiff was bound to value his suit at R30,000, the consideration mentioned in the

STAMP DUTY, REFUND OF.—Refund of excess of stamp duty—*continued.*

hibanama. The plaintiff paid the deficiency, and his suit was ultimately dismissed. The plaintiff appealed to the High Court, and valued his appeal at R5,600, which valuation was accepted by the High Court. On an application by the plaintiff for a certificate authorising him to receive back from the Collector the excess of stamp duty paid by him,—*Held* that the Court had no power to grant it, its power being limited to cases specified in sections 13, 14, and 15 of the Court Fees Act; but that there is nothing in the law preventing the Government from refunding any amount which they may think the plaintiff was improperly ordered to pay. IN THE MATTER OF THE PETITION OF ZOYNOODDEEN HOSSEIN KHAN

[11 B. L. R., 370

S. C. ZOYNOODDEEN HOSSEIN KHAN *v.* SECRETARY TO THE BOARD OF REVENUE . 20 W. R., 106

5. ——— **Failure of portion of appeal.**—Where an appeal to the High Court in a case involving property not exceeding R3,000 in value was filed, under Act X of 1862, on a stamp paper worth R100, and the result was a remand in respect to a portion of the property of which the value was R1,756, it was held that, as the appellant was successful in his appeal in respect of property representing a value which must of itself have required a stamp duty of R100, that portion of his appeal in which he failed did not necessitate the payment of any further stamp duty; consequently the appellant was entitled to a refund of the stamp duty in full. BHIKOO MOLLAH *v.* RASH MONEE DOSSEE

[9 W. R., 357

6. ——— **Compromise of appeal before hearing.**—Where an appeal had been compromised before a Bench of the Sudder Court, and in the presence of the parties, before it had been entered in the cause list hung up in the Court-room,—*Held* that appellant was entitled to a refund of the full amount of stamp duty paid by him. IN THE MATTER OF GUJENDRO NARAIN ROY . . 11 W. R., 158

STAMP FEES, RIGHT OF GOVERNMENT TO RECOVER—

See PAUPER SUIT—SUITS.

[2 B. L. R., Ap., 22

STAMPS, CANCELLATION OF—

See PLAINT—RETURN OF PLAINT.

[I. L. R., 7 Bom., 487

STATUTE.

——— **5 & 6 Edw. III., c. 16.**

See SALARY, ASSIGNMENT OF—

[3 Moore's I. A., 435

——— **13 Eliz., c. 5.**

See DEBTOR AND CREDITOR.

[1 Hyde, 178
2 Ind. Jur., O. S., 7
1 W. R., 41
I. L. R., 10 Calc., 616

STATUTE.—13 Eliz., c. 5—*continued.*

See INSOLVENT ACT, s. 26.
[I. L. R., 3 Calc., 434

——— *Doctrine of fraudulent conveyance void against creditors.*—The doctrine of a fraudulent conveyance being void as against creditors held to be a principle of Hindu as it is of English law under 13 Elizabeth, c. 5. SHAMKISSORE SHAW *v.* COWIE . . 2 Ind. Jur., O. S., 7

See SOODHEEKEENA CHOWDHRAIN *v.* GOPEE MOHUN SEIN . . . . 1 W. R., 41

——— 27 Eliz., c. 4.

See VOLUNTARY CONVEYANCE.
[22 W. R., 60

——— 43 Eliz., c. 4.

See WILL—CONSTRUCTION.
[14 B. L. R., 442

——— 3 Jac. I., c. 7.

Statute 3 Jac. I., c. 7, has not been extended to India. WILKINSON *v.* ABBAS SIRKAR
[3 B. L. R., O. C., 96

——— 21 Jac. I., c. 16.

See ENGLISH LAW.
[5 Moore's I. A., 43, 234

See LIMITATION — STATUTES OF LIMITATION—STATUTE 21, JAC. I., C. 16.
[5 Moore's I. A., 43

See STATUTE, CONSTRUCTION OF—
[5 Moore's I. A., 234

——— 29 Car. II., c. 3.

See GUARANTEE.

See STATUTE OF FRAUDS.
[5 B. L. R., 639

——— c. 7.

See LORD'S DAY ACT.

——— 31 Car. II., c. 2.

See HABEAS CORPUS . 6 B. L. R., 392

——— 2 & 3 Anne, c. 4, s. 1.

See VENDOR AND PURCHASER—NOTICE.
[I. L. R., 6 Bom., 168

——— 6 Anne, c. 2, s. 4 (Ireland).

See VENDOR AND PURCHASER—NOTICE.
[I. L. R., 6 Bom., 168

——— 6 Anne, c. 35, s. 1.

See VENDOR AND PURCHASER—NOTICE.
[I. L. R., 6 Bom., 168

——— 7 Anne, c. 20, s. 1.

See VENDOR AND PURCHASER—NOTICE.
[I. L. R., 6 Bom., 168

STATUTE—*continued.*

——— 8 Anne, c. 14.

See LANDLORD AND TENANT—PAYMENT OF RENT—GENERALLY.
[3 B. L. R., O. C., 56

——— 7 Will. III., c. 3, s. 5.

See WAGING WAR AGAINST THE QUEEN.
[7 B. L. R., 63

——— 7 Geo. I., c. 21, s. 2.

See BOTTOMRY BOND . 5 Bom., O. C., 64

——— 8 Geo. II., c. 6, s. 1.

See VENDOR AND PURCHASER—NOTICE.
[I. L. R., 6 Bom., 168

——— 21 Geo. III., c. 70, s. 5.

See HIGH COURT, JURISDICTION OF—HIGH COURT, MADRAS—CIVIL.
[I. L. R., 8 Mad., 24

——— s. 8.

See MANDAMUS . 11 B. L. R., 250

See RIGHT OF SUIT—ACTS DONE IN EXERCISE OF SOVEREIGN POWERS.
[I. L. R., 1 Calc., 11

——— s. 17.

See CONTRACT ACT, s. 27.
[14 B. L. R., 76

See GUARANTEE . 5 B. L. R., 639

See LANDLORD AND TENANT—BUILDINGS ON LAND, RIGHT TO REMOVE—
[I. L. R., 8 Calc., 582
I. L. R., 5 Calc., 688

See LANDLORD AND TENANT—CONTRACT OF TENANCY, LAW GOVERNING—
[I. L. R., 5 Calc., 688

See STATUTE OF FRAUDS.
[5 B. L. R., 639, 643

——— *Construction of section.*—"*Inheritance and Succession.*"—*Per* PONTIFEX, *J.*—The true construction of section 17 of 21 George III, chapter 70, must confine the words "their inheritance and succession" to questions relating to inheritance and succession by the defendants. SARKIES *v.* PROSONOMOYEE DOSSEE
[I. L. R., 6 Calc., 794 : 8 C. L. R., 76

——— s. 21.

See PRIVY COUNCIL, PRACTICE OF—VALUATION OF APPEAL . 5 W. R., P. C., 34
[1 Moore's I. A., 363

——— s. 24.

See JUDICIAL OFFICERS, LIABILITY OF—
[2 Moore's I. A., 293

——— 27 Geo. III., c. 142, s. 10.

See JURISDICTION OF CRIMINAL COURT—EUROPEAN BRITISH SUBJECTS.
[7 Bom., Cr., 6

STATUTE—*continued.*

——— 39 & 40 Geo. III., c. 70, s. 3.

See HIGH COURT, JURISDICTION OF—HIGH COURT, MADRAS—CIVIL. [I. L. R., 8 Mad., 24

——— 49 Geo. III., c. 126.

See SALARY, ASSIGNMENT OF— [3 Moore's I. A., 435

——— 53 Geo. III., c. 155, ss. 99 & 100.

See JURISDICTION OF CIVIL COURT—REVENUE . . I. L. R., 1 Mad., 89

——— s. 105.

See JURISDICTION OF CRIMINAL COURT—EUROPEAN BRITISH SUBJECTS. [7 Bom., Cr., 6

See MAGISTRATE, JURISDICTION OF—GENERAL JURISDICTION. [6 Bom., Cr., 14

——— s. 111.

See ADVOCATE GENERAL. [4 Moore's I. A., 190

——— 56 Geo. III., c. 100.

See HABEAS CORPUS. [5 B. L. R., 418, 557

——— 4 Geo. IV., c. 81.

See JURISDICTION OF CRIMINAL COURT—EUROPEAN BRITISH SUBJECTS. [13 B. L. R., 474

——— 6 Geo. IV., c. 16.

See ENGLISH LAW. [2 Moore's I. A., 263

——— c. 85.

See SALARY, ASSIGNMENT OF— [3 Moore's I. A., 435

——— 9 Geo. IV., c. 33 (Fergusson's Act).

See LAND TENURE IN BOMBAY. [4 Bom., O. C., 1

——— c. 73, s. 36.

See INSOLVENT ACT, 9 GEO. IV. [1 Moore's I. A., 87

——— 2 & 3 Will. IV., c. 34.

See SUPREME COURT, MADRAS. [3 Moore's I. A., 329

——— c. 71.

See PRESCRIPTION—EASEMENTS—LIGHT AND AIR . . 3 B. L. R., O. C., 18
6 B. L. R., 85: S. C. on appeal, 12 B. L. R., 406
15 B. L. R., 361

STATUTE.—2 & 3 Will. IV—*continued.*

——— c. 114.

See ENGLISH LAW—BANKRUPTCY. [2 Moore's I. A., 263

——— 3 & 4 Will. IV., c. 41.

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES—APPEALABLE ORDERS . 5 Moore's I. A., 499

See PRIVY COUNCIL, PRACTICE OF—SPECIAL LEAVE TO APPEAL.
[1 Ind. Jur., O. S., 117: 8 Moore's I. A., 270

——— c. 42, s. 28.

See INTEREST—CASES UNDER ACT XXXII OF 1839 . 6 Moore's I. A., 232

——— c. 85, s. 43.

See CESSION OF BRITISH TERRITORY IN INDIA . . I. L. R., 1 Bom., 367
[10 Bom., 37

——— c. 123.

See JURISDICTION OF CRIMINAL COURT—EUROPEAN BRITISH SUBJECTS. [7 Bom., Cr., 6

——— 5 & 6 Will. IV., c. 54.

See MARRIAGE . . 2 Hyde, 65

——— 7 Will. IV., & 1 Vict., c. 85, s. 2.

See OFFENCE COMMITTED ON THE HIGH SEAS . . 1 B. L. R., O. Cr., 1

——— 1 Vict., c. 26, s. 9.

See WILL—ATTESTATION [13 B. L. R., 392

——— 2 & 3 Vict., c. 39.

See CUSTODY OF CHILDREN. [1 Hyde, 99

——— 3 & 4 Vict., c. 56.

See SHIP, REGISTRY OF— [4 Moore's I. A., 179

——— c. 65, s. 6.

See JURISDICTION—ADMIRALTY JURISDICTION . . 5 Bom., O. C., 64

——— 5 & 6 Vict., c. 39, ss. 1 & 3.

See PRINCIPAL AND AGENT—AUTHORITY OF AGENTS . 1 Ind. Jur., O. S., 17
[1 W. R., P. C., 43: 9 Moore's I. A., 140

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STATUTE.—6 & 7 Vict.—*continued.*

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——— 8 & 9 Vict., c. 109.

See CONTRACT—WAGERING CONTRACTS. [4 Moore's I. A., 339

See ENGLISH LAW—WAGERS. [4 Moore's I. A., 339

——— 11 & 12 Vict., c. 21.

See CASES UNDER INSOLVENCY.

See INSOLVENT ACT.

——— 12 & 13 Vict., c. 96.

See JURISDICTION OF CRIMINAL COURT—GENERAL JURISDICTION. [8 Bom., Cr., 63
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——— 16 & 17 Vict., c. 95.

See TERRITORY, TRANSFER OF— [2 Bom., 112: 2nd Ed., 106

——— 17 & 18 Vict., c. 104, s. 243.

See MERCHANT SEAMEN'S ACT. [I. L. R., 12 Calc., 438

——— c. 125.

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——— 18 & 19 Vict., c. 104.

See MERCHANT SHIPPING ACT. [Bourke, O. C., 388
1 Ind. Jur., N. S., 95, 271

——— 20 & 21 Vict., c. 66, s. 67.

See MILITARY COURTS OF REQUEST. [1 Mad., 443

——— 21 & 22 Vict., c. 70.

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——— c. 106.

See DOMICILE . I. L. R., 4 Calc., 106

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See JURISDICTION OF CRIMINAL COURT—OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—THEFT. [I. L. R., 10 Bom., 186

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See TERRITORY, TRANSFER OF — [2 Bom., 112: 2nd Ed., 106

——— c. 126.

See ARREST—CIVIL ARREST. [1 Hyde, 253

——— 23 & 24 Vict., c. 88.

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——— 24 Vict., c. 10.

See CASES UNDER JURISDICTION—ADMIRALTY JURISDICTION.

——— 24 & 25 Vict., c. 67.

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES—SUBSTANTIAL QUESTION OF LAW. [I. L. R., 1 Calc., 431

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[10 Bom., 37

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——— c. 73.

See COPYRIGHT OF ORNAMENTAL DESIGN. [8 B. L. R., 298

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See RULES OF HIGH COURT, MADRAS. [I. L. R., 1 Mad., 24

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STATUTE.—24 & 25 Vict., c. 104, s. 9—*continued.*

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[10 Bom., 37

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[7 B. L. R., 452, note

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[I. L. R., 3 Calc., 63
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——— ss. 11 & 13.

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[I. L. R., 3 Calc., 63
I. L. R., 4 Calc., 172

——— s. 12.

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[24 W. R., 366

——— s. 13.

See LETTERS PATENT, HIGH COURT, N.-W. P., CL. 27 . . . 2 N. W., 117
[S. C. Agra, F. B., Ed. 1874, 196

——— s. 14.

See CHIEF JUSTICE, POWER OF—
[I. L. R., 8 Calc., 63

——— s. 15.

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES—APPEALABLE ORDERS . . 13 B. L. R., 103

See LAND ACQUISITION ACT, 1870.
[15 B. L. R., 197

See REVIEW—POWER TO REVIEW.
[6 B. L. R., 333; 334, note

See CASES UNDER SUPERINTENDENCE OF HIGH COURT—CHARTER ACT, s. 15.

——— s. 18.

See DIVORCE ACT, s. 2.
[I. L. R., 10 Bom., 422

——— 26 Vict., c. 24.

See JURISDICTION—ADMIRALTY JURISDICTION . . . 6 B. L. R., 323

——— 28 & 29 Vict., c. 15, ss. 3 and 6.

See DIVORCE ACT, s. 2.
[I. L. R., 10 Bom., 422

——— 30 & 31 Vict., c. 13, s. 99.

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—MILITARY MEN.
[2 B. L. R., S. N., 3, 7

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——— c. 124, s. 11.

See OFFENCE COMMITTED ON THE HIGH SEAS . . . 7 Bom., Cr., 89

——— 32 & 33 Vict., c. 71.

See INSOLVENT ACT, s. 40.
[13 B. L. R., Ap., 9

——— 39 & 40 Vict., c. 46.

See CONSUL'S COURT AT ZANZIBAR, JURISDICTION OF—
[I. L. R., 3 Bom., 58

——— 42 & 43 Vict., c. 33, s. 144.

See ARMY DISCIPLINE ACT.
[7 C. L. R., 336

——— 43 & 44 Vict., c. 16, s. 10.

See MERCHANT SEAMEN'S ACT.
[I. L. R., 12 Calc., 438

——— 44 & 45 Vict., c. 58.

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—ARMY ACT.
[I. L. R., 13 Calc., 143
I. L. R., 10 Bom., 218

See SMALL CAUSE COURT, PRESIDENCY TOWNS—JURISDICTION—ARMY ACT.
[I. L. R., 13 Calc., 37

STATUTE, CONSTRUCTION OF—

See BOMBAY ACT III OF 1866, s. 1, CL. 2 . . . 4 Bom., Cr., 9

See LIMITATION—STATUTES OF LIMITATION—GENERALLY.
[13 B. L. R., 177, 254
I. L. R., 1 Bom., 19
I. L. R., 3 Bom., 207
I. L. R., 6 Bom., 26

See LIMITATION ACT, 1877, s. 14.
[I. L. R., 8 All., 475

See MADRAS MUNICIPAL ACT, 1878, s. 192
[I. L. R., 2 Mad., 362

See MADRAS REGULATION XXV OF 1802.
[14 B. L. R., 115

See MADRAS TOWNS IMPROVEMENT ACT, 1871, ss. 58-62.
[I. L. R., 3 Mad., 129

See MINOR—CASES UNDER MINORS ACT (BOMBAY) . I. L. R., 4 Bom., 635

See PENSIONS ACT, 1871.
[I. L. R., 1 Bom., 523, 531
I. L. R., 2 Bom., 346

See SUPREME COURT, BOMBAY.
[3 Moore's I. A., 468, 488

See TRANSFER OF PROPERTY ACT, s. 2.
[I. L. R., 12 Calc., 583

STATUTE, CONSTRUCTION OF—*continued.*

1. ——— **Mode of construction.**—The meaning of an Act is to be gathered solely by reference to the Act itself. MUDBOOSOODEN DEY *v.* BAMACHURN MOOKERJEE . . . **1 Hyde, 100**

2. ——— *Duty of Court.*—Where the terms of an Act are clear and plain, it is the duty of the Court to give effect to it as it stands. GURREBULLAH SIRKAR *v.* MOHUN LALL SHAHA **[I. L. R., 7 Calc., 127 : 8 C. L. R., 409**

3. ——— *Preamble.*—A rule of construction is that the enacting words of a statute may be carried beyond the preamble, if words be found in the former strong enough for the purpose. CHINNA AIYAN *v.* MAHOMED FAKRUDIN SAIB . . . . . **2 Mad., 322**

4. ——— *Pre-existing state of law.*—The pre-existing state of the law, as recognised by the tribunals, is one of the chief means of interpreting laws of procedure. PRABHAKARBHAT *v.* VISHWAMBHAR . . . **I. L. R., 8 Bom., 313**

5. ——— *Reasons for enacting law.—Motives of parties.*—If the words of a law are clear and positive, they cannot be controlled by any consideration of the motives of the party to whom it is to be applied, nor limited by what the Judges who apply it may suppose to have been the reasons for enacting it. JODOONATH BOSE *v.* SHUMSOONNISSA BEGUM. BUZLOOR RUHEEM *v.* SHUMSOONNISSA BEGUM **[8 W. R., P. C., 3 : 11 Moore's I. A., 551**

6. ——— *Intention of Legislature in framing Act.*—It is not for a Civil Court to speculate upon what was in the mind of the Legislature in passing a law, but the Court must be bound by the words of the law judicially construed. MOHESH CHUNDER DOSS *v.* MADHUB CHUNDER SIRDAR **[13 W. R., 85**

7. ——— *"Objects and reasons" of Act.—Forms in which Bill came before Council.*—For the purpose of ascertaining the intention of the Legislature in passing an Act, where that intention, so far as can be gathered from the Act itself, appears doubtful, the "objects and reasons" may be referred to. It is not, however, permissible to refer, for this purpose, to the various forms in which the Bill was brought before the Legislature. MOOSA *v.* ESSA . . . . **I. L. R., 8 Bom., 241**

8. ——— *Stamp duty, Charge of.*—If the express words of an Act do not warrant or necessitate a demand of duty or charge, it is not competent to a Court of law to extend such enactment or to give to the words a meaning beyond their strict and literal signification, so as to include any case which may reasonably come within the spirit of the enactment. IN THE MATTER OF THE PORT CANNING LAND COMPANY . . **16 W. R., 208**

9. ——— *Special and general procedure.*—Inconvenience pointed out of introducing into Acts relating and intituled as relating to special jurisdiction only provisions affecting civil procedure generally. JUDOW MULJI *v.* CHHAGAN RAICHAND . . . **I. L. R., 5 Bom., 306**

STATUTE, CONSTRUCTION OF.—Mode of construction—*continued.*

10. ——— *Retrospective effect of Act.*—Statutes are *primâ facie* deemed to be prospective only. "*Nova constitutio futuris formam imponere debet, non præteritis.*" *Moon v. Durden, 2 Exch., 22,* approved of. DOOLUBDASS PETTAMBERDASS *v.* RAMLOLL THACKOORSEYDASS **[5 Moore's I. A., 109**

CHUTTERDHARRE MISSER *v.* NURSINGH DUTT SOOKOOL . . . . **3 Agra, 371**
[S. C. Agra, F. B., Ed. 1874, 163

11. ——— *Retrospective effect of Acts, Principle as to.—Mad. Act VIII of 1865.*—In a suit for rent for 1865, 1866, it was objected that pottahs and muchalkas were not exchanged as required by Act VIII of 1865, which came into force on 1st January 1866. *Held* (reversing the decision of the Civil Judge) that Act VIII of 1865 was inapplicable to the case. The general principle is that rights already acquired shall not be affected by the retro-action of a new law. Rules as to procedure are not exceptions, but the question here was not one of processual but of material law. MORRIS *v.* SAMBAMURTHI RAYAR . **6 Mad., 122**

12. ——— *Penal provision in statute.—Retrospective effect.*—Retrospective effect is not to be given to the penal provision of section 2, Bengal Act VI of 1862. NOBOKANTH DEY *v.* BORADAKANTH ROY . . . **1 W. R., 100**

13. ——— *Penal statute.—Excise Act.—Beng. Act VII of 1878.*—Penal statutes must be construed strictly,—*i.e,* nothing is to be regarded as within the meaning of the statute which is not within the letter and clearly and intelligibly described in the very words of the statute itself. EMPRESS *v.* KOLA LALANG **[I. L. R., 8 Calc., 214 : 10 C. L. R., 155**

14. ——— *Penal statute.—Act XXXI of 1860.*—A penal statute should, when its meaning is doubtful, be construed in the manner most favourable to the liberties of the subject, and this is more especially so when the penal enactment is of an exceptional character. REG. *v.* BHISTA BIN MADANNA . . **I. L. R., 1 Bom., 308**

15. ——— *Repeal by implication.—Repugnancy.*—Statutes are not to be held to be repealed by implication, unless the repugnancy between the new provision and a former statute be plain and unavoidable. SITAPATHI NAYUDU *v.* QUEEN . . . . **I. L. R., 6 Mad., 32**

16. ——— *Implied repeal.—Civil Procedure Code, 1859, s. 187.—Act IX of 1850, s. 101.*—A special enactment is not impliedly repealed by a subsequent general enactment, if the two enactments are not so repugnant as to be

STATUTE, CONSTRUCTION OF.—Mode of construction—*continued.*

incapable of standing together. Act IX of 1850, section 101, was not repealed by section 187 of Act VIII of 1859. SABAPATI MUDALIYAR *v.* NARAYANSVAMI MUDALIYAR . . . . . **1 Mad., 115**

17. ——————— *Effect of repeal.—Retrospective effect.—Deccan Agriculturists' Relief Act, 1879.—General Clauses Consolidation Act, 1868, s. 6.*—The general rule is that a repealed statute cannot be acted on after it is repealed; but, as provided in section 6 of the General Clauses Act, 1868, all matters that have taken place under it before its repeal remain valid. But a new order of a Court, not ancillary or provisional, but directing a further substantive step in the execution of a decree, is a new proceeding which should be governed by the law in force when the order is made, and not by the law which it repeals. An Act passed to promote some public important object, such as the protection of the property of the Deccan agriculturists, may be given on that account a retro-active operation, if necessary, as the rule against such operation rests itself on such a general public interest, which may, under the circumstances, be deemed of less importance than the one embodied in the Act. SHIVRAM UDARAM *v.* KONDAJI MURTAJI **[I. L. R., 8 Bom., 340**

18. ——————— *Law governing suit when law is changed pending suit.*—The law as it exists when a suit is commenced must decide the rights of the parties to the suit, unless the Legislature has expressed a clear intention to vary the relative rights of the parties to each other in the new law. Rule followed in the interpretation of Act X of 1859. BUNGSHEEDHUR DOSS *v.* MAHOMED KHULEEL . . . . . **1 Hay, 369**

19. ——————— *Alteration of law while suit is pending.—Act XIX of 1857, s. 219.—Repeal, Effect of.*—Where the law is altered while a suit is pending, the law as it existed when the action was commenced must decide the rights of the parties, unless the Legislature, by the language used, shows a clear intention to vary the mutual relations of such parties. GUJERAT TRADING COMPANY *v.* TRIKAMJI-VELJI . **3 Bom., O. C., 45**

20. ——————— *Repeal, Effect of, on right of action.*—A right of action is not taken away by a change in the law, unless by express enactment; but in the case of mere procedure, unless something is said to the contrary, the new law, where its language is general in its terms, applies without reference to the former law or procedure. FRAMJI BOMANJI *v.* HORMASJI BARJORJI **[3 Bom., O. C., 49**

21. ——————— *Right of suit.—Act XVI of 1842.—Act VIII of 1868, s. 1.—Act XIV of 1870, s. 1.*—On the 27th of June 1866, it was agreed by and between *B.*, a zemindar, and *D.*, a ryot, that the latter should pay R20 annually as the rent of his holding, and that for the future no further sum in excess should be demanded or suit brought for enhancement of rent. At the date of the agreement Act XVI of 1842 was in force. The settlement of the district, where the land, in respect of which the agreement was made, was situate, expired on the first of July 1870, before when Act XVI of 1842 was repealed by Act VIII of 1868, which Act was repealed by Act XIV of 1870, both Acts saving any right or title which had already accrued. *Held* that no right of action to avoid or right to repudiate the engagement of the 27th of June 1866, accrued to the zemindar before the passing of those Acts. DEOJEET *v.* BHUGWANT . **6 N. W., 373**

22. ——————— *Statutes making contracts void and those prohibiting actions on them.*—The distinction between enactments which declare contracts absolutely void and those which simply provide that no action shall be brought upon such contracts pointed out. VISSAPPA *v.* RAMAJOGI . . . . . **2 Mad., 341**

23. ——————— *Statute imposing duty.—Action for failure to perform it.*—Where a statute imposes a duty, it, without express words, gives an action for the failing to perform that duty, and for wrongfully performing it. PONNUSAMY TEVAR *v.* COLLECTOR OF MADURA . . **3 Mad., 35**

24. ——————— *Limitation Act, XIV of 1859, ss. 20, 21.*—In interpreting statutes, the words "must" and "shall" may, in some cases, be substituted for the word "may," but only for the purpose of giving effect to the intention of the Legislature. In the absence of proof of such intention, the word "may" should be taken as used in its natural, *i e.*, in a permissive, and not in an obligatory, sense. DELHI AND LONDON BANK *v.* ORCHARD **[I. L. R., 3 Calc., 47: L. R., 4 I. A., 127**

25. ——————— *Hindu Wills Act.*—In construing an Act of the Government of India, passed in the form peculiar to the Hindu Wills Act, the sound rule of construction is to give their full and natural meaning to the provisos, and only to give effect to the enactments contained in the applied sections and chapters so far as the latter do not contravene the full and natural meaning of the provisos. ALANGAMONJORI DABEE *v.* SONAMONI DABEE **[I. L. R., 8 Calc., 637: 10 C. L. R., 459**

26. ——————— *Land Acquisition Acts.*—Acts relating to the acquisition of lands for public purposes must be construed strictly in favour of the subject. SORABJI NASSARVANJI DUNDAS *v.* JUSTICES OF THE PEACE FOR THE CITY OF BOMBAY **[12 Bom., 250**

27. ——————— *Statute of Limitations, 21 Jac. I., c. 16.*—Where words have been long used in a technical sense, and have been judicially construed to have a certain meaning, and have been adopted by the Legislature as having a certain meaning prior to a particular statute in which they are used, the rule of construction of statutes requires

STATUTE, CONSTRUCTION OF.—Mode of construction—*continued.*

that the words used in such statute should be construed according to the sense in which they have been so previously used, although that sense may vary from the strict literal meaning of the words. The words in the Statute of Limitations, 21 Jac. I., Cap. 16, section 7, "beyond the seas," are synonymous in legal import with the words "out of the realm" or "out of the land" or "out of the territories," and are not to be construed literally. RUCKMABOYE *v.* LULLOOBHOY MOTTICHUND

[5 Moore's I. A., 234

28. ——————— *Beng. Rent Act, X of 1859, s. 77.—Meaning of "determined."*—The word "determined" meant "legally decided by a Court of competent jurisdiction." GHALIB ALI *v.* KHILLOO

[3 N. W., 51: Agra, F. B., Ed. 1874, 243

29. ——————— *Road Cess Act, Beng. Act X of 1871.—Interpretation clause, Construction of.*—In a suit on a bond by which certain land, admittedly lakhiraj, was mortgaged, the purchaser of a portion of the mortgaged property at an auction sale for arrears of road cess due under Bengal Act X of 1871 was added as a defendant, and the lower Courts holding that the effect of such a sale was to pass the property to the defendants free of encumbrances, made a decree excluding that portion from liability in respect of the mortgage-bond. *Held*, on the construction of Bengal Act X of 1871, that the sale had no such effect, and that the whole of the property was liable to be sold in satisfaction of the plaintiffs' claim. Although the effect of an interpretation clause is to give the meaning assigned by it to the word interpreted in all places in the Act in which that word occurs, it is not the effect of an interpretation clause that the thing defined has annexed to it every incident which may seem to be attached to it by any other Act of the Legislature. It does not follow, therefore, that because lakhiraj property is defined in the Road Cess Act, 1871, to be a tenure, all the interests and consequences attached by other Acts to tenures generally, or to particular classes of tenures, become annexed to lakhiraj property. UMACHURN BAG *v.* AJADANNISSA BIBEE

[I. L. R., 12 Calc., 430

30. ——————— *Tax illegally levied.*—A statute not only enacts its substantive provisions, but, as a necessary result of legal logic, it also enacts as a legal proposition everything essential to the existence of the specific enactments. Where the Legislature has imposed certain duties both upon the tax-payer and upon the Municipal Commissioners, and those duties, as to the tax-payer, enforceable by penalties, are to be performed at a particular time,—*Held* that there was implied a "latent proposition of law," which is as clear and binding as if it had been explicitly declared. That proposition is that there shall be a legally-sanctioned tax at the period at which the duties are to be performed. LEMAN *v.* DAMODARAYA . . I. L. R., 1 Mad., 158

STATUTE, CONSTRUCTION OF.—Mode of construction—*continued.*

31. ——————— *Acts imposing taxes.—Ambiguity in Acts.*—In order to impose a tax, due, rate, or toll upon a subject, the framers of the Act or bye-law under which such tax, &c., is imposed must use clear and unambiguous words to effect their purpose. When the words used are ambiguous, the intendment of the Courts will be in favour of the subject upon whom the tax is sought to be imposed. Thus where the framers of the Surat bye-law imposed a tax of R1 per Surat mân upon "copper" imported into Surat for consumption, it was held that copper wrought up into pots did not fall within the words of the bye-law. *Semble*,—That when a tax is imposed upon goods imported into a town for consumption, and such goods, after having been subjected to the tax upon being imported into the town, are afterwards taken out for sale into the neighbouring villages and brought back unsold, such goods are not liable to be subjected to tax a second time. DULLABH SHIVLAL *v.* HOPE . 8 Bom., A C., 213

STATUTE, PROMULGATION OF—

See ONUS PROBANDI—MORTGAGE.

[B. L. R., Sup. Vol., 415

STATUTE, REPEAL OF—

——— **Effect of—**

See CASES UNDER APPEAL—RIGHT OF APPEAL, EFFECT OF REPEAL ON—

See CASES UNDER EXECUTION OF DECREE—EFFECT OF REPEAL OF ACT PENDING SUIT.

See LIMITATION—STATUTES OF LIMITATION—LIMITATION ACT, 1871.

[I. L. R., 1 Bom., 287

See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—MADRAS ACT III OF 1865

[I. L. R., 1 Mad., 223

See OFFENCE COMMITTED BEFORE PENAL CODE CAME INTO OPERATION.

[I. L. R., 1 All., 599
I. L. R., 2 Calc., 225

STATUTE OF DISTRIBUTION.

See PARSIS . . I. L. R., 2 Bom., 75

STATUTE OF FRAUDS (29 Car. II., c. 3).

See EVIDENCE—PAROL EVIDENCE—VARYING OR CONTRADICTING WRITTEN INSTRUMENTS . . 9 B. L. R., 245

——— **Sufficiency of signature under—**

See CONTRACT—ALTERATION OF CONTRACTS—ALTERATION BY PARTY.

[8 B. L. R., 305

1. ——————— *Application of, to Parsis*—The Statute of Frauds (29 Charles II., Cap. 3)

STATUTE OF FRAUDS (29 Car. II., c. 3)—*continued.*

except so far as it has been repealed, applies to Parsis in India. BAI MANECKBAI *v.* BAI MERBAI [I. L. R., 6 Bom., 363

2. ——— *Application of.—Mahomedans*—The Statute of Frauds is to some extent in force in the Island of Bombay. The 4th section is not applicable to Mahomedans. MANIKJI MEHERVANJI *v.* RAHIMTULLA ALUBHAI [1 Bom., Ap., 1

3. ——— *Application of, to the High Court, Original Civil Side.—Quære,*—Does the Statute of Frauds form any part of the procedure of the High Court in its original jurisdiction? RAM SAGUR DUTT *v.* NOBOGOPAUL MOOKERJEE [Bourke, O. C., 367

4. ——— s. 4.—*Application of.—European defendant.*—The 4th section of the Statute of Frauds applies to cases in the mofussil in which the defendant alone is a British-born subject. MUTTIYA PILLAI *v.* WESTERN . . . 1 Mad., 27

5. ——— *21 Geo. III., c. 70, s. 17.—Hindu defendant.*—The 4th section of the Statute of Frauds does not apply to suits in which the defendant is a Hindu. NEKRAM JEMADAR *v.* ISWARIPRASAD PACHURI [5 B. L. R., 643: 14 W. R., 305

6. ——— *Hindu and Mahomedan defendants.*—Where a contract is proved to have been entered into, but no memorandum thereof in writing has been signed by the parties, a Hindu defendant is not entitled to plead the Statute of Frauds, that statute not being applicable to Hindu (or *semble,*—Mahomedan) defendants. BORRODAILE *v.* CHAINSOOK BUXYRAM [1 Ind. Jur., O. S., 70: 1 Hyde, 51

7. ——— *21 Geo. III., c. 70, s 17.—Contract of guarantee.*—A contract of guarantee is a "matter of contract and dealing" within the terms of section 4 of 21 George III., cap. 70, and therefore such a contract made by a Hindu is not affected by section 4 of the Statue of Frauds. JAGADAMBA DASI *v.* GROB 5 B. L. R., 639

STATUTORY POWERS.

See CASES UNDER INJUNCTION—SPECIAL CASES - PUBLIC OFFICERS WITH STATUTORY POWERS.

See RAILWAY COMPANY. [10 B. L. R., 241

See ZEMINDAR, DUTY OF— [14 B. L. R., 209

STAY OF PROCEEDINGS.

——— *Suits in respect of same subject-matter in different Courts.—Civil Procedure Code, 1877, s. 20.—A.*, who was employed by *B. & Co.* as their agent at Calicut, instituted a suit for the balance of an account against his principals in the

STAY OF PROCEEDINGS—*continued.*

Court of the Subordinate Judge there in July 1878. In December of the same year, *B. & Co.* instituted the present suit against *A.*, for an account, and for damages caused by his alleged negligence. *Held* that as in both suits practically the same issues were triable, *A.* was entitled, as having been first to institute his suit, to proceed in the Court in which he had chosen to bring his suit and to have the other suit stayed, but without prejudice to the right of the plaintiffs in the latter suit to institute a cross claim in the Calicut Court. MECKJEE KHETSEE *v.* KASOWJEE DEVACHUND [4 C. L. R., 282

STEAM-TUGS.

1. ——— **Regulation as to tugs.**—*River navigation.—Towing.*—A party having two tugs, *A.* and *B.*, undertakes to supply tugs to two vessels, *P.* and *Q.*, in the order of their engagements as soon as the tugs are free. *A.* is first free, and tows *P.*, which has the prior claim, to Diamond Harbour, where she becomes disabled. *B.* subsequently tows *Q.*, and finding *A.* disabled at Diamond Harbour, leaves *Q* and tows *P.* out to sea, returning subsequently for *Q.* *Held* that *B.* was not justified in leaving *Q.*, but that she ought to have towed her out to sea without interruption. NOWRJEE NUSSERWANJEE *v.* JOHANNES . . . 1 Hyde, 293

2. ——— **Government pilots.**—*Order to Government pilots prohibiting their engaging tugs at exorbitant charge.*—The Government may prohibit its pilots from allowing any vessels under their pilotage charge to be taken in tow of a steamer the owners of which will only render their services on exorbitant terms. ROGERS *v.* RAJENDRO DUTT [2 W. R., P. C., 51: 8 Moore's I. A., 103

STOLEN PROPERTY.

Col.

1. OFFENCES RELATING TO— . . 5880
2. DISPOSAL OF BY THE COURT . . 5884

1. OFFENCES RELATING TO—

1. ——— **Concealment of stolen property.**—*Penal Code, ss. 411, 414.—Held* that the prisoner, who, having received stolen property, concealed it in his house, could not be charged and convicted for two offences,—*viz.*, of having dishonestly received stolen property under section 411, Penal Code, and of assisting in the concealment of stolen property under section 414, which applies to persons whose dealing with the stolen property is not of such a kind as to make them guilty of dishonestly receiving or retaining it. GOVERNMENT *v.* NOWLIA [1 Agra, Cr., 9

2. ——— **Assisting in concealing or disposing of.**—*Guilty knowledge.*—Where persons are charged with assisting in concealing or disposing of property which they know or have reason to believe to be stolen, the nature of the property, as well as the circumstances under which it was being

STOLEN PROPERTY—*continued.*

1. OFFENCES RELATING TO—*continued.*

Assisting in concealing or disposing of —*continued.*

made away with, must be taken into consideration. REG. *v.* HARISHANKAR FAKIRBHAT [2 Bom., 136: 2nd Ed., 130

3. ——— **Voluntarily assisting in the disposal of stolen property.**—"*Believe.*"—"*Suspect.*"—*Penal Code, s. 414.*—The word "believe" in section 414 of the Penal Code is much stronger than the word "suspect" and involves the necessity of showing that the circumstances were such that a reasonable man must have felt convinced in his mind that the property, with which he was dealing, was stolen property. It is not sufficient in such a case to show that the accused person was careless, or that he had reason to suspect that the property was stolen, or that he did not make sufficient inquiry to ascertain whether it had been honestly acquired. EMPRESS *v.* RANGO TIMAJI [I. L. R., 6 Bom., 402

4. ——— *Penal Code, ss. 193 and 414.—Intention to get innocent person punished.—Separate offences, Conviction of.*—Where the petitioner was convicted of having voluntarily assisted in concealing stolen railway pins in a certain person's house and field, with a view to having such innocent person punished as an offender,—*Held* that the Magistrate was right in convicting and punishing the petitioner for the two separate offences of fabricating false evidence for use in a stage of a judicial proceeding under section 193 of the Penal Code, and of voluntarily assisting in concealing stolen property under section 414, Penal Code. EMPRESS *v* RAMESHAR RAI . I. L. R., 1 All., 379

5. ——— **Money obtained on forged money orders.**—*Penal Code, s. 410.*—Money obtained upon forged money orders is not "stolen property" within the definition thereof given in the Penal Code, section 410. QUEEN *v.* MON MOHUN ROY . . . . . 24 W. R., Cr., 33

6. ——— **Receiving stolen property.**—*Proof of guilty knowledge.*—In a case in which the accused is charged with receiving stolen property, it must be clearly proved that he retained the property with guilty knowledge. QUEEN *v.* YAR ALI. IN THE MATTER OF THE PETITION OF YAR ALI [18 W. R., Cr., 70

7. ——— *Penal Code, ss. 411 and 409.—Criminal breach of trust.*—A prisoner cannot be convicted, under section 411 of the Penal Code, for dishonestly receiving or retaining stolen property, in respect of property which he himself has been convicted, under section 409, Penal Code, of having obtained possession by committing criminal breach of trust. QUEEN *v.* SHUNKUR [2 N. W., 312

8. ——— *Property stolen at dacoity.—Penal Code, s. 412.—Proof of commission of dacoity.*—In order to sustain a conviction, under

STOLEN PROPERTY—*continued.*

1. OFFENCES RELATING TO—*continued.*

Receiving stolen property—*continued.*

section 412 of the Penal Code, of receiving property stolen at a dacoity, it is necessary to prove that the prisoner knew, or had reason to believe, that dacoity had been committed, or that the persons from whom he acquired the property were dacoits. QUEEN *v.* JOGESHUR BAGDEE . . 7 W. R., Cr., 109

QUEEN *v.* BISHOO MANJEE . 9 W. R., Cr., 16

9. ——— *Evidence of dishonest receipt of property.*—Where stolen property is found with a person who admits having received it, it may be fairly presumed that the receipt was a dishonest one, unless the receiver's conduct is satisfactorily explained. IN THE MATTER OF THE PETITION OF RAMJOY KURMOKAR . 25 W. R., Cr., 10

10. ——— *Penal Code, s. 411.—Animal "nullius proprietas."—Bull set at large in accordance with Hindu religious usage.—Appropriation of bull.*—A person was convicted and sentenced under section 411 of the Penal Code for dishonestly receiving a bull, knowing the same to have been criminally misappropriated. It was found that, at the time of the alleged misappropriation, the bull had been set at large by some Hindu, in accordance with Hindu religious usage, at the time of performing funeral ceremonies. *Held* that the bull was not, at the time of the alleged misappropriation, "property" within the meaning of the Penal Code, inasmuch as not only was it not the subject of ownership by any person, but the original owner had surrendered all his rights as its proprietor; that it was therefore "*nullius proprietas,*" and incapable of larceny being committed in respect of it; and that the conviction must be set aside. QUEEN-EMPRESS *v.* BANDHU . . . I. L. R., 8 All., 51

11. ——— *Penal Code, ss. 83, 411.—Discharge of child-thief.—Doli incapax.—Proof of theft.—Conviction of receiver.*—The fact that a child has been tried for theft and discharged under section 215 of the Code of Criminal Procedure, 1872, on the ground of want of understanding within the meaning of section 83 of the Penal Code, is no bar to the conviction of a person charged under section 411 of the Penal Code with receiving the property alleged to have been stolen. QUEEN *v.* BEGABAYI KRISHNA SARANU [I. L. R., 6 Mad., 373

12. ——— **Possession of stolen property.**—*Evidence of theft.*—Possession of property which has been stolen from the owner is generally at best only evidence of theft when the date of the theft is so recent as to make it reasonable to presume, in the absence of explanation, that the person in whose possession the property is found must have obtained the possession by stealing. QUEEN *v.* POROMESHUR AHEER . . 23 W. R., Cr., 16

13. ——— *Guilty knowledge, Inference of.*—Where property sufficiently identified to be the property of one person is found to be in the possession of another person without leave or

STOLEN PROPERTY—*continued.*

1. OFFENCES RELATING TO—*continued.*

Possession of stolen property—*continued.*

license or any legal permission of the owner, it is for the party in whose possession the property is found duly to account for its possession, and unless he can do so a jury may fairly infer, in such circumstances, that it was with a guilty knowledge that the prisoner took that which he knew to be not his own. QUEEN v. SHURRUFFOODDEEN **13 W. R., Cr., 26**

14. ——————— *Presumption.—Penal Code, s. 411.—Receiver of stolen property.—Presumption as to possession of property after theft.*—A common brass drinking-cup was stolen in October 1883, and was discovered in the possession of the accused in September 1884.—*Held*, in a case in which the accused was tried for receiving stolen property, that his possession of the stolen property, coupled with the fact that he had failed to give an account as to how he became possessed of the property, would, under ordinary circumstances, raise a probable *presumption* of his guilt, but where, as in this case, such possession was not a recent possession, but one eleven months subsequent to the act of theft, the presumption against him was so slight that, taken by itself, he ought not to be called upon to explain how his possession was acquired. The question of what is or is not a recent possession of stolen property is to be considered with reference to the nature of the article stolen. *Rex* v. *Adam, 3 C. & P., 600; Rex* v. *Cooper, 8 C. & P., 318; Rex* v. *Partridge, 7 C. & P., 551,* followed. INA SHEIKH v. QUEEN-EMPRESS . **I. L. R., 11 Calc., 161**

15. ——————— *Penal Code, s. 411.—India-rubber, Possession of.—Smuggling.*—Where a person was charged under section 411 of the Penal Code with having received stolen property (rubber, the produce of the Government forests at Cachar), and it was not proved that the rubber came from the Government forest, or that it was stolen property, it was held that the conviction under section 411 was bad, and that he could not be convicted of smuggling—smuggling india-rubber not being an offence under the Penal Code. QUEEN v. BAJO HURI . . . . **19 W. R., Cr., 37**

QUEEN v. DASSORUT DASS . **18 W. R., Cr., 63**

And *see* QUEEN v. GOUREE CHURN DOSS **[19 W. R., Cr., 38 note**

16. ——————— *Presumption.—Dishonest receipt of stolen property.—Dacoity.—Jury.*—In considering whether the possession of stolen goods raises a presumption of dishonest receipt of stolen property, the attention of the jury should be drawn to the necessity of satisfying themselves that the possession is clearly traced to the accused. The fact of stolen property being found concealed in a man's house would be sufficient to raise a presumption that he knew the property to be stolen property, but it would not be sufficient to show that it had been acquired by dacoity. EMPRESS v. MALHARI **[I. L. R., 6 Bom., 731**

STOLEN PROPERTY—*continued.*

1. OFFENCES RELATING TO—*continued.*

Possession of stolen property—*continued.*

17. ——————— *Penal Code, ss. 411, 414.—Concealment of stolen property.—Husband and wife.*—The only evidence of the receipt of stolen property by a wife was the fact that the property was found in the house where she lived with her husband. *Held* that that constituted the possession of the husband rather than that of the wife. QUEEN v. DESILVA . . . **5 N. W., 120**

18. ——— **Retaining stolen property.**—*Penal Code, s. 411.—Knowledge.*—The offence of dishonest retention of stolen property, under section 411 of the Penal Code, may be complete without any guilty knowledge at the time of the receipt. ANONYMOUS . . . . . **4 Mad., Ap., 42**

19. ——————— *Evidence of guilty knowledge.*—Evidence of guilty knowledge is necessary to a conviction on a charge of dishonestly retaining stolen property. QUEEN v. DOYAL SHILYDAR . . . . . **6 W. R., Cr., 87**

20. ——————— *Penal Code, s. 411.—Proof that the property is stolen property necessary.—Guilty knowledge of retainer.*—Where a person is accused of an offence under section 411 of the Penal Code, he cannot, where the circumstances do not raise the presumption that he received the property knowing it to be stolen, be convicted of that offence merely because he is in possession of the property and does not account for his possession. The prosecution must prove both that the property was stolen and that the accused received it dishonestly. QUEEN-EMPRESS v. BURKE **[I. L. R., 6 All., 224**

2. DISPOSAL OF BY THE COURT.

21. ——— **Right to stolen property.**—*Property in cash or notes.*—The property in stolen cash, and bills or notes payable to bearer which circulate as cash, is inseparable from possession ordinarily. The property in stolen goods remains in the person from whom they are stolen. ANONYMOUS CASE **[1 N. W., Ed. 1873, 298**

22. ——————— *Currency note.—Right to, as between Government and the person from whom it has been stolen, where thief has cashed it at treasury.*—A R50 currency note was changed by one *M.* at the Government Treasury on the Shevaroy Hills. *M.* was subsequently convicted by the Sessions Court of Salem of having stolen the note from one *S.* The note was produced in evidence at the trial, and the Court directed it to be given up to *S.*, from whom it had been stolen. *Held* that the Sessions Court was wrong A note of this kind being in legal view money, the property in it passes by mere delivery, and nothing short of fraud in taking an instrument payable to bearer will engraft an exception upon the rule. QUEEN v. MUPPEN. IN THE MATTER OF THE PETITION OF COLLECTOR OF SALEM **[7 Mad., 233**

STOLEN PROPERTY—*continued.*

2. DISPOSAL OF BY THE COURT—*continued.*

23. ——— Order of Court as to property.—*Restoration of property by Criminal Court.—Remedy by suit in Civil Court.*—If personal property, of which a complainant has been forcibly or illegally deprived, comes into the Magistrate's hands, he may order its restoration to its owner, otherwise the complainant must seek to recover it or its value through the Civil Court. RAMJEEBUN DOOBEY *v.* LUCHMONEE DABEA . . W. R., 1864, Cr., 5

24. ——— *Criminal Procedure Code, 1861, 1869, s. 132A.*—Under section 132A, Criminal Procedure Code (VIII of 1869), no order can be passed with reference to the disposal of any property in a Criminal Court, unless that property is produced before the Court: such order must be made at the time of passing judgment. IN THE MATTER OF THE PETITION OF RASH MOHUN GOSHAMY. RASH MOHUN GOSHAMY *v.* KALI NATH RAHA . . . . . 19 W. R., 3

25. ——— *Disposal of by Magistrate where no order had been made by lower Court.—Criminal Procedure Code, 1869, ss. 132A, 132B.*—The Assistant Magistrate, on a review of the proceedings of the Subordinate Magistrate, passed orders directing that certain produce should be delivered over to the parties whom he considered entitled thereto. The Subordinate Magistrate had passed no orders under section 132A of the Criminal Procedure Code. *Held* that the orders of the Assistant Magistrate were made without any jurisdiction. ANONYMOUS . . . . 5 Mad., Ap., 22

26. ——— *Disposal of, where prisoner acquitted.*—Where a person was accused of dishonestly receiving stolen property, knowing it to be stolen, and was discharged by the Magistrate on the ground that there was no evidence that the property was stolen,—*Held* that the Magistrate was competent, believing that the property was stolen, to make an order under section 418 of Act X of 1872 regarding its disposal. EMPRESS *v.* NILAMBHAR BABU . . . I. L. R., 2 All., 276

27. ——— *Disposal of by Criminal Court.—Criminal Procedure Code, 1872, ch. XXX, ss. 415, 416, 417.—Restoration of property made over by the police.*—*A.* was charged before the police with theft of certain property. The police considered that no theft had been committed, and reported the matter to a second class Magistrate, who, agreeing with the police, ordered the property to be restored to *A.* On application by the complainant, the District Magistrate found that *A.* had removed, though not dishonestly, the property from *B.*, a deceased person, and ordered the property to be given by the police to *B.'s* heirs. It was so given. *Held* that the provisions of Chapter XXX of the Code of Criminal Procedure do not apply to such a case. Sections 415, 416, and 417 contemplate proceedings preliminary to, and independent of, inquiry. Upon general principles, where there has been an inquiry, or a trial, and the accused person is discharged or acquitted by any Criminal Court, that Court is bound

STOLEN PROPERTY—*continued.*

2. DISPOSAL OF BY THE COURT—*continued.*

Order of Court as to property—*continued.*

to restore that property into the possession of the person from whom it is taken, unless, as provided for by section 418, such Court is of opinion that "any offence appears to have been committed" regarding it, then such order as appears right for the disposal of the property may be made. The High Court cannot direct the restoration of the property already delivered by the police under the illegal order of the District Magistrate. IN RE ANNAPURNABAI [I. L. R., 1 Bom., 630

IN THE MATTER OF THE PETITION OF BASUDEB SURMA GOSSAIN. BASUDEB SURMA GOSSAIN *v.* NAZIROODDEEN . I. L. R., 14 Calc., 834

But *see* IN RE HAREE BUNDHOO SANTRA [5 W. R., Cr., 55

28. ——— *Criminal Procedure Code, 1882, s. 517.—High Court's Criminal Procedure Act, X of 1875, s. 115.—"Any property."—Reference to Police Magistrate.—Evidence on reference.—Review.*—The words "any property" in section 115 of the High Court's Criminal Procedure Act, X of 1875, include as well property voluntarily produced before the Magistrate by a witness in the case, as property seized by the police or found on the person of the prisoner. The reference to a Magistrate under section 115 of the High Court's Criminal Procedure Act, X of 1875, is not a trial for the final determination of the rights of the parties, and it is not incumbent upon the Magistrate on such reference to hear witnesses, but he may rightly order the delivery of property to that one of the rival claimants whom he considers, upon the statement of their respective cases, to have made out a *primâ facie* case, and it is not competent to the High Court to review the decision at which the Magistrate so arrives. REG. *v.* RAMDAS SAMALDAS. EX PARTE MADAVJI DHARRAMSI . . . . 12 Bom., 217

29. ——— *Criminal Procedure Code, 1882, s. 523.—Code of Criminal Procedure, 1872, ss. 415 and 416.—Delivery of property seized or stolen.—Inquiry into ownership.*—The provisions of section 523 of the Code of Criminal Procedure, Act X of 1882, are wider than the corresponding provisions of the Code of 1872 (sections 415 and 416), and they enable the Magistrate to enquire into the ownership of property seized by the police, and deliver it to the person entitled to it, instead of to the person from whom it is taken. *In re Annapurnabai, I. L. R., 1 Bom., 630,* distinguished. QUEEN-EMPRESS *v.* JOTI RAJNAK [I. L. R., 8 Bom., 338

30. ——— *Criminal Procedure Code, 1882, ss. 517, 520, 523.—Order of Magistrate restoring property alleged to be stolen.—District Magistrate, Power of, to set aside such order.*—Where on acquittal a Criminal Court passes an order for restoration of property under section 517 of the Criminal Procedure Code (Act X of 1882), the proper course for the District Magistrate, if he

STOLEN PROPERTY—*continued.*

2. DISPOSAL OF BY THE COURT—*continued.*

Order of Court as to property—*continued.*

thinks the order improper, is to direct it to be stayed under section 520, and not to treat the property as subject to an order under section 523 of the Code, and set it aside. QUEEN-EMPRESS *v.* ABHRAM UMAR . . . . I. L. R., 8 Bom., 575

31. ——————— *Criminal Procedure Code, 1882, ss. 517 and 523.—Evidence of ownership.—Evidence Act, I of 1872, s. 25.—Confession made to police officer, Admissibility of, for other purposes than as a confession.*—Statements made to the police by accused persons as to the ownership of property which is the subject-matter of the proceedings against them, although inadmissible as evidence against them at the trial for the offence with which they are charged, are admissible as evidence with regard to the ownership of the property in an inquiry held by the Magistrate under section 523 of the Criminal Procedure Code (X of 1882). An order, after trial, made by a Criminal Court for the restoration of property under section 517 of the Criminal Procedure Code (Act X of 1882) is conclusive as to the immediate right to possession; where an order has to be made under section 523, the Magistrate may in the inquiry proceed on such evidence as is available and make an order for handing the property to the person he thinks entitled. This does not conclude the right of any person. The real owner may proceed against the holder of the articles or for damages as for conversion. The High Court declined to interfere with an order, made by a Magistrate under section 523 of the Criminal Procedure Code, for the delivery of property, where the Magistrate made such order upon the mere evidence of a confession of the accused to the police that the property was stolen from the adjudged owner. QUEEN-EMPRESS *v.* TRIBHOVAN MANEKCHAND I. L. R., 9 Bom., 131

32. ——————— *Criminal Procedure Code, 1882, s. 517.—Order for the disposal of property by first class Magistrate.—Appeal from such order to the Sessions Court.*—A decree-holder preferred a complaint against his judgment-debtors, charging them, under section 207 of the Penal Code (XLV of 1860), with concealing certain moveable property for the purpose of screening it from execution. Some property was found by the police to have been so concealed in the house of a third person. The chief constable took possession of it, and kept it in his custody pending the inquiry which the first class Magistrate was about to make in the matter. Before the Magistrate entered upon the inquiry, the complainant caused the property in the custody of the police to be attached and sold in execution of his decree against the accused. At the Court sale the complainant himself purchased the property, and thereupon the Magistrate ordered the property to be handed over to him. This order was reversed, on appeal, by the Sessions Judge. *Held* that the order of the first class Magistrate for the disposal of the property was not, and could not have been, made under section 517 of the Criminal Procedure Code (X of 1882), as the Magistrate did not

STOLEN PROPERTY—*continued.*

2. DISPOSAL OF BY THE COURT—*continued.*

Order of Court as to property—*continued.*

hold any inquiry, nor form any opinion on the conclusion of such inquiry as to whether "any offence appeared to have been committed regarding such property." The Sessions Judge had, therefore, no jurisdiction to hear any appeal from the first class Magistrate's order. IN RE ANANT RAMCHANDRA LOTLIKAR . . . . I. L. R., 10 Bom., 197

33. ——————— *Criminal Procedure Code, 1882, ss. 517, 520.*—An order passed under section 517 of the Code of Criminal Procedure may be revised by a Court of Appeal, although no appeal has been preferred in the case in which such order was passed. QUEEN-EMPRESS *v.* AHMED [I. L. R., 9 Mad., 448

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See VENDOR AND PURCHASER—VENDOR, RIGHTS AND LIABILITIES OF— [2 Agra, 11

STORING JUTE.

——————— *Bengal Act II of 1872, s. 34.—Storage of jute without license.—Criminal Procedure Code, 1861, ch. XV.*—Before a conviction for storing jute in a warehouse without a license can be had under section 4 of Bengal Act II of 1872, proceedings should be taken under the provisions of Chapter XV of the Criminal Procedure Code, 1861, as required by section 34 of the former Act. QUEEN *v.* BHUGWAN CHUNDER KOONDOO . 19 W. R., Cr., 4

STRANGER, INTRODUCTION OF, INTO JOINT FAMILY, EFFECT OF—

See HINDU LAW—JOINT FAMILY—POWERS OF ALIENATION BY MEMBERS—OTHER MEMBERS. [I. L. R., 1 All., 429
I. L. R., 2 All., 898

STRIDHAN.

See CASES UNDER HINDU LAW—STRIDHAN.

See HINDU LAW—WIDOW—POWER OF WIDOW—POWER OF DISPOSITION OR ALIENATION . I. L. R., 1 Mad., 281
[3 W. R., 49, 105
8 W. R., 519
2 Agra, 230
1 Mad., 85
5 Mad., 111
I. L. R., 2 Mad., 333

STRIKING OFF EXECUTION PROCEEDINGS.

See CASES UNDER ATTACHMENT—STRIKING OFF EXECUTION PROCEEDINGS.

See CASES UNDER EXECUTION OF DECREE—STRIKING OFF EXECUTION PROCEEDINGS.

STRIKING OFF EXECUTION PROCEEDINGS—*continued.*

See CASES UNDER LIMITATION ACT, 1877, ART. 179 (1871, ART. 167; 1859, S. 20)—STEP IN AID OF EXECUTION—STRIKING CASE OFF FILE, EFFECT OF—

See LIMITATION ACT, 1877, ART. 179 (1871, ART. 167; 1859, S. 20)—STEP IN AID OF EXECUTION—SUITS AND OTHER PROCEEDINGS BY DECREE-HOLDER.
[I. L. R., 4 Calc., 877

SUBORDINATE COURT.

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES—APPEALABLE ORDERS . I. L. R., 3 Calc., 522

See CASES UNDER CRIMINAL PROCEDURE CODE, S. 437.

——— **Duty of.**—*Conflict of opinion in High Courts.*—The lower Courts are bound to follow the concurrent decisions of the Court to which they are subordinate, and are not at liberty to adopt a contrary opinion expressed by another High Court. KORBAN ALLY MIRDHA *v.* SHARODA PROSHAD AICH
[I. L. R., 10 Calc., 82

S. C. KORBAN ALI MIRDHA *v.* PITUMBARI DASI
[13 C. L. R., 256

SUBORDINATE JUDGE.

See BENGAL RENT ACT, 1869, S. 102.
[10 B. L. R., Ap., 29
8 B. L. R., 180

See DISTRICT JUDGE, JURISDICTION OF—
[I. L. R., 2 Mad., 336
9 Bom., 39
I. L. R., 3 Bom., 146
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1 C. L. R., 534

See SALE IN EXECUTION OF DECREE—INVALID SALES—EXECUTION PROCEEDINGS STRUCK OFF.
[Marsh., 592: 9 Moore's I. A., 324
5 W. R., P. C., 7

See SANCTION TO PROSECUTION—POWER TO GRANT SANCTION.
[I. L. R., 2 Bom., 481

See SPECIAL APPEAL—ORDERS SUBJECT TO APPEAL . I. L. R., 10 Bom., 200

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, S. 622.
[I. L. R., 10 Bom., 200

——— **Powers of—**

See PRINCIPAL AND SURETY—LIABILITY OF SURETY . . I. L. R., 1 All., 87

1. ——— **Suit brought to set aside probate.**—A Subordinate Judge has no jurisdiction to try a suit brought to set aside a probate. BULDEB SURMAH *v.* TARANATH SURMAH . 22 W. R., 416

SUBORDINATE JUDGE—*continued.*

2. ——— **Complaint under Mad. Reg. IV of 1816, s. 35, cl. 1.**—A Subordinate Judge has jurisdiction to entertain a complaint under clause 1, section 35, of Madras Regulation IV of 1816. *Ponnusami Pillai v. Pachai, I. L. R., 2 Mad., 336,* overruled. PONNUSAMI *v.* KRISHNA
[I. L. R., 5 Mad., 222

3. ——— **Trial of suit for land.**—*Officer appointed in the Sonthal Pergunnahs under s. 2, Act XXXVII of 1855.—Beng. Civil Courts Act, 1871.—Reg. III of 1872, s. 5.*—An officer in the Sonthal Pergunnahs, appointed by the Lieutenant-Governor of Bengal under section 2 of Act XXXVII of 1855, although vested with powers of a Subordinate Judge under Act VI of 1871, has jurisdiction to try suits in regard to land, &c., where the value of the matter in dispute exceeds the value of R1,000. RAM RUNJUN CHUCKERBUTTY *v.* RAM PROSHAD DASS
[5 C. L. R., 128

4. ——— **Valuation of suits.**—*Joinder of causes of action.—Civil Procedure Code (Act VIII of 1859), ss. 6, 8; (Act X of 1877), s. 15.—Beng. Civil Courts Act (VI of 1871), s. 19.*—Section 6 of Act VIII of 1859 (corresponding with section 15 of Act X of 1877), which provided that "every suit shall be instituted in the Court of the lowest grade competent to try it," did not affect the jurisdiction of a Subordinate Judge to try a suit wherein several causes of action were joined, the cumulative value of which was over R1,000; notwithstanding that if separate suits had been brought on these several causes, such suits must have been instituted in the Court of the Munsif. MASHOOLLAH KHAN *v.* RAM LALL AGURWALLAH . . . . I. L. R., 6 Calc., 6

5. ——— *Suit for account.—Claim valued at less than R5,000, but value to be accounted for exceeds that sum.—Quære,*—Whether a first class Subordinate Judge has jurisdiction to try a suit for an account where the plaint states that the property in the hands of the defendants, in respect of which the account is prayed, exceeds R5,000, but values the claim at R100. MANOHAR GANESH *v.* BAWA RAMCHARAN DAS . I. L. R., 2 Bom., 219

6. ——— **Appeal transferred.**—*Beng. Civil Courts Act, 1871.—N.-W. P. Rent Act, 1881, ss. 206, 207, 208.*—A Subordinate Judge, to whom an appeal is transferred under the Bengal Civil Courts Act (VI of 1871), has not the power to dispose of it in the manner provided by sections 206, 207, and 208 of the N.-W. P. Rent Act, 1881: the District Judge alone has the power to dispose of appeals in that manner. *Ram Parsad v. Rai Kishen, I. L. R., 6 All., 36,* followed. LODHI SINGH *v.* ISHRI SINGH
I. L. R., 6 All., 295

7. ——— **Appeal transferred.**—*Act XII of 1881, ss. 189, 206, 207, 208.*—The defendant in a suit instituted in a Civil Court set up as a defence that it was cognisable in the Revenue Court. The Court of first instance (Munsif) disallowed this defence, and gave the plaintiff a decree. The defendant appealed to the District Judge, again contending

SUBORDINATE JUDGE.—Appeal transferred—*continued.*

that the suit was cognisable in the Revenue Court. The appeal was transferred by the District Judge to the Court of the Subordinate Judge. The Subordinate Judge dismissed the suit on the ground that it was not cognisable in the Civil Courts, but in the Revenue. *Held* that, looking to the terms of sections 189, 206, 207, and 208 of the N.-W. P. Rent Act, the District Judge had no power to transfer the appeal to the Subordinate Judge, who had not the power vested in the Appellate Court by section 208. RAM PRASAD *v.* RAI KISHEN . **I. L. R., 6 All., 36**

8. ——— Appeal referred by District Judge.—*Beng. Civil Courts Act (VI of 1871), s. 26.—Power of review.—Civil Procedure Code, 1859, s. 376.*—Where a Subordinate Judge hears and disposes of an appeal referred to him by the District Judge under Act VI of 1871, section 26, he does so as District Judge, and has therefore, by implication, the same power of reviewing his judgment as a District Judge has under section 376, Act VIII of 1859. IN THE MATTER OF SHAMA CHURN BHUTT *v.* PAYNE & Co. . . . . **18 W. R., 292**

9. ——— Appeal from Munsif after Act XIV of 1869.—*Assistant Judges in Bombay Presidency.*—A decision passed on appeal from a decision of a Munsif by an Assistant Judge, subsequent to the date on which Act XIV of 1869 came into operation (14th March 1869), and prior to the date on which the Assistant Judges in the Bombay Presidency were invested with appellate powers under the Act (4th April 1869), was not illegal, as the Act did not alter the procedure as regards appeals against decisions passed by Courts constituted under the the old Regulations, under which the Assistant Judges had power to hear appeals. SAKHO NARAYAN KHANDALKAR *v.* NARAYAN BHIKAJI KHANDALKAR **[6 Bom., A. C., 238**

10. ——— Power to inquire into application for execution of decree against ancestor of Sirdar.—*Agent for Sirdars.*—Where a person's name was entered in red ink in the Dekkan Sirdars' list, indicating that he was entitled only to the rank and precedence of a third class Sirdar, it was held that a Subordinate Judge had jurisdiction to inquire into an application for execution of a decree passed against his ancestor by the Agent for Sirdars in the Dekkan. MAHARAJ GIR *v.* ANANDRAV **[8 Bom., A. C., 25**

11. ——— Mortgage lien above limit of Subordinate Judge's jurisdiction.—*Attachment.*—One *D.* applied to the Subordinate Court of Sasvad for the attachment and sale of certain immoveable property in execution of a money-decree, under which the sum of R1,317-4-9 was due to him from his judgment-debtor. On the attachment of the property, the applicant presented a petition to the Court to the effect that he (applicant) had a mortgage lien on the property for R10,368, and that it might be sold subject to his lien and possession as mortgagee. The Subordinate Judge raised the question whether he had jurisdiction to entertain the

SUBORDINATE JUDGE.—Mortgage lien above limit of Subordinate Judge's jurisdiction—*continued.*

application and inquire into the merits of the alleged mortgage. He was of opinion that he had, and referred the question for the opinion of the High Court, which concurred in his opinion and answered the question in the affirmative. PURSHOTAM SIDHESHVAR *v.* DHONDU AMRIT **[I. L. R., 6 Bom., 582**

12. ——— Mortgage lien, Inquiry into.—*Collateral inquiry into a mortgage lien on attached property.—Insolvency of a judgment-debtor.*—The plaintiff obtained a decree against *N.* and *R.* for R165-11-0 in the first class Subordinate Court of Satara, and applied for execution against the person of *R.* When brought before the Court, *R.* applied to be declared an insolvent under section 344 of the Civil Procedure Code (Act X) of 1877. The plaintiff then moved the Court to strike off his application for execution, and to send his decree to the second class Subordinate Court of Vita for execution. The Satara Court accordingly sent the decree to the Vita Court and granted a certificate to the the plaintiff under sections 223 and 224 of the Civil Procedure Code. The Satara Court also informed the Vita Court that proceedings were pending in the Satara Court regarding the insolvency of *R.* On the application of the plaintiff, the Vita Court attached certain immoveable property belonging to *N.* and *R.* Thereupon one *V. T.* claimed a mortgage lien on it for R9,415-9-3. The Vita Court therefore referred for the opinion of the High Court the questions whether it had jurisdiction to inquire into the validity of the mortgage lien claimed by *V. T.*, and whether the execution of the decree in the Vita Court was to be stayed, pending the inquiry into the alleged insolvency of *R.* in the Satara Court. *Held* that the Vita Court had jurisdiction to inquire into the validity of the alleged mortgage lien; that execution in that Court against *R.* was to be stayed pending the inquiry in the Satara Court regarding his alleged insolvency, but that there was no reason for staying the execution of the decree against *N.* in the Vita Court. VISHNU DIKSHIT *v.* NARSINGHRAV . . **I. L. R., 6 Bom., 584**

13. ——— Subordinate Judge invested with powers of Small Causes Court.—*Civil Procedure Code, 1877, s. 525.—Arbitration award.*—A Subordinate Judge, although invested with the jurisdiction of a Judge of a Court of Small Causes, does not on that account become a Judge of a Court of Small Causes, nor his Court such a Court within the meaning of the Civil Procedure Code. He therefore has power, within the limits of his ordinary pecuniary jurisdiction, to receive and file awards of arbitrators under section 525 of the Civil Procedure Code (Act X of 1877). BALKRISHNA *v.* LAKSHMAN **[I. L. R., 8 Bom., 219**

14. ——— *Difference between a Court of Small Causes constituted under Act XI of 1865 and a Court of a Subordinate Judge invested with the jurisdiction of a Judge of a Small Cause Court under section 28 of Act XIV of 1869.*—

SUBORDINATE JUDGE.—Subordinate Judge invested with powers of Small Cause Court—*continued.*

Transfer of decree for execution.—Act XI of 1865, s. 20.—The Code of Civil Procedure (Act XIV of 1882), s. 223—Act XIV of 1869, s. 28—The Courts of Subordinate Judges invested with the jurisdiction of a Judge of a Small Cause Court under section 28 of Act XIV of 1869 do not thereby become "Courts of Small Causes constituted under Act XI of 1865." They merely exercise a similar jurisdiction. This makes their decisions final in the cases to which the jurisdiction extends, but it does not imply that the variations of procedure prescribed expressly for the Courts constituted under Act XI of 1865 are applicable to Courts constituted under a different Act and subject to different conditions. The Court of a Subordinate Judge exercising Small Cause Court powers is, under section 5 of the Code of Civil Procedure (Act XIV of 1882), one of the "other Courts exercising jurisdiction of a Court of Small Causes," and, as such, its procedure is governed by the Civil Procedure Code without the variations provided by Act XI of 1865. Under section 223 (*d*) of the Civil Procedure Code, the Court which has passed a decree in its Small Cause Court jurisdiction may, for any good reason, to be recorded in writing, transfer its decree to the other branch of the same Court, as it might to a different Court, for execution, without requiring a certificate under section 20 of Act XI of 1865. For this purpose the two branches or sides of the Subordinate Judge's Court may be regarded as different Courts. BHAGVAN DAYALJI *v.* BALU

[I. L. R., 8 Bom., 230

15. ——————— *Suit for interest due on a mortgage.*—The plaintiff sued to recover interest due on a mortgage of immoveable property. The defendant pleaded that the plaintiff had received the profits of the mortgaged property, and had got possession of certain materials worth four thousand rupees, and that the mortgaged debt had been paid off. The suit was tried before a Subordinate Judge in his capacity of a Judge of a Court of Small Causes, who held that he had no jurisdiction to go into the questions raised by the defendant in his defence, and he gave judgment for the plaintiff. *Held*, on application to the High Court, that the defence being virtually that the debt had been paid off, and that nothing was due to the plaintiff, the Subordinate Judge had jurisdiction to decide the suit. BABURAV AMRIT PETHE *v.* GANPATRAV DAMODAR

[I. L. R., 10 Bom., 69

16. ——————— *Civil Procedure Code (Act XIV of 1882), s. 295.—Decree passed by Subordinate Judge.—Decree by same Court in exercise of its Small Cause jurisdiction.—Rateable distribution of assets.*—Certain moveable property was at first attached in execution of a money-decree passed by a Subordinate Judge in his Small Cause jurisdiction, of which a part was afterwards sold. In execution of a money-decree passed by the same Subordinate Judge in his ordinary jurisdiction the remaining property was attached and sold. Prior to the date of this sale the applicant applied for execution of a money-decree passed in his favour by the same Subordinate Judge in his Small Cause jurisdiction, and prayed for rateable distribution of the proceeds along with other decree-holders. *Held* that the application must be allowed. Although a Subordinate Judge invested under Act XIV of 1869, section 28, with Small Cause powers, acquires the jurisdiction of two Courts, he does not become the Judge of two Courts, but remains the Judge of a Subordinate Court. MALHARI *v.* NARSO KRISHNA

[I. L. R., 9 Bom., 174

17. ——————— *Execution of decree.—Transfer of decree for execution.—Act XI of 1865, s. 20.—Act XIV of 1869, s. 28.*—The plaintiff, having obtained a money-decree against *H.* and others in a suit in the Subordinate Judge's Court at Dhulia, applied for execution by attachment and sale of their immoveable property. That property was accordingly sold, but before the realisation of the assets the defendant, who also had obtained a money-decree against the same judgment-debtors in the same Court in its Small Cause jurisdiction, applied for the execution of his decree by attachment and sale of the immoveable property which had already been attached at the instance of the plaintiff. The Court, under section 295 of the Civil Procedure Code (Act XIV of 1882), rateably distributed the proceeds of the sale between the plaintiff and the defendant. The plaintiff now brought this suit in the Small Cause judisdiction of the Subordinate Judge's Court at Dhulia to recover from the defendant the amount paid to him, alleging that it had been illegally paid, as the procedure laid down in section 223 of the Code had not been followed. *Held* that, as ruled in *Bhagavan Dayalji* v. *Balu, I. L. R., 8 Bom., 230,* a Subordinate Judge invested with Small Cause Court powers has generally to follow the procedure prescribed in the Code of Civil Procedure. This governs his proceedings both in trial and execution, whether the suit is a Small Cause suit or not. If the two jurisdictions assigned to the Subordinate Judge's Court and to the Subordinate Judge personally are locally co-extensive, there is no distinction of sides or branches. But where, as in some cases, the ordinary jurisdiction is wider locally than the Small Cause jurisdiction, the Court is, in that part of its territory which lies outside the Small Cause Court jurisdiction, to be regarded as a separate Court so far that a decree in a Small Cause should not generally be executed on property beyond the Small Cause jurisdiction without a transfer,—*i.e.*, a dealing with the execution as in a suit tried in the usual way, for reasons to be recorded in writing. As all is done by the same Judge, a suggestion and an order recorded in the case are sufficient, without a formal transmission as to a distant Court. DHARAMDAS SANTIDAS *v.* VAMAN GOVIND

[I. L. R., 9 Bom., 237

18. ——————— **Power of Subordinate Judge to try Munsif's case.**—*Act XVI of 1868, ss. 13, 15, 16.—Beng. Civil Courts Act (Act VI of 1871), ss. 19, 20.—Civil Procedure Code, ss. 15, 578.*

SUBORDINATE JUDGE.—Power of Subordinate Judge to try Munsif's case— *continued.*

—*Per* PETHERAM, *C. J.*, and BRODHURST, MAHMOOD, and DUTHOIT, *JJ.*—The object of sections 19 and 20 of the Bengal Civil Courts Act, 1871, was to create in the District Judge, Subordinate Judge, and Munsif concurrent jurisdiction up to R1,000. *Per* PETHERAM, *C. J.*,—Section 15 of the Civil Procedure Code is a proviso to those sections. The word "shall" in that section is imperative on the suitor. The word is used for the purpose of protecting the Courts. The suitor shall be obliged to bring his suit in the Court of the lowest grade competent to try it. The object of the Legislature is that the Court of the higher grade shall not be overcrowded with suits. Whenever an Act confers a benefit, the donee may exercise the same or not at his pleasure. The proviso is for the benefit of the Court of the higher grade, and it is not bound to take advantage of it. If it does not wish to try the suit, it may refuse to entertain it. If it wishes to retain the suit in its Court, it may do so; it is not bound to refuse to entertain it. *Per* DUTHOIT, *J.*—The words in section 57 of the Civil Procedure Code "shall be" are an instruction which the Court is bound to follow, and they are therefore a restraint upon jurisdiction. The effect, therefore, of the concurrent jurisdiction of Subordinate Judges and Munsifs is not to allow to a Subordinate Judge discretion as to accepting or not accepting for trial by himself suits cognisable by the inferior tribunal. BRODHURST and MAHMOOD, *JJ.*—Section 15 of the Civil Procedure Code is a rule of procedure, not of jurisdiction, and whilst it lays down that a suit shall be instituted in the Court of the lowest grade, it does not oust the jurisdiction of the Courts of higher grades. *Russick Chunder Mohunt* v. *Ram Lall Shaha, 22 W. R., 301;* and *Sufee-ool-lah Sircar* v. *Begum Bibee, 25 W. R., 219,* followed. *Per* OLDFIELD, *J.*—Section 15 of the Civil Procedure Code is a provision entirely of procedure as distinct from jurisdiction, and its effect on section 19 of the Bengal Civil Courts Act is that the jurisdiction of the District Judge and Subordinate Judge extends to all original suits cognisable by the Civil Court, subject in its exercise to a certain procedure,—namely, that the suits be instituted in the Court of lowest grade competent to try them. *Held,* therefore, by PETHERAM, *C. J.*, and OLDFIELD, BRODHURST, and MAHMOOD, *JJ.*, where a Subordinate Judge had tried a suit which a Munsif, a Court of a lower grade, might have tried, that the Subordinate Judge had not acted without jurisdiction. The plaint in such suit had been in the first instance presented to the Munsif, who had returned it, to be presented to the Subordinate Judge. *Per* DUTHOIT, *J.*—The decree of the Subordinate Judge would not be liable to be reversed in appeal for want of jurisdiction, for the jurisdiction was there, though it ought not to have been exercised. This view of the matter was consistent with the received canon of construction, that unless the Legislature uses negative words, or words showing an intention to treat the observance of a rule of procedure as essential, the rule will ordinarily be treated as a direction only. Under the circumstances, therefore, the District Judge had, in appeal, correctly refused to entertain the plea of defect in jurisdiction. NIDHI LAL *v.* MAZHAR HUSAIN

[I. L. R., 7 All., 230

SUBORDINATE JUDGE.—Power of Subordinate Judge to try Munsif's case— *continued.*

SUBSCRIBER TO CHARITABLE INSTITUTION.

See RIGHT OF SUIT—SUBSCRIPTION TO CHARITABLE INSTITUTION.

[10 C. L. R., 197

SUBSISTENCE-MONEY.

1. ——— Payment of subsistence-money.—*Civil Procedure Code, 1859, s. 276.*—According to Act VIII of 1859, as it stood at the end of 1876 and until October 1877, the batta for the maintenance of a debtor could not become payable until he was arrested and brought before the Court, and the order made for his committal to the civil jail. KASTURCHAND *v.* RAOJI SADASHIV

[I. L. R., 4 Bom., 65

Under the present Code it has to be paid into Court before the order for the arrest can be made.

2. ——— *Illegal commitment.—Duty of jailor.*—Unless subsistence-money is paid before the commitment, the commitment is illegal. The jailor is bound by the words of the Act. It is for him, and not for the prisoner, to see that the money is paid. IN THE MATTER OF THOMSON

[Bourke, O. C., 421

3. ——— Fixing subsistence-money.—*Detention in jail on decree of defendant arrested prior to decree.—Right to discharge.*—Where a defendant is arrested prior to decree under Act VIII of 1859, section 78, and a decree is afterwards obtained against him in the suit, the plaintiff, if he wishes to detain the defendant in prison, must have him brought before the Court, and his subsistence-money fixed, in the same way as in the case of an arrest in execution of a decree; and if he fails to do so, the defendant is entitled to his discharge from prison. IN THE MATTER OF CALLACHAND DASS

[1 Ind. Jur., N. S., 327

S. C. RAMPERSAUD ROY *v.* CALLACHAND DOSS

[Bourke, O. C., 423

4. ——— *Order for allowance.—Application for discharge in absence of order.*—*Civil Procedure Code, 1859, ss. 276, 278.*—*S. H.* and two other debtors in the custody of the Sheriff on a *ca. sa.* appeared on a *habeas corpus* for the execution-creditor to show cause why they should not be discharged. *S. H.* had been arrested in execution of a decree in a suit which was begun under the old procedure in the Supreme Court, and the question was whether the procedure in his case should be regulated by Act VII of 1855 or Act VIII of 1859. The grounds relied on by all three prisoners (besides the above in *S. H.'s* case) were, that no order for their allowance had been made by the Court, nor had

SUBSISTENCE-MONEY.—Fixing subsistence-money—*continued.*

they been brought before it for that purpose. *Held* that the case of *S. H.* was to be regulated by the old procedure, and as under Act VII of 1835 no order for allowance was necessary, he must be remanded to jail. *Held*, also (PEACOCK, *C. J.*, *dissentiente*), that a prisoner arrested on a *ca. sa.* must, within a convenient time, be brought before the Court to have his allowance fixed; that an "allowance" within the meaning of sections 276 and 278 of Act VIII of 1859 meant subsistence-money fixed by order of the Court; that the Court must have the prisoner before them to exercise their discretion upon a matter which must be determined before he can be formally committed to prison, and which may be so determined as to entitle him to be discharged; that a decree must be carried into execution by and under the direction of the Court which pronounces it by means of a special application to the Court, and an order passed thereupon; that a jailor or other officer cannot lawfully receive a prisoner for debt under commitment unless the preliminary payment of subsistence has been made in compliance with the order of the Court; and that the jailor cannot lawfully detain a judgment-debtor when the time limited for payment of any subsistence-money under the order of the Court passes without due payment accordingly. IN RE SUMBOO CHUNDER HALDAR. IN RE DOORGAPERSAUD MITTER. IN RE RAKHAB DOSS [Bourke, O. C., 59

5. ——— **Right of debtor to discharge.**—*Omission to make order for allowance.—Civil Procedure Code, 1859, ss. 276, 278.*—A debtor having been imprisoned on a writ of *ca. sa.*, was brought up on a *habeas corpus*, and applied for his discharge, on the ground that his arrest and imprisonment were illegal, as no order for his allowance, under section 276 of Act VIII of 1859, had been made. Sufficient subsistence-money, however, was paid to the Sheriff previous to the arrest, and he was kept amply supplied with it. *Held* that sections 276 and 278 of Act VIII of 1859 applied as much to the execution of a mofussil decree as to an arrest by writ of the High Court; that no one is to be imprisoned in execution of a decree unless subsistence-money for a month in advance be paid to the person to whose custody he is committed; that a similar payment must be received in advance every successive month pending the imprisonment; that if any such payment be not made the prisoner is entitled to be released; that the "allowance" referred to in section 276 of Act VIII of 1859 meant subsistence-money of 4 annas per diem; that section 276 of Act VIII of 1859 enacted only that the prisoner shall have an allowance of 4 annas per diem paid monthly, unless the Court shall specially fix a less amount; that an order for an allowance to the prisoner was not necessary, and was intended only as a relief to the execution-creditor; that the omission to have such order made did not render the arrest and imprisonment illegal; that in the absence of such order, section 278 of Act VIII of 1859 ensured 4 annas a day as subsistence-money for the prisoner. AGA ALI KHAN *v.* JOYDOYAL PERSAUD . . . . Bourke, O. C., 52

SUBSISTENCE-MONEY.—Right of debtor to discharge—*continued.*

6. ——— *Non-payment of subsistence-money in advance.—Civil Procedure Code, 1859, s. 276.*—The monthly subsistence-money under section 276 of Act VIII of 1859 must be paid in advance; therefore, where a debtor was arrested and subsistence-money paid for January, but no further deposit was made till 4th February, the prisoner was held entitled to his discharge. IN RE KONOY LOLL DOSS . . . . Bourke, O. C., 51

7. ——— *Application for discharge on non-payment of subsistence-money.—Petition for discharge.—Civil Procedure Code, 1859, s. 278.*—A prisoner was arrested on the 30th of December on a *ca. sa.* dated the 24th of December, on which day the execution-creditor paid subsistence-money for thirty days. This failing on the 29th of January, the prisoner made a fruitless application to the Sheriff for more, and then applied to the Court for his discharge, upon which notice was directed to be given to the execution-creditor. *Held* that no particular form of petition of discharge was required from a prisoner applying for his discharge for non-payment of subsistence-money; that subsistence-money must be paid in advance by the execution-creditor before putting a writ of *ca. sa.* in force; that the discharge by the Sheriff of a prisoner detained on a writ of *ca. sa.* was equally imperative on the happening of any of the contingencies specified in section 278 of Act VIII of 1859; and that on failure of subsistence-money the prisoner should be released, and further detention of him by the person in whose custody he is, was illegal. SPEYER *v.* JANSSEN [Bourke, O. C., 28

8. ——— *Non-payment of subsistence-money in advance.—Act VIII of 1859, ss. 276, 278.*—A prisoner was arrested on August 4th, and committed to prison on the evening of the same day. Before his committal, the execution-creditor paid into the hands of the jailor a sum sufficient for his subsistence-money for twenty-seven days, at the established rate of 4 annas per day. On the 5th August, a writ of *habeas corpus* was applied for to bring the prisoner up, and on the 6th a further sum of 4 annas was paid to the jailor to cover any deficiency in the former payment. *Held* that the requirements of section 276, Act VIII of 1859, had not been fulfilled, and that the prisoner was entitled to his discharge under section 278. DUTT *v.* CORNELIUS . . . . 5 B. L. R., Ap., 79

9. ——— *Mode of payment of subsistence-money.*—On the 30th of September, the plaintiff, a detaining creditor, paid to the jailor of the Calcutta jail subsistence-money for thirty days, for a prisoner confined at the suit of the plaintiff, the jailor then having a balance of 4 annas over from the subsistence-money for September. *Held* that there was a sufficient compliance with section 276 of Act VIII of 1859. HALADHAR DEY *v.* AMBIKA CHARAN BOSE . . . . 5 B. L. R., Ap., 8

10. ——— **Refund of subsistence-money.**—*Release at request of creditor.—Bombay*

SUBSISTENCE-MONEY.—Refund of subsistence-money—*continued.*

Act IV of 1865.—Where the defendants were arrested through the Munsif's Court in execution of a decree, but were released at the request of the execution-creditor before they had been sent to the civil jail, it was held that the execution-creditor was entitled to a refund of the balance of subsistence-money advanced by him that remained in the Munsiff's hands at the time of his debtor's release. Section 10 of Act IV of 1865 (Bombay) was not applicable to such a case. EX PARTE KASHINATH BALAL OK . . . . . **5 Bom., A. C., 84**

11. ———— **Effect of discharge of debtor.**—*Non-payment of subsistence-money.—Future arrest in execution of same decree, Effect of discharge on.*—The discharge of a defendant from confinement in jail, in consequence of the plaintiff's failure to pay subsistence-money at the rate fixed by the Court, bars a second arrest and imprisonment in execution of the decree. APPIAH CHETTY *v.* CHENGADOO . . . . . **4 Mad., 76**

SUBSTANTIAL QUESTION OF LAW.

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH AN APPEAL LIES—SUBSTANTIAL QUESTION OF LAW.
[I. L. R., 2 Calc., 228
I. L. R., 1 Calc., 431

SUCCESSION.

See ENGLISH LAW—PRIMOGENITURE.
[5 Bom., 172

See CASES UNDER HINDU LAW.—INHERITANCE.

See MAHOMEDAN LAW—DEBTS.
[I. L. R., 4 Calc., 142
I. L. R., 4 All., 361

See CASES UNDER MAHOMEDAN LAW—INHERITANCE.

See CASES UNDER MALABAR LAW—INHERITANCE.

See MARRIAGE SETTLEMENT.
[1 Ind. Jur., N. S., 290

See PARSIS . **I. L. R., 1 Bom., 506**
I. L. R., 2 Bom., 75
I. L. R., 3 Bom., 537

———— **Deed altering course of, by Hindu law.**

See COMPROMISE — CONSTRUCTION, ENFORCING, EFFECT OF, AND SETTING ASIDE DEEDS OF COMPROMISE.
[6 B. L. R., 202

———— **to raj.**

See CASES UNDER HINDU LAW—CUSTOM—INHERITANCE AND SUCCESSION.

See JUDGMENT IN REM.
[11 B. L. R., 244

SUCCESSION ACT.

———— **ss. 2 & 3.**—*Minor.*—The definitions of "minor" and "minority" in the Succession Act do not apply to cases in which a person enters into a contract on his own behalf, and not in any representative character under that Act. SULTAN CHAND *v.* SMYTH . . **12 B. L. R., 358: 21 W. R., 221**

———— **s. 4.**

See DIVORCE ACT, s. 35
[5 B. L. R., Ap., 9
I. L. R., 1 Calc., 357
I. L. R., 9 Mad., 12

See HUSBAND AND WIFE.
[8 B. L. R., 372
I. L. R., 1 Calc., 285

1. ———— *Operation of section.—Rights acquired before passing of Act.*—The provisions of section 4 of the Succession Act are prospective, and leave rights unaffected which had already been acquired before the Act passed. SARKIES *v.* PROSONOMOYEE DOSSEE
[I. L. R., 6 Calc., 794: 8 C. L. R., 76

2. ———— *Married woman, Liability of.—Separate estate.—Restraint on anticipation.—Husband and wife.—Married Women's Property Act (III of 1874), s. 8.*—In a suit against a husband and wife, and the trustees of the wife's marriage settlement, on two joint and several promissory notes given by the husband and wife after their marriage, but before the passing of the Married Women's Property Act (III of 1874), the plaintiff sought to render liable property settled on the marriage upon the wife for her separate use without power of anticipation. The marriage was contracted after the passing of the Succession Act. *Held* that section 4 of that Act did not prevent the operation of the clause in the marriage settlement in restraint of anticipation. *Held*, further, that section 8 of the Married Women's Property Act, 1874, does not apply to contracts made before the passing of the Act. *Semble, per* COUCH, *C. J.*—If the contract had been made after that Act came into operation, the plaintiff would have had a remedy against the wife's separate estate, notwithstanding the clause restraining anticipation. PETERS *v.* MANUK . **13 B. L. R., 383: 22 W. R., 175**

3. ———— **and s. 44.**—*Husband and wife.—Parties with English domicile married in India.—Succession to moveable property.*—*H. M.*, a British subject having his domicile in England, married in Calcutta, in April 1866, *C.*, a widow, who at the time of the marriage had also an English domicile. *C.*, after her marriage with *H. M.*, became entitled as next of kin to shares in the moveable properties of her two sons by her former marriage: these shares were not realised nor reduced into possession by *C.* during her life. *C.* died in 1872, leaving her husband but no lineal descendants. In March 1874 *H. M.* filed his petition in the Insolvent Court, and all his property vested in the Official Assignee. In April 1875 letters of administration of the estate and effects of *C.* were, with the consent of *H. M.*, granted to the Administrator General of Bengal, by whom the shares to which *C.* became entitled as next

SUCCESSION ACT, s. 4 and s. 44—*continued.*

of kin of her sons were realised. In a special case for the opinion of the Court under Chapter VII, Act VIII of 1859,—*Held* that the domicile of the parties being in England, the English law was to be applied, and therefore the Official Assignee, as assignee of the estate of *H. M.*, was entitled to the whole fund realised by such shares in the hands of the Administrator General. Section 4 of the Succession Act does not apply in respect of the moveable property of persons not having an Indian domicile. MILLER *v.* ADMINISTRATOR GENERAL OF BENGAL [I. L. R., 1 Calc., 412

——— **s. 5.**

See FOREIGN STATE [I. L. R., 11 Calc., 17

——— **and s. 10.**

See DOMICILE . I. L. R., 4 Calc., 106

——— **s. 35.**

See CONVERTS . I. L. R., 9 Mad., 466

——— **s. 42.**

See PARSIS . . I. L. R., 2 Bom., 75

——— **s. 48.**

See WILL—VALIDITY OF WILL. [I. L. R., 7 Mad., 515

——— **s. 50.**

See CASES UNDER WILL—ATTESTATION.

See CASES UNDER WILL—SIGNATURE.

——— **s. 54.**

See WILL—VALIDITY OF WILL. [I. L. R., 4 Mad., 244

——— **s. 56.**—*Revocation of will.—Lawful polygamous marriage.*—The will of a Jew, made subsequently to his first marriage, but previously to a second marriage in the lifetime of his first wife, held to be revoked by such second marriage under section 56 of the Succession Act. GABRIEL *v.* MORDAKAI [I. L. R., 1 Calc., 148

——— **s. 98.**

See WILL—CONSTRUCTION. [I. L. R., 4 Calc., 670

——— *Application of section.—Vested interests.—Semble,*—Section 98 of the Succession Act applies only to vested interests. MASEYK *v.* FERGUSON . . . I. L. R., 4 Calc., 304

——— **ss. 101, 102.**

See WILL—CONSTRUCTION. [I. L. R., 4 Calc., 304

——— **s. 179.**

See PROBATE—POWER OF HIGH COURT TO GRANT, AND FORM OF— [I. L. R., 6 Bom., 460

SUCCESSION ACT—*continued.*

——— **s. 180.**

See PROBATE—EFFECT OF PROBATE. [8 B. L. R., 208

——— **s. 182.**

See PROBATE—TO WHOM GRANTED. [7 B. L. R., 563

——— **s. 187.**

See CERTIFICATE OF ADMINISTRATION—EFFECT OF CERTICATE. [23 W. R., 252

See PROBATE—EFFECT OF PROBATE. [22 W. R., 174

——— **s. 188.**

See PROBATE—OPPOSITION TO AND REVOCATION OF GRANT. [I. L. R., 4 Calc., 360

——— **s. 190.**

See LETTERS OF ADMINISTRATION. [I. L. R., 5 Calc., 2

——— **ss. 190, 191.**—*Intestate.—Sale of property of intestate in execution of decree against some of his heirs.—Title to sale-proceeds.—Letters of administration.*—*S.* sued some of the heirs to a person governed by the Succession Act, 1865, who died intestate, such heirs being in possession of a part of the estate of the deceased, for a debt due to him by the deceased, and obtained a decree against such persons. In execution of this decree property belonging to the deceased was sold. Before the sale-proceeds were paid to *S.*, *R.*, an heir to the deceased, obtained in the District Court letters of administration to the estate of the deceased, and an order for payment to her of such sale-proceeds. Thereupon *S.* sued *R.* for such sale-proceeds and to have the District Court's order directing payment thereof to her set aside. *Held* that, with reference to sections 190 and 191 of the Succession Act, 1865, the decree obtained by *S.* against persons who did not legally represent the estate of the deceased, and the proceedings taken against such persons in execution of such decree, gave *S.* no title to the sale-proceeds which formed part of the estate of the deceased, and the suit was therefore not maintainable. SUKH NANDAN *v.* RENNICK . . . . I. L. R., 4 All., 193

——— **ss. 208, 209.**

See LETTERS OF ADMINISTRATION. [I. L. R., 8 Calc., 864

——— **ss. 212, 213.**

See LETTERS OF ADMINISTRATION. [4 B. L. R., Ap., 49

——— **s. 224.**

See ILLEGITIMACY . 11 B. L. R., Ap., 6

——— **s. 232.**

See PROBATE—AMENDMENT OF ERROR IN PROBATE . I. L. R., 4 Calc., 582

SUCCESSION ACT—*continued.*

——— s. 234.

See PROBATE—OPPOSITION TO AND REVOCATION OF GRANT I. L. R., 6 Calc., 11
[I. L. R., 5 Bom., 638
I. L. R., 8 Calc., 880
I. L. R., 6 Calc., 460

——— s. 235.

See JUDICIAL COMMISSIONER, ASSAM.
[12 W. R., 424

See PROBATE—OPPOSITION TO AND REVOCATION OF GRANT.
[I. L. R., 8 Calc., 570

——— s. 237.—*Exemplification of will.—Probate.—Order to produce testamentary paper.*—The testator died in Calcutta, leaving a will, whereof he appointed *A.*, *B.*, *C.*, and *D.*, executors. *D.*, the mother of the testator, had carried on business in partnership with the testator in Calcutta, and a considerable portion of the testator's estate was in India. *A.* renounced probate, and the will was proved in England by *B.* and *C.*, who sent their agents in Calcutta an exemplification of the will for the purpose of obtaining a grant of probate or letters of administration to the estate in India. In an application by *D.* for an order directing the agents to bring the exemplification into Court with a view to obtaining probate thereof,—*Held* that the exemplification was an instrument which the Court would order to be produced under section 237, Succession Act. IN RE THE GOODS OF NEWTON
[8 B. L. R., Ap., 76

——— s. 242.

See PROBATE—EFFECT OF PROBATE.
[8 B. L. R., 208

See PROBATE—OPPOSITION TO AND REVOCATION OF GRANT.
[I. L. R., 4 Calc., 360

——— s. 244.

See PROBATE—JURISDICTION OF DISTRICT COURTS . . . 4 C. L. R., 498

——— s. 250.

See PROBATE—OPPOSITION TO AND REVOCATION OF GRANT.
[I. L. R., 2 Calc., 208
I. L. R., 8 Calc., 570

——— s. 256.

See PROBATE—ADMINISTRATION BONDS.
[I. L. R., 7 Calc., 84
3 Mad., Ap., 10
4 C. L. R., 498

——— s. 257.

See ACT XL OF 1858, s. 21.
[I. L. R., 5 All., 248

See ADMINISTRATION BOND.
[6 N. W., 62

See GUARDIAN—LIABILITY OF GUARDIANS.
[I. L. R., 5 All., 248

SUCCESSION ACT—*continued.*

——— s. 258.—*Grant of letters of administration with will annexed.—Practice.*—Letters of administration with the will annexed may, under section 258 of the Succession Act, be granted after the expiration of seven clear days from the death of the testator. IN THE GOODS OF WILLSON
[I. L. R., 1 Calc., 149

——— s. 261.

See PROBATE—OPPOSITION TO AND REVOCATION OF GRANT . 21 W. R., 84
[24 W. R., 162
6 C. L. R., 176

——— s. 264.

See REFERENCE TO HIGH COURT.
[I. L. R., 5 Calc., 756

——— s. 265.

See APPEAL—PROBATE . 2 C. L. R., 589

——— s. 269.

See EXECUTOR . I. L. R., 1 All., 710

——— s. 282.

See ADMINISTRATOR . 8 Bom., O. C., 20

1. ——— *Decree, Satisfaction of.—Executor.—Administrator.*—Where a person obtains a decree against an executor or administrator, he is entitled to have his decree satisfied out of the assets of the deceased, and section 282 of the Succession Act does not interfere with that right. NILKOMUL SHAW *v.* REED
[12 B. L. R., 287: 17 W. R., 513

2. ——— *Debt.—Liability to pay calls on shares in company.*—A liability to pay calls is a debt within the meaning of section 282 of the Succession Act. ASIATIC BANKING COMPANY *v.* VIEGAS . . . . 8 Bom., O. C., 20

3. ——— *Judgment-creditor.—Execution of decree.—Right to assets in hands of Administrator General.—Administrator General's Act (II of 1874), s. 35.*—A decree for money was obtained against a person who afterwards died intestate. Letters of administration to his estate were granted to the Administrator General of Bengal. The decree-holder applied for execution of his decree against the assets in the hands of the Administrator General. *Held* that he was entitled to have his decree satisfied out of the assets of the deceased, although those assets were not sufficient to pay in full all the claims made against the estate. REMFRY *v.* DEPENNING.
[I. L. R., 10 Calc., 929

——— s. 331.

See PROBATE—POWER OF HIGH COURT TO GRANT, AND FORM OF—
[I. L. R., 6 Bom., 452

See WILL—FORM OF WILL.
[2 B. L. R., A. C., 79

SUCCESSION ACT, s. 331—*continued.*

1. ——————— *Jains.*—"*Hindu.*"—The term "Hindu" in section 331 of Act X of 1865 means and includes a "Jain," and consequently in matters of succession Jains are not governed by that Act. BACHERBI *v.* MAKHAN LAL [I. L. R., 3 All., 55

2. ——————— *Native Christians.—Hindu law.—Inheritance.*—The Succession Act governs the succession in Native Christian families; and since the passing of that Act such families have not been at liberty to adhere to the Hindu law of succession. *Held* that if the family continued to observe the Hindu law of succession until the Succession Act altered their rule of succession, the members of the family who were born before the latter Act came into operation could not be deprived of the rights acquired by them under the Hindu law. PONNUSAMI NADAN *v.* DORASAMI AYYAN [I. L. R., 2 Mad., 209

3. ——————— *Native Christian.—Application under Act XXVII of 1860 for certificate of administration.*—Petitioner, a Native Christian, applied, under Act XXVII of 1860, for a certificate of heirship to his deceased grandfather. The Civil Judge refused it on the ground that Native Christians are not "Hindus" within the meaning of the term as used in section 331 of the Succession Act, X of 1865, and therefore that they are affected by the provisions of that Act, and cannot proceed under Act XXVII of 1860. *Held*, upon appeal, that the order of the Civil Judge was right. IN THE MATTER OF THE PETITION OF VATHIAR . . 7 Mad., 121

SUDDER COURT.

——— Meaning of term.—*Act VIII of 1842.—Criminal Procedure Code, 1861, s. 19.*—Meaning of the term "Sudder Court" as defined by Act VIII of 1842, and by section 19 of the Criminal Procedure Code. REG. *v.* VYANKATASVAMI [2 Bom., 2nd Ed., 106

"SUDDER KHAJANA."

——— Meaning of term.—The words "sudder khajana" do not necessarily mean a rental payable to Government, but may mean a rental payable to the zemindar. KALEE TARA DEBIA *v.* NITTIANUND SHAHA . . . . 12 W. R., 90

SUDRAS.

See CASES UNDER HINDU LAW—ADOPTION—REQUISITES FOR ADOPTION—CEREMONIES.

See HINDU LAW—ADOPTION—WHO MAY BE ADOPTED . I. L. R., 1 Mad., 62
[I. L. R., 3 Calc., 443
I. L. R., 6 Mad., 43
8 Bom., A. C., 67
12 Bom., 364
7 Bom., Ap., 26
I. L. R., 8 Bom., 524

SUDRAS—*continued.*

See HINDU LAW—INHERITANCE—ILLEGITIMATE CHILDREN.
[I. L. R., 1 Calc., 1
I. L. R., 1 Bom., 97
1 Mad., 478
5 N. W., 94
4 Mad., 204, 234
I. L. R., 2 All., 134
I. L. R., 7 Mad., 407
I. L. R., 11 Calc., 702
I. L. R., 8 All., 387

See HINDU LAW—MAINTENANCE—RIGHT TO MAINTENANCE—ILLEGITIMATE CHILDREN . . 3 B. L. R., P. C., 1
[2 B. L. R., P. C., 15
5 Mad., 405
I. L. R., 8 Mad., 325, 557
I. L. R., 1 Mad., 306

See HINDU LAW—MARRIAGE—VALIDITY OR OTHERWISE OF MARRIAGE.
[3 B. L. R., P. C., 1
I. L. R., 1 Calc., 1

SUICIDE.

See ABETMENT . . 1 Agra, Cr., 21
[3 N. W., 316

See ENGLISH LAW—SUICIDE.
[1 W. R., P. C., 14: 9 Moore's I. A., 387

——— Attempt to commit suicide.—*Penal Code, s. 309.—Intention.—Locus pœnitentiæ.—R.*, with the intention of committing suicide by throwing herself into a well, ran to the well, where she was arrested. She was convicted under section 309 of the Penal Code of having attempted to commit suicide. *Held* that the conviction was illegal. QUEEN-EMPRESS *v.* RAMAKKA . I. L. R., 8 Mad., 5

SUIT.

See BENGAL RENT ACT, 1869, s. 101.
[6 B. L. R., 569

See BROACH ENCUMBERED ESTATES ACT, s. 19 . . I. L. R., 5 Bom., 448

See LIMITATION ACT, 1877, s. 14 (1871, s. 15) . . . I. L. R., 1 All., 97

See LIMITATION ACT, 1877, ART. 84 (1871, ART. 85) . I. L. R., 1 Bom., 253

See LIMITATION ACT, 1877, ART. 179 (1871, ART. 167)—PERIOD FROM WHICH LIMITATION RUNS—WHERE PREVIOUS APPLICATION HAS BEEN MADE.
[I. L. R., 2 Calc., 336

See RES JUDICATA—ADJUDICATIONS.
[I. L. R., 3 Calc., 340

——— against Justices for damage in repairing drains.

See CALCUTTA MUNICIPAL ACT, 1863, s. 226 . . . 8 B. L. R., 265

SUIT—*continued.*

——— against Municipal Commissioners for possession of land.

See BENGAL MUNICIPAL ACT, 1864, s. 87. [5 B. L. R., Ap., 50

——— by creditor of intestate Mahomedan.

See MAHOMEDAN LAW—DEBTS. [I. L. R., 4 Calc., 142, 402

——— by dancing girl to establish right to hereditary office with emoluments.

See HINDU LAW—CUSTOM—IMMORAL CUSTOMS . . I. L. R., 1 Mad., 356

——— for account of profits of patent.

See LIMITATION ACT, 1877, ART. 40 (1871, ART. 11) . . I. L. R., 3 Calc., 17

——— for balance of account by zemindar against manager of two estates.

See JURISDICTION—CAUSES OF JURISDICTION—CAUSE OF ACTION—BALANCE OF ACCOUNT, SUIT FOR— [7 B. L. R., Ap., 35

——— for declaration of right to officiate in hereditary office.

See CASES UNDER JURISDICTION OF CIVIL COURT—OFFICES, RIGHT TO—

See CASES UNDER RIGHT OF SUIT—OFFICE OR EMOLUMENT.

——— for declaration of right to share in the produce of trees.

See BENGAL RENT ACT, 1869, s. 27. [2 B. L. R., Ap., 19

——— for declaration of trusts of a temple.

See ACT XX OF 1863. [5 B. L. R., Ap., 55

——— for land.

See CASES UNDER JURISDICTION—SUITS FOR LAND.

——— for money charged on imoveable property.

See CASES UNDER LIMITATION ACT, 1877, ART. 132.

See CASES UNDER MORTGAGE—SALE OF MORTGAGED PROPERTY — MONEY-DECREES ON MORTGAGES.

——— for share of fees received by Hindu priest.

See CASES UNDER JURISDICTION OF CIVIL COURT—FEES AND COLLECTIONS AT SHRINES.

SUIT—*continued.*

——— for share of a debt.

See PARTIES—PARTIES TO SUITS—DEBTOR AND CREDITOR, SUITS BETWEEN— [2 B. L. R., Ap., 1

——— for specific sum of money.

See RES JUDICATA—CAUSES OF ACTION. [I. L. R., 3 Calc., 23

——— for turn of worship of idol.

See LIMITATION ACT, 1877, ART. 131. [6 B. L. R., 352 : 15 W. R., 29
I. L. R., 4 Calc., 683
I. L. R., 8 Calc., 807 : 10 C. L. R., 439

——— in personam.

See JURISDICTION—SUITS FOR LAND—GENERAL CASES—INJUNCTION. [10 B. L. R., 241

——— on behalf of deceased lunatic's estate.

See RIGHT OF SUIT—INTEREST TO SUPPORT RIGHT. [13 B. L. R., Ap., 14 : 22 W. R., 200

——— on bond executed for barred debt.

See LIMITATION ACT, 1877, s. 19 (1871, s. 20)—ACKNOWLEDGMENT OF DEBTS. [I. L. R., 1 Bom., 590

——— on decree of High Court.

See RIGHT OF SUIT—DECREES, SUITS ON— [I. L. R., 7 Calc., 74

——— on decree of Small Cause Court.

See COSTS—SPECIAL CASES—SMALL CAUSE COURT SUITS . 1 B. L. R., O. C., 66

See RIGHT OF SUIT—DECREES, SUITS ON— [1 Ind. Jur., N. S., 220
9 W. R., 399
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10 B. L. R., Ap., 35
I. L. R., 2 Calc., 434
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I. L. R., 6 Bom., 7, 292

——— to close doors or windows.

See CASES UNDER JURISDICTION OF CIVIL COURT—PRIVACY, INVASION OF—

See TRESPASS—GENERAL CASES. [3 B. L. R., A. C., 411

——— to close new road and open old one.

See JURISDICTION OF CIVIL COURT—PUBLIC WAYS, OBSTRUCTION OF— [3 B. L. R., A. C., 351

See ONUS PROBANDI—MISCELLANEOUS CASES . . 3 B. L. R., A. C., 351

SUIT—*continued.*

——— to determine terms of tenancy.

See MADRAS RIGHT RECOVERY ACT, VIII OF 1865, s. 9 . I. L. R., 1 Mad., 389

——— to obtain custody of minor from father.

See HINDU LAW—GUARDIAN—RIGHT OF GUARDIANSHIP . I. L. R., 1 All., 549

——— to recover money paid by mortgagee to prevent sale.

See MONEY HAD AND RECEIVED. [8 B. L. R., 418

——— to set aside deed.

See COURT FEES ACT, SCH. II, ART. 17, CL. 3 . . . 15 B. L. R., 172

See CASES UNDER DECLARATORY DECREE, SUIT FOR—SUITS CONCERNING DOCUMENTS.

See CASES UNDER LIMITATION ACT, 1877, ART. 91.

See CASES UNDER ONUS PROBANDI—DECREES AND DEEDS, SUITS TO SET ASIDE—

SUMMARY DECISION.

See CASES UNDER LIMITATION ACT, 1877, ART. 178 (1859, s. 22).

SUMMARY ORDER, SUIT TO SET ASIDE.

See CASES UNDER LIMITATION ACT, 1877, ART. 13 (1871, ART. 15).

SUMMARY PROCEDURE.

See CASES UNDER NEGOTIABLE INSTRUMENTS, SUMMARY PROCEDURE ON—

See PRACTICE—CIVIL CASES—LEAVE TO SUE OR DEFEND. [I. L. R., 3 Calc., 539

SUMMARY TRIAL.

See PRACTICE—CRIMINAL CASES—SIGNATURE OF MAGISTRATE. [I. L. R., 6 Mad., 396

1. ——— **Requisites for legal conviction.**—*Criminal Procedure Code, 1872, ss. 222-230.—Procedure.*—In summary cases under Chapter XVIII, sections 222-230 of the Code of Criminal Procedure, 1872, the formalities provided by that chapter should be most strictly observed. If they are not, a conviction will be set aside. QUEEN *v.* JOHRIE SINGH . . . 22 W. R., Cr., 28

2. ——— *Criminal Procedure Code, 1872, s. 222.—Procedure.*—In a case tried under the summary procedure authorised by section 222 of the Criminal Procedure Code, 1872, it must appear clearly on the face of the conviction that the case was dealt with as one of those which come under

SUMMARY TRIAL.—Requisites for legal conviction—*continued.*

the purview of that section. If the case be one of theft, it should appear what the value of the property alleged to have been stolen really was. QUEEN *v.* ABHEEN PARRIDA . . . 20 W. R., Cr., 17

3. ——— **Test of summary trial.**—*Criminal Procedure Code, 1872, s. 222.—Care in recording proceedings and in decision.*—Where the procedure is of a summary nature, the trial is summary, notwithstanding the length and carefulness of the record and decision. QUEEN *v.* DOMA RAM [24 W. R., Cr., 66

4. ——— **Test of summary case.**—*Criminal Procedure Code, 1872, s. 222.—Jurisdiction to try summarily.*—It is the nature of a complaint which should determine whether a case should be tried summarily under section 222 of the Code of Criminal Procedure. Where the acts complained of amount to an offence which a Magistrate cannot try summarily, he is not competent to hold a summary trial. *Dwarkanath Mazoomdar* v. *Nabe Das, 21 W. R., 89;* and *Chunder Shekhur Thakoor* v. *Nitaloo, 22 W. R., 29,* followed. IN THE MATTER OF BEPUTOOLLA *v.* NAJIM SHEIKH . . 2 C. L. R., 374

5. ——— *Criminal Procedure Code, 1872, s. 222.—Criterion for testing.*—Whether a case is triable summarily or not, must be determined by the complaint, not by an estimate formed by the Magistrate (*e.g.*, of the worth of the property which the accused is charged with having stolen) after evidence has been recorded: and such estimate cannot restrospectively warrant a mode of trial which was originally illegal. RAM CHUNDER CHATTERJEE *v.* KANYE LAHA . 25 W. R., Cr., 19

6. ——— **Value stolen in case of theft as determining jurisdiction to try summarily.**—*Evidence, Mode of taking.*—In a case in which the accused was charged with theft of a box containing R50 in cash and of the box worth 8 annas 6 pie, the Magistrate considered the box to be of no value, and struck out the 8 annas 6 pie, and thereupon tried the case summarily under section 222 of the Criminal Procedure Code, 1872. *Held* that the Magistrate was not at liberty, upon his own authority and without taking evidence, to throw the box entirely out of consideration, as upon that depended his jurisdiction to dispose of the case summarily. Such evidence should have been taken precisely in the same way as evidence upon the merits of the case, and as it was not taken the Court held that the Magistrate had no jurisdiction in this case. QUEEN *v.* BUZLEH ALI [22 W. R., Cr., 65

7. ——— **Case instituted by Magistrate.**—*Criminal Procedure Code, 1872, s. 222.—Institution by Magistrate without complaint.*—Where an accused person had, at the instance of the Magistrate, who had come across him while out walking one morning, encroaching on an embankment, been placed on his defence for mischief, and summarily tried and sentenced to two months' rigorous imprisonment,—*Held* that, in a case of this

SUMMARY TRIAL.—Case instituted by Magistrate—*continued.*

kind, where Government had been made prosecutor, but no complaint had been offered to the Magistrate, who had acted on his own impulse, the Magistrate had erred seriously in dealing with the case summarily and sentencing of the accused to imprisonment. IN THE MATTER OF THE PETITION OF PRAN NATH SHAHA. IN THE MATTER OF THE PETITION OF ROMA NATH BANERJEE . **25 W. R., Cr., 69**

8. ——— Criminal trespass and mischief.—*Magistrate, Jurisdiction of.—Code of Criminal Procedure (Act X of 1882), s. 260.*—A person may be tried summarily for criminal trespass and mischief unless there is a *bonâ fide* claim of right depriving the Magistrate of jurisdiction. *Shakur Mahomed* v. *Chunder Mohun Sha, 21 W. R., Cr., 38,* disapproved. *Issur Chunder Mundle* v. *Rohim Sheikh, 25 W. R., Cr., 65,* distinguished. GAMIRULLAH SARKAR *v.* ABDUL SHEIKH **[I. L. R., 10 Calc., 408**

9. ——— Mischief combined with theft.—*Criminal Procedure Code, 1872, s. 222.*—A charge of mischief, even if combined with one of theft, is triable summarily under Act X of 1872, section 222. QUEEN *v.* RAMAOTAR PANRE **[25 W. R., Cr., 5**

10. ——— Offence under Act XXI of 1856.—*Criminal Procedure Code, 1872, s. 222 and s. 148.—Illegal possession of opium.*—On a conviction, under Act XXI of 1856, of having in possession opium not supplied from Government stores, the Magistrate tried the case summarily under section 222, Code of Criminal Procedure, and passed a sentence of fine or imprisonment, and confiscation of the opium. *Held* that the case could not be tried summarily, the additional sentence of confiscation not coming under section 148, Code of Criminal Procedure. QUEEN *v.* JODOONATH SHAHA **[23 W. R., Cr., 33**

See IN THE MATTER OF THE PETITION OF KHETTER MOHUN CHOWRUNGHEE **[22 W. R., Cr., 43**

11. ——— *Illegal possession of opium.—Offence punishable by fine and confiscation.*—An offence under section 49 of Act XXI of 1856 can be tried summarily under section 222 of the Criminal Procedure Code, the confiscation provided by section 49 being merely a consequence of the conviction, and not forming part of the punishment for the offence. EMPRESS *v.* BAIDANATH DASS **[I. L. R., 3 Calc., 366 : 1 C. L. R., 442**

12. ——— Criminal intimidation.—*Criminal Procedure Code, 1872, s. 222.*—Where a head constable of police of many years' service was charged with criminal intimidation with a view to prevent a person from giving evidence against serious offenders, and the District Magistrate tried the case summarily under the special power given by section 222 (10) of the Code of Criminal Procedure, 1872, —*Held* that the case ought not to have been tried summarily. SUBRAMANYA *v.* QUEEN **[I. L. R., 6 Mad., 396**

SUMMARY TRIAL—*continued.*

13. ——— Offences one triable summarily and the other not.—*Criminal Procedure Code, 1882, s. 260.—Omission of charge so as to give summary jurisdiction.*—Where an accused is charged with offences, one of which is triable summarily and the other not so triable, it is not open to a Magistrate to discard the latter charge and to proceed to try the case summarily. RAMANUND MAHTON *v.* KOYLASH MAHTON . . **I. L. R., 11 Calc., 236**

14. ——— Alteration of charge to make it triable summarily.—*Criminal Procedure Code, 1872, ss. 222-230.—Power of Magistrate.*—The powers conferred upon Magistrates under the 18th chapter of the Criminal Procedure Code, 1872, were not intended to give them the power of altering a charge brought against an accused person so as to bring his case within the provisions of that chapter; but when a charge of a serious offence —one which the Magistrate is not competent to inquire into summarily—is preferred, it is the plain duty of the Magistrate to apply the procedure prescribed for such cases, and either to convict or acquit, or commit for trial, the person implicated. The procedure under Chapter XVIII is to be followed when a charge is plainly and directly one of those specified in section 222. CHUNDER SHEKHUR THAKOOR *v.* NITALOO . . . . . **22 W. R., Cr., 29**

HARAN SHEIKH *v.* RAMDHUN BISWAS **[24 W. R., Cr., 21**

EMARAL SHEIKH *v.* MOHAMMADI SHEIKH **[24 W. R., Cr., 48**

15. ——— *Alteration of charge of dacoity to one of unlawful assembly.*—In a case where the charge was originally one of dacoity, but in the course of the proceedings that charge was ignored and the accused put on their defence on a charge of being members of an unlawful assembly, and the proceedings continued in a summary way,—*Held* that the original charge being one of dacoity, the Magistrate had no jurisdiction to alter it and try the case summarily. DWARKANATH MAZOOMDAR *v.* NALU DAS . . **21 W. R., 89**

16. ——— *Rioting altered to charge of mischief.*—Where a charge of rioting was tried summarily by the Magistrate as one of mischief and unlawful assembly, the Sessions Judge, relying on the case of *Chunder Shekhur Thakoor* v. *Nitaloo, 22 W. R., Cr., 29,* submitted, at the request of the accused, that the summary order might be set aside, and the accused might be tried for rioting under Chapter XVII of the Criminal Procedure Code. The High Court declined to interfere at the instance of the accused persons, and distinguished this from the case cited by the Sessions Judge, as the reference there was made by the Magistrate in the interests of public justice. QUEEN *v.* ABOO SHEIKH **[23 W. R., Cr., 19**

17. ——— Alteration of assault on public servant to one of assault.—*Criminal Procedure Code, 1872, s. 222.—Penal Code, ss. 352, 353.*—The accused in this case were convicted by the

SUMMARY TRIAL.—Alteration of assault on public servant to one of assault —*continued.*

Magistrate summarily of offences under sections 352 and 341, Penal Code, although it was contended on their behalf that, if guilty, they ought to have been convicted under section 353, in respect of which a summary trial could not be held. The Sessions Judge, on the Magistrate's own judgment, recommended that the convictions should be set aside, on the grounds (1) that the facts showed that the accused should have been convicted under section 353 or under section 342, and (2) that the Magistrate had no power to convict of the lesser offence, and so give himself jurisdiction to try the case summarily. *Held*, in concurrence with the Sessions Judge, that the accused ought to have been tried under section 353: the Magistrate's summary proceedings were accordingly set aside, and a fresh trial directed. QUEEN *v.* BANEE MADHUB DOSS [23 W. R., Cr., 3

18. ——— **Alteration of charge from lurking house-trespass or house-breaking at night to receiving stolen property.**—*Magistrate, Jurisdiction of.—Penal Code, ss. 411, 457. —Criminal Procedure Code, 1872, ss. 141, 222.—Alteration of charge from one offence to another.*—A Magistrate, who is otherwise competent, has, under section 141 of Act X of 1872, a discretion to inquire into and try a person on any charge which he may consider covered by the facts complained of by any person, or reported by the police, without reference to the particular charge that may have been preferred by the complainant or by the police, and without reference to the procedure which, when he has determined the offence with which he will charge the accused, it will be competent to him to adopt. *Held*, therefore, when a person was brought before a Magistrate by the police, charged with an offence under section 457 of the Penal Code, an offence not triable in a summary way, that the Magistrate was competent to alter the charge to one under section 411, and to try the accused summarily under the provisions of section 222 of Act X of 1872. IN THE MATTER OF MEWA . 6 N. W., 254

19. ——— **Appeal from summary trial.** —*Insufficiency of evidence.—Criminal Procedure Code, 1872, ss. 222 to 230.*—If on appeal from a summary trial under Chapter XVIII of the Criminal Procedure Code, Act X of 1872, the evidence before the Judge is not sufficient to reasonably satisfy him that the prisoner has been rightly convicted, he ought to acquit him. QUEEN *v.* KHERAJ MULLAH [11 B. L. R., 33

SUMMING UP EVIDENCE.

See ASSESSORS . 7 B. L. R., 63; 67, note
[I. L. R., 9 Calc., 875
4 Mad., Ap., 39

See CASES UNDER CHARGE TO JURY.

SUMMONS.

See CASES UNDER SERVICE OF SUMMONS.

SUMMONS—*continued.*

See CASES UNDER WITNESS—CIVIL CASES —SUMMONING WITNESSES.

See CASES UNDER WITNESS—CRIMINAL CASES—SUMMONING WITNESSES.

——— **Application for—**

See LIMITATION ACT, 1877, ART. 178.
[I. L. R., 3 Calc., 312
I. L. R., 5 Calc., 126

——— **Leave to amend—**

See SMALL CAUSE COURT, PRESIDENCY TOWNS—JURISDICTION—RECOVERY OF IMMOVEABLE PROPERTY.
[I. L. R., 2 Bom., 91

——— **Refusal to grant receipt for—**

See PENAL CODE, s. 173.
[I. L. R., 3 Calc., 621

——— **to attend taxation.**

See TAXATION OF BILL OF COSTS.
[7 B. L. R., Ap., 50
5 Bom., Cr., 34

1. ——— **Issue of summons.**—*Issue after period of limitation.*—A summons ought not to be ordered to issue after the lapse of the period of limitation prescribed for a suit, unless the plaintiff has, in the meantime, done what he can to prosecute his suit with proper diligence. If a defendant is aggrieved by an order directing a summons to issue in such a case, he ought to apply to set aside the order and the summons under it. GEREENDER COOMAR DUTT *v.* JUGGADUMBA DABEE
[I. L. R., 5 Calc., 126

2. ——— **Issue of fresh summons.**—*Return of old summons.*—A fresh writ of summons will not be granted till the old one is returned into Court. ISSURCHUNDER SEIN *v.* AUSHOTOSH CHATTERJEE . . . 1 Ind. Jur., N. S., 283

3. ——— **Application for fresh summons.**—*Practice.*—An application for a fresh summons to appear, &c., should be issued on petition showing that a fruitless endeavour had been made on the part of the plaintiff to serve the first summons, and that it was not by any default of his that he had failed. URQUHART *v.* GILBERT
[1 Ind. Jur., N. S., 224

4. ——— **Grant of second summons.**—*Discretion of Judge.—Practice.—Rule 12 of High Court Rules, 1st May 1875.—Laches.*—A Judge has, under Rule 12 of the Rules of 1st May 1875, discretion as to granting a second summons, and is bound to inquire into the circumstances under which it is applied for; and when there has been great and unexplained laches, he should refuse it. Unless such discretion is clearly shown to have been improperly exercised, the Court will not interfere on appeal; but, under the circumstances of this case, the Court on appeal, finding there was no definite

SUMMONS.—Grant of second summons— *continued.*

rule of practice as to the time within which a second summons might be applied for, allowed a second summons to issue. GOURCHURN SOOR *v.* PEARY LALL PAUL . . . 15 B. L. R., Ap., 12

SUMMONS TO PRODUCE DOCUMENTS.

——— *Civil Procedure Code, 1859, ss. 152, 153.—Verbal order to pleader to produce.*—A written summons distinctly describing the nature of the document required must be issued on a party to a suit required to produce a document. A verbal order to his pleader is not sufficient, and is not such a summons as is contemplated by law. DOORGAMONEE DOSSEE *v.* BENODE MONEE DOSSEE [W. R., 1864, 164

SUMMONS BOOK OF SMALL CAUSE COURT.

See EVIDENCE—CIVIL CASES—MISCELLANEOUS DOCUMENTS—SMALL CAUSE COURT, PROCEEDINGS IN—
[6 B. L. R., 729; 730, note
7 B. L. R., Ap., 61

SUMMONS CASE.

See POLICE ACT, 1861, s. 29.
[25 W. R., Cr., 20

SUNDAY.

——— Arrest on—

See ARREST—CIVIL ARREST.
[4 Mad., Ap., 62

See LORD'S DAY ACT. . 7 Mad., 285

——— Time expiring on—

See CASES UNDER LIMITATION ACT, 1877, s. 5.

See WRITTEN STATEMENT . Cor., 39

——— Trial on—

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[W. R., 1864, Cr., 2
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——— Presentation of plaint on—

See HOLIDAY.
[3 B. L. R., Ap., 72: 11 W. R., 537
16 W. R., 231

SUNDERBUNS BOUNDARY.

——— *Beng. Reg. III of 1828, s. 13.*—Section 13, Regulation III of 1828, was intended to make provision for the immediate settlement of the limits of the Sunderbuns; hence it fixed peremptorily a period after which the demarcation of those limits, made by the Special Commissioner to that end appointed, should be final. No person could come

SUNDERBUNS BOUNDARY— *continued.*

in after that period (namely, three months from the date of the Commissioner's proceeding fixing boundary) pleading infancy or other ground for reopening the question of boundary, since the geographical boundary line was necessarily to be one and the same for all the world. Even within the period of limitation allowed, no one could be heard to object to the line, unless he declared and offered proof that at the time of the survey he was in the occupation of a definite quantity of land cleared and under cultivation within the line. After the line had once become final, no party could be heard to say that even cultivated lands within it were part of his settled zemindari. BARADAKANT ROY *v.* COMMISSIONER OF THE SUNDERBUNS
[2 B. L. R., P. C., 33: 11 W. R., P. C., 14

S. C. BURODACANT ROY *v.* COMMISSIONER OF SOONDERBUNS.

SUPERINTENDENCE OF HIGH COURT.

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1. ACT XXIII OF 1861, s. 35 . . 5916
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[15 B. L. R., 197

——— Criminal cases.

See CASES UNDER REVISION—CRIMINAL CASES.

1. ACT XXIII OF 1861, s. 35.

1. ——— Exercise of superintendence. —*Orders of Court of first instance and Appellate Court.*—The High Court could interfere, under section 35, Act XXIII of 1861, with the order of the Court of first instance, as well as of the Appellate Court, where the orders of both the Courts appeared to be without jurisdiction. SHEO DYAL SINGH *v.* MAHOMED KAMIL . . . 3 Agra, Mis., 2

2. ——— *Case tried in two Courts without jurisdiction.*—Where a case properly cognisable by a Small Cause Court had been heard and determined by the Subordinate Judge, and on appeal by the District Judge, the High Court, in the exercise of its extraordinary jurisdiction, annulled the proceedings of the two lower Courts. BHIMRAV JIVAJI *v.* BHIMRAV GOVIND . . . 11 Bom., 194

3. ——— *Trial with jurisdiction.—Error in decision on facts.*—The High Court cannot, where an inferior Court has jurisdiction to try a case, and has tried it, merely because

SUPERINTENDENCE OF HIGH COURT—*continued.*

1. ACT XXIII OF 1861, s. 35—*continued.*

Exercise of superintendence—*continued.*

there is an error apparent in the decision on the facts, alter that decision, where the law allows no appeal. IN THE MATTER OF THE PETITION OF PEAREE LALL SAHOO . . . **7 W. R., 130**

4. ——————— *Courts of revenue officers.—Courts acting without jurisdiction.*—The provisions of section 35 of Act XXIII of 1861 extended to the Courts of revenue officers acting without jurisdiction under Act X of 1859. HURPERSHAD *v.* LALU

[3 N. W., 60: Agra, F. B., Ed. 1874, 246

5. ——————— *Act X of 1859, s. 108.—Sale by Deputy Collector.—Appeal.*—A Deputy Collector sold an under-tenure in execution of a decree for rent. An appeal was made to the Collector on the ground that the tenure could not be sold unless execution had been previously issued against the moveable property of the judgment-debtor. The Collector affirmed the decision of the Deputy Collector, but on review set aside his former order, on the ground that he had no jurisdiction, the sale having taken place under the provisions of Act X of 1859. An application was made to the High Court under section 35 of Act XXIII of 1861 to set aside the order of the Collector, on the ground that the Collector had no power to review his own judgment, and consequently his first order stood, which the High Court ought to set aside, and pass such order as it might think right, and reverse the order of the Deputy Collector. The question was referred to a Full Bench, whether section 35 applied to the order of the Collector. The Full Bench refused to consider the question referred, on the ground that it was the intention of Act X of 1859 that the sale by the Deputy Collector should be final. IN THE MATTER OF THE PETITION OF DOCOWRI KAZI

[B. L. R., Sup. Vol., 517
6 W. R., Act X, 53

6. ——————— *Order illegally made.—Appeal entertained without jurisdiction.*—In execution of a decree, the District Munsif made an order which he was not legally authorised to make at the instance of the purchaser of the property sold in execution. No appeal could be made against the order, but the Civil Judge entertained an appeal and reversed the order of the District Munsif. The High Court set aside the order of the Civil Judge under section 35, Act XXIII of 1861, but, by virtue of the powers given by the section, the order of the District Munsif was also annulled. SUBRAYA GOUNDEN *v.* VENKATAGIRI AIYAR . . . **6 Mad., 22**

7. ——————— *Court exceeding its jurisdiction.—Appeal heard without jurisdiction.*—The true construction of section 35 of Act XXIII of 1861 was, that the High Court might call for the record in any case in which a subordinate Court exercised a jurisdiction when it had none, or exceeded it when it had jurisdiction. The words in section 35, "the

SUPERINTENDENCE OF HIGH COURT—*continued.*

1. ACT XXIII OF 1861, s. 35—*continued.*

Exercise of superintendence—*continued.*

Sudder Court may set aside the decision passed on appeal in such case by the subordinate Court, or may pass such other order in the case as to such Sudder Court may seem right," meant that, where a Court exceeds its jurisdiction, the High Court may set aside that part of the order which is in excess of jurisdiction, and that, where the decision of the subordinate Court is made on appeal in a case in which it has no appellate jurisdiction, the proper order is to set aside the decision altogether. If an appeal be heard by a subordinate Court which has no jurisdiction to hear it, when it ought to be heard by another subordinate Court which has jurisdiction to hear it, the Court may set aside the decision of the Court which had no jurisdiction, and may, if it think right, refer the case to the Court which had jurisdiction, even if it be too late to prefer a fresh appeal to that Court. The Judge having entertained an appeal where none lay, is no ground for interfering with a decision which the Legislature intended to be final. JACKSON, *J.*, differed. IN THE MATTER OF THE PETITION OF SUBJAN OSTAGUR

[B. L. R., Sup. Vol., 531: 6 W. R., Mis., 77

8. ——————— *Power to call for record.—Discretion of Court.*—Under section 35 of Act XXIII of 1861, there was a discretion in the Court to call for the record or not; and in cases where the application was made a considerable time after the decree, the Court refused to call for it. BOODHEE *v.* ALLEE HYDEE . . **1 N. W., Ed. 1873, 271**

9. ——————— *Appeal from order refusing to rectify a decree.*—The general powers of the High Court do not enable it to hear an appeal from an order of a Zillah Judge refusing to rectify a decree. MAHOMED BUSHEEROOLLAH CHOWDHRY *v.* RAMKANT CHOWDHRY . . . **9 W. R., 394**

10. ——————— *Application to transfer appeal.—Laches.*—An application to the High Court, under section 35 of Act XXIII of 1861, to order a subordinate Court to receive an appeal, which in ordinary course ought to have been received within fifteen days of the original decision (in this case to transfer an appeal from a Court which had dealt with it without jurisdiction) ought to be made either immediately upon the quashing of the order of the subordinate Appellate Court, or promptly and without any avoidable delay. IN THE MATTER OF RUSSICK LALL CHATTERJEE . . . **15 W. R., 518**

11. ——————— *Appeal preferred in Court having no jurisdiction.—Extension of time for appealing.*—When an appeal had been preferred by the plaintiff to the Judge which ought to have been preferred to the Collector, the Court made an order giving the plaintiff thirty days within which to prefer his appeal to the Collector instead. ADHIRANI NARAIN KUMARI RAJRANI OF BURDWAN *v.* PURIKHIT RAWTRA

[7 B. L. R., Ap., 15: 15 W. R., 426

SUPERINTENDENCE OF HIGH COURT—*continued.*

1. ACT XXIII OF 1861, s. 35—*continued.*

Exercise of superintendence—*continued.*

12. ——————— *Decision by Collector as to genuineness of deed.*—Where a Collector decided upon the genuineness of a deed of sale, he was held to have exceeded his authority, and his order could be set aside by the High Court under section 35, Act XXIII of 1861. TOYLUCKONATH SIRDAR *v.* BALUCKRAM DOSS . **W. R., 1864, Act X, 26**

13. ——————— *Illegal order of Deputy Collector.*—Where a Deputy Collector, who had decreed a suit for ejectment on proof of arrears due, held afterwards in execution that as the arrear had been paid up within fifteen days the tenant could not be ejected in accordance with section 78, Act X of 1859, his order in execution was declared to be *ultra vires* and illegal, and was set aside by the High Court under its general powers of revision. DEEN DYAL PURAMANICK *v.* RAMCOOMAR CHOWDHRY **[10 W. R., 345**

14. ——————— *Order of Collector ejecting gantidar.*—Where a gantidar on the suit of the putnidar was ejected from his holding, notwithstanding a right of occupancy independent of his ganti, an appeal lay to the Collector, whose order could only be questioned by a civil suit, and not under section 35, Act XXIII of 1861. RUGHOONATH MITTER *v.* WOOMANATH CHOWDHRY **[W. R., 1864, Act X, 47**

15. ——————— *Extraordinary jurisdiction of High Court.—Power to deal with order staying execution.*—Where a Subordinate Judge, in consequence of a fresh suit by the plaintiff, stayed the execution of a decree which was passed in the defendants' favour for costs, the High Court, in exercise of its extraordinary jurisdiction, reversed the stay order. GAMBHIRMAL *v.* CHEJMAL JODHMAL **[11 Bom., 151**

16. ——————— *Refusal to set aside Collector's order made without jurisdiction where it reversed an illegal order.*—A rule having been issued calling on a judgment-debtor to show cause why an order of the Collector in appeal, reversing an order made by a Deputy Collector in execution, should not be set aside, the rule was discharged with costs, inasmuch as, although the Collector had no jurisdiction to make the order which he made, the Deputy Collector's order was wrong, being a violation of the provisions of section 92 of Act X of 1859, and could not be upheld. TARACHUND MUNDUL *v.* BHYRUB CHUNDER CHUCKERBUTTY **[15 W. R., 551**

17. ——————— *Right of appeal.—Sale for arrears of rent, Irregularity in.*—A Civil Court had no power, under section 35 of Act XXIII of 1861, to reverse a sale for arrears of rent under Act X of 1859 on account of irregularity or damage, without the aggrieved party having first appealed to the Commissioner of Revenue. Act XXIII of 1861 gave no power to the High Court to consider the legality or otherwise of the Collector's order without such appeal. SUDDER GOLAB SINGH *v.* RAM BUDDUL SINGH **[1 Ind. Jur., N. S., 1: 4 W. R., Act X, 28**

18. ——————— *Setting aside sale in execution.—Courts exceeding jurisdiction.*—If the Judge exceeded his jurisdiction in hearing the appeal from the order of the Sudder Ameen setting aside a sale in execution, on the ground of the non-payment of the purchase-money within the proper time,—*Held* that it was competent for the High Court, exercising its power under section 35, Act XXIII of 1861, to set aside the order of the Sudder Ameen. AMANEE BEGUM *v.* KOORBAN ALI . . **3 Agra, 204**

MAHESH PANDEY *v.* BALDUT PANDEY **[3 Agra, Rev., 10**

19. ——————— *Act XXIII of 1861, s. 35.—Order made without jurisdiction.—Interference with order of lower Courts.*—Petitioner bought at a Court sale certain property which had been attached in O. S. No. 30 of 1860 on the file of the District Munsif's Court. Before, however, the sale certificate was issued to him, the plaintiff in O. S. No. 79 of 1866 presented a petition praying for a re-sale of the property, on the ground that it had been sold at an undervalue. On this petition the Munsif cancelled the former sale and ordered a re-sale. Before this re-sale took place the property was sold in execution of the decree in suit No. 3 of 1866 on the file of the Civil Court, and purchased by the plaintiff in that suit. Thereupon petitioner applied to the Munsif to re-sell the property in satisfaction of his claim. The Munsif refused to do so, and the Civil Judge, upon appeal, confirmed the Munsif's order. *Held*, on special appeal, that the Munsif's first order, annulling the sale, was a nullity, and the subsequent attachment and sale under the decree in O. S. No. 3 of 1866 was inoperative against the property: that, consequently, the appellant was entitled to have these proceedings set aside and the validity of his sale upheld, if the respondent's objection that the orders were not open to question in the High Court should not prevail. Upon the latter point,—*Held* that no right of appeal existed, but that, therefore, the Civil Court had no jurisdiction to entertain the appeal to that Court, and, giving effect to the petition of special appeal as a petition under section 35 of Act XXIII of 1861, that the orders of the lower Courts should be annulled and the petitioner declared entitled to an order and certificate perfecting his title. ANNAMALAI CHETTI *v.* MUTHULINGA PILLAI . . . **6 Mad., 360**

20. ——————— *Order remanding suit.—Application to set aside order from which appeal could have been brought.*—Where a Judge on regular appeal by a defendant had remanded a case for re-trial to the Court of first instance,—*Held*, on a miscellaneous petition to the High Court, that, as it was competent to the petitioner to have pre-

SUPERINTENDENCE OF HIGH COURT—*continued.*

1. ACT XXIII OF 1861, s. 35—*continued.*

Exercise of superintendence—*continued.*

sented an appeal from the order of the Judge remanding the suit, the High Court had no power under section 35, Act XXIII of 1861, to entertain a miscellaneous application to set aside the Judge's order. TUKEE ALI *v.* SAADUT ALI . **5 N. W., 14**

21. ——— *Power of Judge to interfere with order sanctioning complaint in offence against public justice.*—The District Judge having reversed on appeal the order of the Subordinate Judge sanctioning the prosecution of the defendant in a suit in his Court for an alleged false statement, the High Court set aside the Judge's order under the provisions of section 35 of Act XXIII of 1861. IN THE MATTER OF THE PETITION OF BULWUNT RAI . . . **6 N. W., 124**

22. ——— *Power of High Court.*—Under this section the High Court should not only reverse the illegal order, but pass the order that should have been made. ADURMONEE DOSSEE *v.* KAMINEE SOONDUREE DEBIA **[3 W. R., Act X, 145**

RAJ CHUNDER ROY CHOWDHRY *v.* GREESH CHUNDER ROY . . . **5 W. R., Mis., 45**

2. CHARTER ACT, 24 & 25 VICT., c. 104, s. 15.

(*a*) CIVIL CASES.

23. ——— *Functions of High Court under s. 15 of the Charter Act.—Nature of superintendence.—Held* (*per* STUART, *C. J.*) that under section 15 of 24 and 25 Victoria, Cap. 104, the power of superintendence to be exercised by the High Court is not merely administrative, or ministerial, but also judicial. BIJEE KOOER *v.* DAMODUR DASS . . . . . **5 N. W., 55**

24. ——— *Object of superintendence.*—It was not the intention of section 15 of the Charter Act to confer any rights upon litigant parties, its whole object being to give the High Court some control over the Courts subject to its appellate jurisdiction. DOSSEE *v.* SREENIBASH DEY **[12 W. R., 74**

25. ——— *Beng. Act VIII of 1869, s. 102.*—The Court held that in a suit for rent, even if no appeal lay under section 102, Bengal Act VIII of 1869, the Court on special appeal could interfere under section 15 of Act 24 and 25 Victoria, Cap. 104. On appeal under the Letters Patent,—*Held* that the power conferred by that section ought not to be exercised in such a way as to do indirectly that which the law forbids to be done directly. KARIM SHEIKH *v.* MUKHODA SOONDERY DASSEE **[15 B. L. R., 111: 23 W. R., 268**

Reversing decision in MOKHODA SOONDUREE DASSEE *v.* KUREEM SHAIKH . **23 W. R., 11**

26. ——— *Existence of remedy by suit.*—Where the applicant has a remedy

SUPERINTENDENCE OF HIGH COURT—*continued.*

2. CHARTER ACT, 24 & 25 VICT., c. 104, s. 15—*continued.*

(*a*) CIVIL CASES—*continued.*

Exercise of superintendence—*continued.*

by regular suit, the Court is reluctant to interfere. MADHUB CHUNDER GIREE *v.* SHAM CHAND GIREE. IN THE MATTER OF THE PETITION OF MADHUB CHUNDER GIREE . . . **I. L. R., 3 Calc., 243**

MAHASHANKAR HARISHANKAR *v.* VALIBHAI UMANJI . . . **6 Bom., A. C., 174**

BISHNO CHUNDER BHUTTACHARJEE *v.* SHOSHEE MOHUN PAL CHOWDHRY . **22 W. R., 277**

HUREEHUR MOOKERJEE *v.* NOBIN CHUNDER DOSS **[20 W. R., 202**

27. ——— *Existence of remedy by suit.*—The High Court cannot interfere under section 15 of the High Courts Act, where the lower Court has not acted without jurisdiction, or where there is a remedy by a regular suit. KHORSHED ALI *v.* CHOWDHRY WAHID ALI **[15 W. R., 170**

DOORGA SOONDUREE DEBIA *v.* KASHEE KANT CHUCKERBUTTY . . **14 W. R., 212**

28. ——— *Existence of other remedy.*—Where a petitioner had his remedy under section 269, Act VIII of 1859, and the Munsif had, whether right or wrong, acted within his jurisdiction, the Court held it had no power to interfere under section 15 of the Charter Act. HUR KISHORE AUDHICARY *v.* SUDOY CHUNDER NUNDEE **[17 W. R., 80**

29. ——— *Existence of remedy by regular suit.*—*S.* was adjudicated an insolvent in the Insolvent Court, Calcutta. *R.* thereupon deposited in the Court at Shahabad a sum for which *S.* had obtained a decree against him. This decree had been attached by *T.* under a decree obtained by him against *S.*, and they applied to the Shahabad Court for satisfaction of their decree out of the money deposited by *R.* The Official Assignee opposed the application, which was granted. The Official Assignee petitioned the High Court to interfere under section 15, 24 and 25 Victoria, Cap. 104, but the Court refused to interfere, on the ground that there was a remedy by suit for injunction and application for a preliminary order under section 92, Act VIII of 1859. IN RE MILLER **[4 B. L. R., A. C., 72, note: 12 W. R., 103**

30. ——— *Delay in making application.*—The Court refused to extend assistance by the exercise of its extraordinary powers under the High Court Act, section 15, to parties who were chargeable with great and unexplained delay. RADHA MOHUN ROY *v.* RAJ CHUNDER SHAH **[22 W. R., 522**

BHUGGOBUTTY KOWAR *v.* MONEY **[2 C. L. R., 545**

SUPERINTENDENCE OF HIGH COURT—*continued.*

2. CHARTER ACT, 24 & 25 VICT., c. 104, s. 15 —*continued.*

(*a*) CIVIL CASES—*continued.*

Exercise of superintendence—*continued.*

31. ——————— *Laches of appellant.—Power of High Court.*—Where the Court below adopted a different procedure, and, after partitioning the property, put up for sale the divided share of the execution-debtor, the High Court, in the exercise of its extraordinary jurisdiction, refused to interfere, in consequence of the laches of the applicant in neglecting to avail himself of an opportunity which the lower Appellate Court had given him, of showing that the partition which had been made was injurious to him. MATHURADAS GOVARDHANDAS *v.* FATMA ULKA BEGAM **[5 Bom., A. C., 63**

32. ——————— *Order of Judge under s. 269, Civil Procedure Code, 1859.—Resistance to delivery of possession in execution of decree.*—The Court declined to interfere under section 15 of the Charter Act in order to set aside an order lawfully made by a Judge under section 269, Act VIII of 1859, upon a complaint made to him of resistance or obstruction to the delivery of possession under section 264; and stated that it would not have interfered even if the order had been made without jurisdiction, after the delay that had taken place, the petitioners' remedy being to bring a regular suit to establish their right. ZUHOORUN BEGUM *v.* MAHOMED WAJED . . **18 W. R., 87**

33. ——————— *Laches.—Existence of another remedy.*—Petitioner, a decree-holder, allowed another decree-holder to obtain a decree upon a regular suit declaring him entitled to follow the properties in dispute in execution of his decree, and did nothing even after that decree was obtained until another decree-holder applied for the attachment and sale of the properties in execution of his decree, and the lower Court having all the parties arrayed before it, and having passed an order rejecting the petitioner's application, petitioner, after more than ninety days (the period limited for an appeal) had elapsed, invoked the aid of the High Court under section 15 of the Charter Act; but the Court declined to exercise that jurisdiction, leaving the petitioner to his remedy in a regular suit. KALEE KISHORE SEN *v.* WISE . . **17 W. R, 477**

34. ——————— *Effect as to merits of case of rejection of claim to exercise of extraordinary jurisdiction.*—The extraordinary powers conferred on High Courts by section 15 are only exercised when, *firstly*, there has been a capital error in the judgment of the lower Court; or, *secondly*, the plaintiff has entitled himself to special interference. The rejection of an application under section 15 does not necessarily amount to a decision on the merits. Where a suit for rent was thrown out by a Munsif and subsequently thrown out by a Small Cause Court, and in either case the High Court refused to interfere under section 15, but a different Munsif interpreted the second order of the High Court as a variation of the first, and entertained the suit,—*Held* that though the action of the High Court did not affect the merits, yet, as plaintiff had a substantial claim, the second Munsif did right in receiving it. SHOOVANKURRY DABEE *v.* DWARKA NATH MOOKERJEE . . . **25 W. R., 344**

35. ——————— *Giving appeal where none lies.—Order doing injustice.*—The High Court should not, in the exercise of its extraordinary powers, give an appeal in a case where the law provides none. Nor should the Court in the exercise of those powers interfere when such interference would have the effect of working an injustice. NARAYANBHAI LALBHAI *v.* GANGAKRISHNA BALKRISHNA . . . . **4 Bom., A. C., 87**

36. ——— **Exercise of jurisdiction.**—*Giving appeal where none lies.*—The High Court cannot admit an appeal which Act VIII of 1859, and section 11, Act XXIII of 1861, do not allow. Section 15 of the Charter Act held not to apply to the question. GOBINDNATH SANDYAL *v.* RAM COOMAR GHOSE . . . . . **9 W. R., 115**

37. ——————— *Party bringing appeal without right of appeal.—Per* BIRCH, *J.*—A party who has preferred an appeal to the High Court when the law gave him no right of appeal, is not entitled upon the hearing to ask the Court to treat it as an application for the exercise of its extraordinary jurisdiction under section 15 of 24 and 25 Victoria, Cap. 104. IN THE MATTER OF THE PETITION OF SOORJA KANT ACHARJ CHOWDRY **[I. L. R., 1 Calc., 383**

38. ——————— *Admission of appeal after time.—Appeal, Delay in filing.—Act X of 1859, s. 25.*—The High Court, under its general power of superintendence, set aside an order of a lower Appellate Court admitting an appeal filed beyond time, on the ground that the lower Appellate Court had no jurisdiction to entertain an appeal passed by the Collector under section 25, Act X of 1859. AMRA NASHYA *v.* GAGAN SHUTAR **[2 B. L. R., Ap., 35**

S. C. OMRA NUSHYO *v.* GUGUN SOOTUR **[11 W. R., 130**

39. ——————— *Appeal withdrawn without authority.—Application to set aside order refusing to restore appeal.*—An appeal which had been preferred to the Judge was withdrawn the next day through another pleader. Shortly after, an application was made to have the appeal restored, on the ground that the second pleader had no authority to withdraw the appeal. The Judge refused the application. *Held* that no appeal lay from that order, and the High Court refused to interfere

SUPERINTENDENCE OF HIGH COURT—*continued.*

2. CHARTER ACT, 24 & 25 VICT., c. 104, s. 15 —*continued.*

(*a*) CIVIL CASES—*continued.*

Exercise of jurisdiction—*continued.*

under section 15, 24 and 25 Victoria, Cap. 104, as under the circumstances they thought the Judge should not be directed to take further action in the matter. MUDHOOMUTTY DEBIA *v.* DHUNPUT SINGH [13 W. R., 167

40. ——————— *Order releasing property from attachment.*—An order of a competent Court releasing property from attachment after investigation of a claim put forward ought not to be interfered with on any ground of mere irregularity, unless a failure of justice has occurred. BISHNO CHUNDER BHUTTACHARJEE *v.* SHOSHEE MOHUN PAL CHOWDHRY . . . 22 W. R., 277

41. ——————— *Illegal arrest in Court of Magistrate.*—The High Court declined to exercise the extraordinary powers described in section 15 of the High Courts Act, where a Magistrate did not interfere with the arrest in his Court, under a a civil process, of a person who had been accused before the Magistrate, but was acquitted at the time of his arrest. IN THE MATTER OF THE PETITION OF GUZEREE LALL . . . 13 W. R., 393

42. ——————— *Award under the Nawab Nazim's Debts Act, 1873, on matter already decided by decree.*—Where certain judgment-creditors submitted a decree of Court to the Commissioners appointed under the Nawab Nazim's Debts Act, 1873, as if it were a new and unascertained claim, and the Commissioners expressed their opinion on the matter involved in it (although it had been already determined), the High Court held it had no authority to inquire into their award. OMRAO BEGUM *v.* COMMISSIONERS UNDER ACT XVII OF 1873 [24 W. R., 394

43. ——————— *Power over Collectors.*—Under section 15 of the High Courts Act, the High Court had a power of superintendence over Collectors' Courts, and could interfere to restrain a Collector from exercising a jurisdiction which properly belongs to a Zillah Judge. BHYRUB CHUNDER CHUNDER *v.* SHAMA SOONDEREE DEBIA [6 W. R., Act X, 68

Contra, HURO MOHUN MOOKERJEE *v.* KEDARNATH DOSS . . . 5 W. R., Act X, 25

44. ——————— *Setting aside decree made ultra vires.*—Where a decree is *ultra vires,* the debtor's remedy is either by an application for review or by an application to the High Court to exercise its powers under the Charter Act, section 15. DOORGA DOSS SANDYAL *v.* PANCHOO RAM MUNDUL . . . . 23 W. R., 271

45. ——————— *Refusal of application under Act VIII of 1859, s. 119.—Ex parte decree.*—Judgment was passed *ex parte* against a defendant who had not appeared. The defendant failed to show cause for setting aside the judgment under section 119 of Act VIII of 1859. He then applied to the High Court under section 15 of 24 and 25 Victoria, Cap. 104, to set aside a portion of the decree as having been passed without jurisdiction. The Court refused to interfere. IN THE MATTER OF THE PETITION OF LESLIE [10 B. L. R., 68 : 18 W. R., 474

46. ——————— *Discretion of Municipality.—Rates for cleaning tank.*—Case in which the Munsif held that the Municipality had expended more money than was necessary in cleaning the petitioner's tank, and the Judge on appeal set aside the Munsif's decision and gave the Municipality a decree, on the ground that under the law the matter was purely within the discretion of the Municipality. *Held* that, even though the rates charged by the Municipality were higher than those which could be obtained by other persons, that was no ground for the interference of the High Court. IN THE MATTER OF JOGESH CHUNDER DUTT [16 W. R., 285

47. ——————— *Exercise of discretion under Act XX of 1863, ss. 4 and 5.—Refusal of jurisdiction.*—Where an application by a petitioner under Act XX of 1863, section 5, to be appointed manager of a religious endowment, was rejected by the Judge after hearing both sides, on the ground that there had been no transfer of the property by the Local Government under section 4. The Court refused to interfere under section 15 of the Charter Act, holding that the Judge had not declined to accept jurisdiction in the case, and that he was right in refusing to exercise the jurisdiction vested in him by section 5. ASHRUF HOSSEIN *v.* HAZARA BEGUM . . . . 18 W. R., 396

48. ——————— *Order rejecting document under s. 129, Civil Procedure Code, 1859.*—The High Court refused to interfere under section 15 of the Charter Act to set aside an order rejecting a document, made by a Court under Act VIII of 1859, section 129,—an appeal from such order being barred by section 363. IN THE MATTER OF ERSKINE . . . 18 W. R., 511

49. ——————— *Error of law.—Quære,*—Is a conflict between a Judge's order and a direction of law, ground for the High Court to exercise its powers of interference? DOSSEE *v.* SREENIBASH DEY . . . 12 W. R., 74

50. ——————— *Error of law.—Case where no appeal lies to High Court.*—Mere errors of law committed by a lower Appellate Court in cases in which the High Court has no appellate jurisdiction, do not give the latter Court power to

SUPERINTENDENCE OF HIGH COURT—*continued.*

2. CHARTER ACT, 24 & 25 VICT., c. 104, s. 15 —*continued.*

(*a*) CIVIL CASES—*continued.*

Exercise of jurisdiction—*continued.*

interfere under section 15 of the Charter Act, its interference being restricted to cases in which the lower Court exercises a jurisdiction which it has not, or refuses to exercise a jurisdiction which it has. KALEE HUR DASS *v.* ROODRESSUR CHUCKERBUTTY [15 W. R., 90

ISSUR CHUNDER PODDAR *v.* SHOSHEE DHUR SEN [18 W. R., 289

51. ——————— *Court acting without jurisdiction.—Error in lab.*—The interference of the High Court under section 15, 24 and 25 Victoria, Cap. 104, should be confined to cases in which the lower Court has acted without jurisdiction, or has improperly declined jurisdiction, and should not be extended to cases in which the Court, though competent in respect of the subject-matter, has misconceived the law in deciding a case. IN RE KASINATH ROY CHOWDRY [7 B. L. R., 146, note

S. C. KASHEENATH ROY CHOWDHRY *v.* SHABITREE SOONDUREE DOSSEE . 11 W. R., 402

52. ——————— *Error in law.—Injustice, Prevention of.*—Where there has been a manifest error of law, and to prevent manifest injustice, the High Court in the exercise of its extraordinary jurisdiction will remand a case to the lower Court though the value of the claim may be under R500 and the case may be one in which a special appeal is not allowed. RAMABAI *v.* TRIMBAK GANESH DESAI . . 9 Bom., 283

53. ——————— *Erroneous order in law made in consequence of false statement of party.*—The High Court will interfere, under section 15 of the Charter Act, with an order made by a lower Court which is merely contrary to law, when that order has been passed in consequence of a wilfully false statement made by the opposite party. ROGHO NUNDUN LALL *v.* MOHESH LALL [3 C. L. R., 137

54. ——————— *Wrong decision where no special appeal lay.*—Where the lower Court's decision was fundamentally wrong in law, and the liability of the defendants in the essential matter of the suit had not been properly tried, the High Court, although not warranted in interfering in special appeal (by reason of the suit being a money claim under R500), was justified in interfering under its general powers of supervision. SHAMDANEE *v.* BHOJOO RAM . . . . . 22 W. R., 44

55. ——————— *Refusal of order of confirmation of sale.—Error of law.*—A certified purchaser of property sold in execution of a decree applied to the Judge for an order of confirmation of sale, and was refused. *Held* that the High Court had no power to interfere with the Judge's decision, even though erroneous on a point of law, upon a matter entirely within his jurisdiction, and from which there was no appeal. IN THE MATTER OF THE PETITION OF DURGA CHARAN SIRKAR [2 B. L. R., A. C., 165

S. C. DOORGA CHURN SIRCAR *v.* DOORGA CHURN GHOSSAL . . . . 11 W. R., 23

56. ——————— *Error of law.*—The High Court will not, under section 15 of 24 and 25 Victoria, Cap. 104, interfere with judgments, decrees, or orders of a lower Court on the bare ground that they are erroneous at law, or are based upon a wrong conclusion of facts: there must be some special ground justifying the High Court to exercise such powers. MADHUB CHUNDER GIREE *v.* SHAM CHAND GIREE. IN THE MATTER OF THE PETITION OF SHAM CHAND GIREE [I. L. R., 3 Calc., 243

57. ——————— *Error of law.—Revision of judicial proceedings.—Jurisdiction.*—The High Court is not competent, in the exercise of the powers of superintendence over the Courts subordinate to it conferred on it by section 15 of 24 and 25 Victoria, Cap. 104, to interfere with the order of a Court subordinate to it, on the ground that such order has proceeded on an error of law or an error of fact. Where, therefore, on appeal by the judgment-debtor against an order confirming a sale of immoveable property in the execution of a decree, the lower Court set aside the sale on a ground not provided by law, and the auction-purchasers applied under the above-mentioned section to the High Court to cancel the lower Court's order, the High Court refused to interfere. TEJ RAM *v.* HARSUKH [I. L. R., 1 All., 101

58. ——————— *Supervision as to execution of order.*—The High Court has jurisdiction to direct a lower Court in what manner its own (the High Court's) decree or order shall be carried into effect by that Court, and to see that the lower Court does not pervert the order or do that which was not intended to be done, even when such order constitutes a part of the order in execution of a decree which the lower Court ought to have passed. KALEE DOSS SANDYAL *v.* ROY LUCHMEEPUT DOOGUR . . . . . 14 W. R., 145

59. ——————— *Act X of 1859, s. 151.—Execution proceedings.*—Where a Deputy Collector refused to entertain an application by a defendant for realisation of costs awarded by a Court of Appeal, and for refund of the amount which the plaintiff had realised from the defendant in execution of the decree of the lower Court, but which had been disallowed by the Court of Appeal, and where, on appeal, the Judge held that no appeal lay under section 151 of Act X of 1859,—*Held* that the High

SUPERINTENDENCE OF HIGH COURT—*continued.*

2. CHARTER ACT, 24 & 25 VICT., c. 104, s. 15 —*continued.*

(*a*) CIVIL CASES—*continued.*

Exercise of jurisdiction—*continued.*

Court had power, under 24 and 25 Victoria, Cap. 104, section 15, to order the Deputy Collector to enforce restitution of the amount realised from the defendant in excess of the amount allowed by the Court of Appeal, and also to execute that part of the decree which awarded costs to the defendant. IN THE MATTER OF THE PETITION OF GOBIND KOOMAR CHOWDRY . B. L. R., Sup. Vol., 714 [2 Ind Jur., N. S., 199 : 7 W. R., 520

60. ——————— *Order of Collector giving possession, Reversal of.*—Where a Collector, having passed an order for possession of a certain tenure in favour of the applicant on his purchase thereof at a sale for arrears, reversed such order at the instance of an objector who had already purchased the same at a sale under Bengal Act VIII of 1865, for arrears of rent due upon it, and had been put in possession, the High Court refused to exercise its powers under section 15 of the Charter Act. NARAYANI DAYI DEBI *v.* CHANDI CHARAN CHOWDHRY . . . 3 B. L. R., Ap., 65

S. C. NARAINEE DABEE *v.* CHUNDEE CHURN CHOWDHRY . . . 11 W. R., 512

61. ——————— *Letters Patent, cl. 16.—Release of person imprisoned in execution of decree.*—Where, in execution of a summary decree for rent obtained under Regulation VII of 1799 in 1851 against the father of the petitioner and another, the petitioner was arrested and lodged in jail in January 1867,—*Held* by the majority of the Court (NORMAN, *J.*, dissenting) that the High Court could not, under the general powers of superintendence vested in it by section 15 of the High Courts Act, or section 16 of the Letters Patent, interfere to order the release of the petitioner. GOPAL SINGH *v.* COURT OF WARDS . . . . . 7 W. R., 430

62. ——————— *Assignment of decree.—Civil Procedure Code, 1859, ss. 246, 265.—Duty of Judge.*—Where a judgment-creditor seeks to attach and sell a decree on the allegation that the assignment of it was not a *bonâ fide* conveyance, and the conveyance purports to be one of property specified in section 265, Act VIII of 1859, it is the duty of the Judge, under section 246, to inquire whether the assignee of the decree was or was not in *bonâ fide* possession of the property. If the Judge inquires into the facts, no appeal lies from his order; but if he refuses an inquiry, the High Court, under its general powers of superintendence, can and ought to require the Judge to make the inquiry GREESH CHUNDER LAHOREE *v.* KASHEESSUREE DEBIA . 8 W. R., 26

63. ——————— *Execution of decrees for rent.—Act X of 1859, ss. 23, 77, and 160.*—Whether a decree for rent, under Act X of 1859, made in one district, can be transferred to another for execution, is a question which the High Court can

SUPERINTENDENCE OF HIGH COURT—*continued.*

2. CHARTER ACT, 24 & 25 VICT., c. 104, s. 15 —*continued.*

(*a*) CIVIL CASES—*continued.*

Exercise of jurisdiction—*continued.*

decide in the exercise of its "superintendence over all Courts subject to its appellate jurisdiction," under 24 and 25 Victoria, Cap. 104, section 15. NILMONI SINGH DEO *v.* TARANATH MUKERJEE [I. L. R., 9 Calc., 295 : 12 C. L. R., 361 L. R., 9 I. A., 174

64. ——————— *Acting in excess of, or refusal of, jurisdiction.*—A party dissatisfied with a legitimate finding under section 15, Act XIV of 1859, has a special remedy by a suit in a Civil Court, and cannot claim the High Court's interference under section 15, 24 and 25 Victoria, Cap. 104, except where the Judge has exercised a jurisdiction which he has not, or has refused to exercise a jurisdiction which he has. DOORGA SOONDUREE DEBIA *v.* KASHEE KANT CHUCKERBUTTY . 14 W. R., 212

65. ——————— *Order exempting debtor from liability on ground of limitation.*—Section 15 of the 24 and 25 Victoria, Cap. 104, does not enable the High Court, by way of motion, to deal with an order made by a lower Appellate Court in cases where the latter has jurisdiction, and the law declares that its order should be final. An order exempting a debtor from liability on the question of limitation, even though erroneous, is an exercise of jurisdiction. SHOWDAMINEE DOSSEE *v.* MANICK RAM CHOWDHRY [9 W. R., 386

KALEE PERSAUD CHOWDHRY *v.* RAM SOONDUR SIRCAR . . . . . 12 W. R., 129

66. ——————— *Postponement of execution sale without taking security.*—Where, in a case under Bengal Act VIII of 1869, a Munsif on a claim being preferred to property attached in execution postponed the sale of it without taking security or having the amount of the decree deposited,—*Held* that his proceeding, though erroneous, was in a case in which he had and exercised jurisdiction, and that his decision ought not to be set aside under the 15th section of the Act 24 and 25 Victoria, Cap. 104. IN THE MATTER OF THE PETITION OF BAGRAM [20 W. R., 10

67. ——————— *Execution of decree, Refusal to stay.—Allegation of fraud and finding against it.—W.* got a decree against *M.* in the Court of the Sudder Ameen, and, in execution, attached certain property of the judgment-debtor. *J.*, who had a decree against the same judgment-debtor in the Court of the Principal Sudder Ameen, applied to the Court of the Sudder Ameen to stay its proceedings, on the ground that *W.'s* decree had been obtained by fraud. The Sudder Ameen refusing the application, *J.* appealed to the Judge, who saw no ground for the imputation of fraud. *Held* (by HOBHOUSE, *J.*) that the Judge's judgment was on the face of it good and in a case within his jurisdiction, and that it did not call for an exercise of the

SUPERINTENDENCE OF HIGH COURT—*continued.*

2. CHARTER ACT, 24 & 25 VICT., c. 104, s. 15 —*continued.*

(*a*) CIVIL CASES—*continued.*

Exercise of jurisdiction—*continued.*

extraordinary power given to the High Court by section 15 of the Charter Act. JUMAL ALI *v.* WAHED ALI . . . . . **11 W. R., 97**

68. ——————— *Order within jurisdiction.—Suit for arrears of rent and ejectment.*—A suit for arrears of rent, where the plaint contained also a prayer for ejectment, having been dismissed by the first Court, an appeal was preferred to the Collector, who heard the case without any objection as to jurisdiction, and decreed it solely upon the question of the extent and character of the land and the arrears of rent thereupon. *Held* that as the Collector exercised a jurisdiction which he had, no question of ejectment having been decided by the first Court, and no appeal having been made to him upon that point, the High Court refused to exercise the power they had to interfere under section 15 of 24 and 25 Victoria, Cap. 104. DURSUN BHUGUT *v.* MAHOMED ALI . . **13 W. R., 438**

69. ——————— *Suit brought in wrong Court.*—The plaintiff brought a suit, which was cognisable by a Small Cause Court, in a Munsif's Court having jurisdiction within the local limits of the jurisdiction of the Small Cause Court. He obtained a decree, but the decree was reversed on appeal. On special appeal the Court, though holding that no special appeal would lie, set aside the decrees of both the lower Courts as having been passed without jurisdiction. TARINI CHARAN MOOKERJEE *v.* PURNA CHANDRA ROY **[6 B. L. R., 717: 15 W. R., 397**

70. ——————— *Order made without jurisdiction.*—The High Court exercised its powers of superintendence to set aside a judgment of a Judge reversing a judgment of a Munsif passed in accordance with the award, the Judge's order being without jurisdiction. IN THE MATTER OF ILAHI BUX . . . . . **5 B. L. R., Ap., 75**

S. C. ELAHEE BUKSH *v.* HAJOO . **14 W. R., 33**

71. ——————— *Order made without jurisdiction.—Appeal in rent suit to wrong Court.*—A suit to recover R254 as arrears of rent having been decreed by the Deputy Collector for R49, the defendant appealed to the Judge, but plaintiff appealed to the Collector. The Judge dismissed the defendant's appeal, and the Collector gave plaintiff a decree for the full amount originally claimed. The High Court, under section 15 of the Charter Act, set aside the Collector's decree as made without jurisdiction. ROOKNEE ROY *v.* AMRITH LALL . . . . . **14 W. R., 254**

72. ——————— *Order of Collector made without jurisdiction.*—*N.* sued his gomasta (*M.*) and *M.*'s surety (*C.*) under section 24, Act X of 1859, and got a decree *ex parte* as against the surety. Upon *N.*'s proceeding to execute the decree, *C.* applied for a revival of the suit, which was granted, and a re-hearing was appointed for the 4th May 1869, but subsequently postponed to the 8th, on which date the case was struck off by the Deputy Collector, under the provisions of section 54. Subsequently *N.* applied for a fresh execution of his original decree to the Collector, who sent the record to the Deputy Collector, with instructions to carry out the execution. Thereupon *C.* obtained a rule from the High Court calling on *N.* to show cause why the Collector's order should not be set aside. *Held* that the Deputy Collector's order striking the case off the file annulled the decree so far as *C.* was concerned, and that the Collector's order directing execution was without jurisdiction and the High Court would set it aside under their powers of superintendence. GUDADHUR CHATTERJEE *v.* NUNDLALL MOOKERJEE **[12 W. R., 406**

73. ——————— *Order contrary to law, from which no appeal lay.—Civil Procedure Code, 1859, s. 246.*—Where an order was made by a Munsif under section 246 of Act VIII of 1859, and a regular appeal was preferred, and then a special appeal to the High Court, that Court, while refusing to entertain the appeal, on the ground that the Munsif's order was final, or to set aside the order under section 15 of 24 and 25 Victoria, Cap. 104, expressed an opinion that the order was contrary to law, and left it to the Munsif to act upon such opinion. KALI CHURN GIR GOSSAIN *v.* BANGSHI MOHAN DAS **[6 B. L. R., 727: 15 W. R., 339**

74. ——————— *Order contrary to law.—Civil Procedure Code, 1859, s. 246.—Want of jurisdiction.—Act VIII of 1859, s. 246, Order under.*—In a case decided by the Munsif, in which it was found by the High Court that there was no appeal to the Judge, the Judge's order was set aside as passed without jurisdiction, and the Munsif's order was also set aside as not having been passed under section 246, Act VIII of 1859, under which section the objection had been perferred. HARRIS CHUNDRA GUPTO *v.* SHASHI MALA GUPTI **[6 B. L. R., 721: 15 W. R., 163**

75. ——————— *Order passed without jurisdiction.—Claim overvalued for purpose of giving jurisdiction.*—The plaintiff brought a suit in the Court of the Subordinate Judge of Dacca, under section 15, Act XIV of 1859. The defendant pleaded that the Judge had no jurisdiction; inasmuch as if the suit had been properly valued, it was one cognisable by the Munsif. The Judge found that the value of the property did not exceed R500, and that the plaintiff had over-estimated the value of the claim in order to exceed the jurisdiction; but instead of returning the plaint, he proceeded to try the case on its merits, and dismissed the suit. On an applica-

SUPERINTENDENCE OF HIGH COURT—*continued.*

2. CHARTER ACT, 24 & 25 VICT., c. 104, s. 15 —*continued.*

(*a*) CIVIL CASES—*continued.*

Exercise of jurisdiction—*continued.*

tion on behalf of the plaintiff to set aside the judgment as passed without jurisdiction, the High Court refused to interfere under section 15 of 24 and 25 Victoria, Cap. 104. IN THE MATTER OF THE PETITION OF WISE . . 10 B. L. R., Ap., 20

76. ——————— *Order passed without jurisdiction.—Revival of suit.—Act X of 1859, ss. 54, 55, and 58.*—A suit for arrears of rent was dismissed by the Deputy Collector for default under section 54, Act X of 1859. Thereupon a fresh suit was brought by the same plaintiff for the recovery of the said arrears, and a decree was obtained. On appeal, the Judge reversed the decision of the Deputy Collector, and dismissed the suit. The plaintiff then applied under section 58, Act X of 1859, for revival of the former suit, but the Deputy Collector rejected the application. On appeal, the Judge held that the suit might be revived, and remanded the case for trial. The High Court, under its general power of superintendence, set aside the order of the Judge as passed without jurisdiction, holding that, although the Deputy Collector had formerly struck off the case under section 54, yet it was in fact an order under section 55, and therefore under section 58, Act X of 1859, no appeal lay to the Judge. HABIB SOBHAN *v.* MAHENDRA NATH ROY [2 B. L. R., Ap., 32: 11 W. R., 129

77. ——————— *Order made without jurisdiction.—Omission to object to illegal proceeding.*—Where a respondent in a Collector's Court applied in special appeal to the High Court to exercise the general powers of supervision vested in it by section 35, Act XXIII of 1861, and section 15 of 24 and 25 Victoria, Cap. 104, to set aside the Collector's proceedings as without jurisdiction, it was held that as he had allowed the appeal to be heard without objection, he was not entitled to the relief sought. DROBO MOYEE DABEE *v.* BIPIN MUNDUL [10 W. R., 6

78. ——————— *Error in reversing judgment for want of jurisdiction.*—Where the District Judge reversed the decree of the Munsif for want of jurisdiction, although the amount of the claim was under R500, the Court, in the exercise of its extraordinary jurisdiction, interfered. RATANSHANKAR REVASHANKAR *v.* GULABSHANKAR. LALSHANKAR . . . . . 4 Bom., A. C., 173

79. ——————— *Judge exceeding his powers under s. 246, Act VIII of 1859.*—Where a Subordinate Judge, under Act VIII of 1859, section 246, declared that a decree-holder was entitled to enforce his mortgage lien against certain attached property, although that property was in the possession of the claimant on his own account, and not on behalf of the judgment-debtor, inasmuch as the claimant professed to derive his title under a

SUPERINTENDENCE OF HIGH COURT—*continued.*

2. CHARTER ACT, 24 & 25 VICT., c. 104, s. 15 —*continued.*

(*a*) CIVIL CASES—*continued.*

Exercise of jurisdiction—*continued.*

ladavee executed in his favour by the judgment-debtor,—*Held* that the Subordinate Judge had proceeded beyond the authority given him by the section, and the High Court would therefore exercise the extraordinary jurisdiction given by section 15 of the Charter Act, by setting aside the Judge's order and directing the property to be released. IN THE MATTER OF KHELLAT CHUNDER GHOSE *v.* GOURCHURN MOJOOMDAR . . 18 W. R., 402

80. ——————— *Improper exercise or improper refusal to exercise jurisdiction.*—The High Court will not exercise its extraordinary powers under the Charter Act, section 15, except where jurisdiction has been either exercised or refused improperly: it will not interfere under that section even where a wrong decision has been arrived at, if the Court which arrived at such decision exercised a jurisdiction which it properly possessed. KHOWAZ RAM BUX SINGH *v.* BISHENDHARBE GEER [23 W. R., 402

81. ——————— *Refusal to entertain suit by Court from which there is an appeal.*—When a Court, subject to the appellate jurisdiction of the High Court, refuses to entertain a suit over which it has jurisdiction, the High Court may, under its general power of superintendence, order the Court below to entertain such suit notwithstanding that no appeal would lie to the High Court from the decree in such suit. HARDAYAL MANDAL *v.* TIRTHANAND THAKUR [4 B. L. R., Ap., 28: 13 W. R., 34

82. ——————— *Refusal to make inquiry as to possession in claim under s. 246, Civil Procedure Code, 1859.*—In a case of a claim to attached property where the Subordinate Judge did not consider himself competent to make the inquiry as to the nature of the possession necessary under section 246, Act VIII of 1859, the High Court declined to interfere under the special provisions of the Charter Act, because the decree-holder had a remedy by regular suit. IN THE MATTER OF HUREEHUR MOOKERJEE. HUREEHUR MOOKERJEE *v.* NOBIN CHUNDER DOSS . . . 20 W. R., 202

83. ——————— *Decision on irregular procedure under s. 230, Civil Procedure Code, 1859.*—A decree-holder in execution having got possession of certain property, application was made for an investigation under section 230, Act VIII of 1859. The Munsif, without going into evidence, rejected the application, and the Judge, in the same manner, reversed the Munsif's judgment and gave the applicant possession. The High Court on application set aside both decisions as not being decisions on the investigation of a suit within the section. The question still remained for decision, whether the property was *bonâ fide* in the possession of the applicant

SUPERINTENDENCE OF HIGH COURT—*continued.*

2. CHARTER ACT, 24 & 25 VICT., c. 104, s. 15 —*continued.*

(*a*) CIVIL CASES—*continued.*

Exercise of jurisdiction—*continued.*

on his own account or on account of some person other than the defendant. WOOMESH CHUNDER ROY *v.* BIDHOO MOOKHEE DOSSEE . 11 W. R., 197

84. ——————— *Order rejecting application by party dispossessed in execution of decree.—Act VIII of 1859, s. 230.*—Whether or not an appeal lies from the decision of a lower Court rejecting an application by a party other than a defendant, under section 230, Act VIII of 1859, disputing the right of the decree-holder to dispossess him, the High Court may, under the 15th section of the Charter, compel the lower Court to exercise its jurisdiction. *Golucknarain Dutt* v. *Bistooprea Dossee, 1 W. R., 140*, referred to and questioned. COLLECTOR OF BOGRA *v.* KRISHNA INDRA ROY

[2 B. L. R., A. C., 301: 11 W. R., 191

85. ——————— *Denial of jurisdiction.—Act X of 1859, s. 77.—A.* sued *B.*, a ryot, for arrears of rent. *C.* was added as a party under section 77, Act X of 1859. The Collector on appeal refused to try *C.'s* claim under section 77, because she had not produced her title-deeds. *Held* that the refusal to try *C.'s* claim by the Collector was a denial of jurisdiction on his part, and the High Court sent back the case to the Collector for trial of *C.'s* claim. IN THE MATTER OF THE PETITION OF NASSIR JAN

[7 B. L. R., 144: 15 W. R., 418

86. ——————— *Refusal to attach property—Refusal of jurisdiction.*—Where a Munsif refuses to attach property in execution which he is bound to attach, he may be compelled to do so by the High Court in the exercise of its powers of supervision. MUNOHUR PAUL *v.* WISE . 15 W. R., 246

87. ——————— *Refusal to execute decree.—Refusal of jurisdiction.*—Where a Deputy Collector who had passed an informal decree refused to execute it on application, the decree-holder was held to be entitled to an order from the High Court, in the exercise of the powers it possesses under section 15 of the High Courts Act directing the Deputy Collector to do his duty. KHENUMKUREE DABEE *v.* SHURUT SOONDUREE DABEE

[14 W. R., 9

88. ——————— *Refusal of Deputy Collector to sell in execution of decree where plaintiff has obtained declaration of his right in Civil Court.*—If a decree of a Civil Court declares that the plaintiff has a right to bring certain property to sale in a Deputy Collector's Court, and the Deputy Collector, at the instigation of the defendant, declines to proceed with the sale, his declining to do his duty does not give a fresh cause of action for the purpose of obtaining a second declaration, though it may be a good ground for asking the High Court to use its extraordinary powers to put the Deputy Collector right. RUGHOONUNDUN SINGH *v.* COCHRANE . . . . 20 W. R., 16

89. ——————— *Refusal to consider grounds.—Review of judgment of predecessor.*—Where a Court subordinate to the High Court rejected an application for a review of judgment, refusing to consider the grounds of the same, because the decree of which a review was sought was given by its predecessor, the High Court, in the exercise of its powers of superintendence under section 15 of the High Courts Act, directed such Court to consider the grounds. IN THE MATTER OF THE PETITION OF MATHRA PARSHAD . I. L. R., 1 All., 296

90. ——————— *Refusal to grant application for review of judgment of predecessor.—Refusal to exercise jurisdiction.*—Forty-six suits were brought against the defendants and dismissed by the Munsif of B. The plaintiffs in each case appealed to the District Judge, who reversed the decision of the Munsif. In both Courts all forty-six cases were disposed of in one judgment. Six of the cases being appealable, special appeals in such cases were preferred to the High Court, and pending such appeals an application for a review of the remaining forty cases was made to the District Judge, who ordered that the petition for review should stand over until the result of the special appeal should be known. The High Court having on special appeal restored the decision of the Munsif dismissing the suits, the application for review was renewed before the successor of the former District Judge. He refused to admit the application. *Held* that the District Judge had not declined jurisdiction or acted beyond his jurisdiction, and that the High Court had therefore no power under section 15 of the Charter Act to interfere. RAM LALL SINGH *v.* JANKI MAHATOON . . . . . 4 C. L. R., 14

91. ——————— *Wrongly declining to exercise jurisdiction.*—Where a Judge declined jurisdiction on a wrong ground, as that of a question of title having arisen, when even if that were the case he had jurisdiction, the High Court interfered under section 15 of the Charter Act. RAM JEEBUN KOYEE *v.* SHAHAZADEE BEGUM

[9 W. R., 336

92. ——————— *Orders of Courts established under Land Acquisition Act (X of 1870).*—The Courts established under Act X of 1870 are subject to the appellate jurisdiction of the High Court, and not the less so because an appeal lies to the High Court from their decisions in certain cases only. The High Court consequently has the power of superintendence over those Courts under section 15 of the Charter Act. IN THE MATTER OF THE PETITION OF ABDOOL ALI . . . . 15 B. L. R., 197

SUPERINTENDENCE OF HIGH COURT—*continued.*

2. CHARTER ACT, 24 & 25 VICT., c. 104, s. 15 —*continued.*

(*a*) CIVIL CASES—*continued.*

Exercise of jurisdiction—*continued.*

93. ——————— *Dismissal of ministerial officer.*—With reference to the rule that its extraordinary powers of superintendence should not be exercised except for the purpose of protecting a complainant in a matter wherein otherwise he would not be able to obtain redress, and where the applicant showed himself worthy of its interference, the High Court declined to interfere on behalf of a party who complained that a District Judge had acted *ultra vires* in dismissing him from the post of serishtadar of the Munsif's Court, seeing that it was open to the applicant, under the Civil Courts Act, to seek his remedy from the Local Government. IN THE MATTER OF THE PETITION OF AKBAR ALI

[19 W. R., 148

94. ——————— *Dismissal of ministerial officer.*—A Munsif having charged his serishtadar with carelessness and irregularities recommended his transfer to some other Munsifi. The Judge after calling for and receiving an explanation from the serishtadar dismissed him from office. The High Court refused to interfere in the exercise of its general power of superintendence, holding that although the Judge had exercised an original power where he had only an appellate jurisdiction, he had done so on a complaint made by the Munsif, and the petitioner, if aggrieved, had a remedy under Act VI of 1871 in an application to the Local Government. IN THE MATTER OF FAKEER CHAND LALL

[20 W. R., 470

95. ——————— *Dismissal of suit in absence of original plaintiff, after adding third party as plaintiff.*—*Per* NORMAN, *J.* (SETON-KARR, *J.*, dissenting).—Where a Court added a third party as a plaintiff, and, in the absence of the original plaintiff, improperly dismissed the suit, it was held that the suit was still pending, and undisposed of by the lower Court as regards the plaintiff; and the lower Court was ordered, under the High Court's power of superintendence vested in it by the 24 and 25 Victoria, Cap. 204, section 15, to take up and try the case accordingly. CHUNDER KANT BHUTTACHARJEE *v.* BINDABUN CHUNDER MOOKERJEE

[7 W. R., 277

S. C. IN THE MATTER OF THE PETITION OF CHUNDER KANT BHUTTACHARJEE

[B. L. R., Sup. Vol., Ap., 43

96. ——————— *Erroneous order.—Putting on the record party not a legal representative.*—Where a decree had been obtained against a British subject domiciled in India, who subsequently died intestate, and an order was made reviving the decree against one of his children, and ordering execution to proceed before letters of administration to his estate had been taken out, and without inquiry being made as to who were his legal personal representatives,—*Held* that, although no appeal lay against the order, yet that as it was clearly erroneous, and as, under the circumstances of the case, it must lead to the greatest confusion and injury to the interests of the parties if the execution was proceeded with, the Court was justified in interfering under section 15 of the Charter Act. POGOSE *v.* CATCHICK

[I. L. R., 3 Calc., 708: 2 C. L. R., 278

But *see* POGOSE *v.* AHSANOOLLAH

[I. L. R., 3 Calc., 710, note

97. ——————— *Order substituting name of purchaser instead of plaintiff.—Jurisdiction of Civil Court.*—A Civil Court is not competent to order the name of a purchaser of the rights of the plaintiff in a suit to be substituted for that of the plaintiff, or, upon the application of the party so substituted, to allow the suit to be withdrawn. Such an order, if made, is made without jurisdiction, and is not an order of that description in respect of which the Legislature intended either to give or to deny the right of appeal. But the order is one which the High Court may set aside in the exercise of the superintendence vested in it by section 15 of 24 and 25 Victoria, Cap. 104. JUDOOPUTTEE CHATTERJEE *v.* CHUNDER KANT BHUTTACHARJEE

[9 W. R., 309

98. ——————— *Pauper, Rejection of application to sue as.—Civil Procedure Code, 1859, s. 304.—Case where there is no appeal.*—Where a decision (*e.g.*, the rejection of an application under Act VIII of 1859, section 304) is declared by law not to be subject to appeal, the High Court cannot interfere under 24 and 25 Victoria, Cap. 104, section 15. BABUR ALI *v.* GOKUL LALL

[24 W. R., 62

99. ——————— *Recorder of Moulmein.—Act XXI of 1863, ss. 16 and 17.—Suspension of pleader.*—The High Court has, under section 15 of 24 and 25 Victoria, Cap. 104, general superintendence over the Court of the Recorder of Moulmein, established under Act XXI of 1863. An order passed by the Recorder of Moulmein under section 16 or 17 of Act XXI of 1863, granting or withdrawing a license to practise as a pleader in the Small Cause Courts of Moulmein, is an exercise of power which comes under the superintendence of the High Court. IN THE MATTER OF THOMSON

[6 B. L. R., 180: 14 W. R., 257

100. ——————— *Refusal of original Court to entertain application for review.—Refusal of leave to sue in formâ pauperis.*—Under section 15 of 24 and 25 Victoria, Cap. 104, the High Court set aside an order of a Court of original jurisdiction, refusing to entertain an application to review an order refusing a petition for leave to sue

SUPERINTENDENCE OF HIGH COURT—*continued.*

2. CHARTER ACT, 24 & 25 VICT., c. 104, s. 15 —*continued.*

(*a*) CIVIL CASES—*continued.*

Exercise of jurisdiction—*continued.*

in formâ pauperis, on the ground that the Court had no jurisdiction to entertain it. IN THE MATTER OF THE PETITION OF UMASUNDARI DEBI [5 B. L. R., Ap., 29

101. ——————— *Review, Admission of, after prescribed time.*—The High Court refused to interfere with the order of a Court granting a review of its judgment, although the application for review was not made until three years after the date of the decree, the party who preferred the application for the review having satisfied such lower Court of the existence of just and reasonable cause for his not having preferred his application for review within ninety days. AJONNISSA BIBEE *v.* SURJA KANT ACHARJI . [2 B. L. R., A. C., 181: 11 W. R., 56

102. ——————— *Review, Admission of, after prescribed time.*—The lower Appellate Court admitted a petition for review of its judgment after a lapse of ninety days from the date of the decision without recording that just and reasonable cause for the delay had been shown. On an application under section 15 of the Charter Act to the High Court to set aside the order of the lower Court, on the ground that that Court had no jurisdiction to entertain an application for review after a lapse of ninety days without recording that there was just and reasonable cause for the delay, the High Court refused to interfere. ASRAFANNISSA BEGUM *v.* INAET HOSSEIN . . 5 B. L. R., 316: 13 W. R., 439

103. ——————— *Order to compel Court to make sale absolute.*—The High Court may, on sufficient cause being shown, make an order upon motion to compel a lower Court to make absolute a sale which had been made by that Court, but which the Court had not confirmed and thought it not expedient to confirm. IN THE MATTER OF THE PETITION OF OODIUT ZUMAN . . 8 W. R., 109

104. ——————— *Sale made pending inquiry under Act XVII of 1873 (the Nawab Nazim's Debts Act).—Order refusing to confirm sale.*—Certain immoveable property having been brought to sale in execution of decrees against Ameer Saheb at the time that the right, title, and interest thereof were under inquiry by Commissioners appointed under Act XVII of 1873 (the Nawab Nazim's Debts Act), it was sold with an intimation that the purchaser would purchase an empty title. Subsequently the Commissioners came to an actual finding under section 12, declaring the property to be held by the Government of India, and their opinion that it could not be alienated by the Nawab Nazim. In consequence of this, the Court which had sold it refused to confirm the sale. The High Court refused to interfere under the High Courts Act, section 15, holding that it was so manifestly right and proper in the interests of all parties to withhold confirmation of the sale in this case, that it was unnecessary to inquire whether the order was in strict conformity with the law or not. KALEE MOHUN SIRCAR *v.* HUMAYOON KADER MAHOMED ALI MIRZA BAHADOOR *alias* AMEER SAHEB . . . . 24 W. R., 311

SUPERINTENDENCE OF HIGH COURT—*continued.*

2. CHARTER ACT, 24 & 25 VICT., c. 104, s. 15 —*continued.*

(*a*) CIVIL CASES—*continued.*

Exercise of jurisdiction—*continued.*

105. ——————— *Order setting aside sale made on insufficient application.*—When an application to cancel a sale does not mention the specific grounds contemplated in sections 256 and 257, Act VIII of 1859, the absence of such specification does not take away the jurisdiction of the Court to inquire into the matter. Where a Judge in such a case sets aside a sale after finding material irregularity and substantial injury, his finding is final, and cannot be questioned by the High Court in the exercise of its extraordinary jurisdiction. SOOKOOMAR SINGH *v.* KASHEE SINGH . . 13 W. R., 250

106. ——————— *Act VIII of 1859, s. 364.—Reversal of sale for inadequacy of price.*—Certain bank shares, the property of a judgment-debtor, were sold in execution of a decree. The Sudder Ameen afterwards reversed the sale on the ground of the inadequacy of the price. The Judge having refused to entertain an appeal, the purchaser applied to the High Court. *Held*, the parties being precluded from appealing by section 364 of Act VIII of 1859, the High Court had no power to grant relief. IN THE MATTER OF THE PETITION OF DACOSTA . . B. L. R., Sup. Vol., 432

S. C. DACOSTA *v.* HALL . 5 W. R., Mis., 25

107. ——————— *Civil Procedure Code, 1877, ss. 290 and 622.—Irregularity in sale in execution of decree.—Order of Judicial Commissioner.*—Certain immoveable property was on the 15th day of February 1879 notified for sale under a decree of a Civil Court on the 15th of March following, so that only twenty-nine instead of thirty days elapsed between the day of sale and the notification. The sale having taken place, the execution-debtor applied to the Deputy Commissioner to set it aside, upon the ground that the sale was illegal, the requirements of section 290 of the Civil Procedure Code being essential to its validity. Upon that ground the sale was set aside as illegal by the Deputy Commissioner. On appeal, the Judicial Commissioner reversed this decision, on the ground that the fact of the sale having taken place twenty-nine instead of thirty days after the notification was merely an irregularity, and that, as the execution-debtor had not shown that he had suffered any damage from the irregularity, the sale ought to be confirmed. An application was then made to a Division Bench of the High Court to set aside the order of the Judicial Commissioner confirming the sale, upon the ground that it was manifestly erroneous, and the Division Bench referred the question to a Full Bench:

SUPERINTENDENCE OF HIGH COURT—*continued.*

2. CHARTER ACT, 24 & 25 VICT., c. 104, s. 15 —*continued.*

(*a*) CIVIL CASES—*continued.*

Exercise of jurisdiction—*continued.*

whether, assuming the requirements of section 290 to be essential to the validity of a sale, the High Court had any power, either under section 15 of the Charter Act or section 622 of the Civil Procedure Code, as amended, to set aside the Judicial Commissioner's order. The Full Bench, without answering the question referred, held that, assuming the requirements of section 290 to be essential, the High Court had a right, under its summary powers, to set aside the sale itself, notwithstanding (and apart from the question whether it would set aside) the order of the Judicial Commissioner. BHEKRAJ KOERI *v.* GENDH LAL TEWARI . . . I. L. R., 5 Calc., 878

108. ——————— *Application to set aside sale in execution of decree.—Circumstances disentitling party to relief.*—A party applying to the High Court for relief under section 15 of 24 and 25 Victoria, Cap. 104, must clearly show that he has not contributed by his own conduct to his being placed in the position he finds himself in. A decree for possession with wasilat of certain lands appertaining to an indigo concern was obtained in a suit against *D.* as manager on behalf of *G. M. & Co.*, the proprietors of the concern, although no member of *G. M. & Co.* was living when the suit was instituted. In execution of this decree the plaintiff obtained possession of the lands. The executors of *M.*, the last surviving member of *G. M. & Co.*, having subsequently assigned the concern to *A*, who also took upon himself the dena-paona, the plaintiff applied under section 210 to execute the decree against *A.* in respect of wasilat; and two successive notices under section 216 were issued to *A.* to show cause why the decree should not be executed against him. *A.* being advised that the suit was a nullity, and that under no circumstances could execution be had against him as heir or legal representative of any of the judgment-debtors, neglected to appear; and certain property belonging to him was sold in execution of the decree without opposition on his part, and the sale having been duly confirmed, the purchaser, who was also the decree-holder, was put into possession. *A.* thereupon applied to the Court executing the decree to have the sale set aside, and his application being refused, petitioned the High Court under section 15 of 24 and 25 Victoria, Cap. 104, for the same relief. The High Court, however, refused to interfere, both upon the principle above stated, and likewise because the purchaser, being also the decree-holder, could not successfully oppose a suit by *A.* to have the sale set aside. IN THE MATTER OF THE PETITION OF COCHRANE

[14 B. L. R., 330 : 23 W. R., 310

109. ——————— *Setting aside order properly made for rateable distribution of sale-proceeds—Claim, Order on.*—A claim was disallowed to certain property which had been attached in execution of a decree. The property was sold, and after satisfaction of the decree it was ordered that the surplus proceeds should be rateably distributed among other judgment-creditors who had subsequently attached. On the application of the unsuccessful claimant again preferring his claim to the property, the Principal Sudder Ameen made another order, setting aside the previous order for distribution so far as it affected some of the creditors. *Held* that the Principal Sudder Ameen had no jurisdiction to make the latter order. The High Court would, therefore, interfere to set it aside under its general power of superintendence. IN THE MATTER OF THE PETITION OF DHIRAJ MAHTAB CHAND BAHADUR

[2 B. L. R., A. C., 217

S. C. MAHARAJAH OF BURDWAN *v.* HEERALALL SEAL . . . . 11 W. R., 54

110. ——————— *Order giving sanction to prosecution.—Grant of certificate of administration to one holding under forged will.*—The application of a widow for a certificate having been opposed by a third party (*K.*), who produced an alleged will of the deceased, the Judge ordered the grant of a certificate to *K.* Subsequently the widow petitioned for an inquiry into the genuineness of the will, and the Judge, after examining witnesses, considered there were sufficient grounds for investigating the charge of forgery, and directed that *K.* should be sent to the Magistrate for that purpose. *Held* that the Judge ought not to have granted the certificate to the party who produced the will unless he was quite satisfied that the will was genuine. As the order, however, directing that *K.* should be sent to a Magistrate was made with jurisdiction, the High Court could not interfere. IN THE MATTER OF KOONJ BEHAREE GHUR . 11 W. R., 171

111. ——————— *Rejection of security offered for stay of execution pending suit brought.*—Where the security offered by a judgment-debtor, with a view to execution against her being stayed until the decision of a suit for an account which she had brought against the decree-holder, was rejected by the lower Court, it was held that the order of rejection could not be interfered with by the High Court under section 15 of the High Courts Act. IN THE MATTER OF THE PETITION OF JODOO MONEE DOSSEE . . . 11 W. R., 494

112. ——————— *Act XI of 1865, s. 4.—Interference with decision of Small Cause Court.*—The powers conferred by 24 and 25 Victoria, Cap. 104, section 15, and Act XI of 1865, section 4, do not enable the High Court to interfere with the decision of a Court of Small Causes refusing an application on the part of a defendant to send for a copy of a letter which was filed in another suit, and which the defendant desired to put in as evidence. IN THE MATTER OF THE PETITION OF MUNNOO SINGH

[19 W. R., 306

SUPERINTENDENCE OF HIGH COURT—*continued.*

2. CHARTER ACT, 24 & 25 VICT., c. 104, s. 15 —*continued.*

(*a*) CIVIL CASES—*continued.*

Exercise of jurisdiction—*continued.*

113. ——————— *Order made by Acting Judge and set aside by permanent incumbent.* —Where an Acting Judge of a Small Cause Court had made an order which the permanent incumbent on his return considered to have been made without authority of law,—*Held* that the High Court was not competent to take up the case on a reference from the Judge, but that the party aggrieved should apply to the High Court, if he thought fit, to exercise its extraordinary powers under section 15 of the High Courts Act. DEEP CHAND *v.* GOUREE [13 W. R., 98

114. ——————— *Cases where no special appeal lies and no question of jurisdiction arises.—Act XXIII of 1861, s. 27.*—Under section 15 of 24 and 25 Victoria, Cap, 104, the High Court will not interfere with the decisions of the Courts below in cases in which a special appeal is forbidden by section 27 of Act XXIII of 1861, and where there is no question of jurisdiction involved. IN THE MATTER OF THE PETITION OF LUKHYKANT BOSE [I. L. R., 1 Calc., 180

S. C. KETIKI CHUTIANY *v.* LUKHEE KANT BOSE [24 W. R., 440

115. ——————— *Interference by High Court in case cognisable by Small Cause Court. —Act XXIII of 1861, s. 27.*—In a suit cognisable by the Small Cause Court, and in which no special appeal lay to the High Court under section 27, Act XXIII of 1861, the High Court exercised its extraordinary powers and dismissed the suit. DHIRAJ MAHTAB CHUND BAHADUR *v.* SHAGOR KUNDU [5 B. L. R., Ap., 91

116. ——————— *Want of jurisdiction to determine part of case.*—In a suit of a Small Cause Court nature (to recover the value of produce) which had been decided upon the real issues between the parties, the High Court refused to exercise its extraordinary powers under section 15 of the Charter, merely on the ground that the Civil Court had no jurisdiction to determine a part of the dispute, which was whether the land whose produce was claimed was or was not in the British territory. BHYRUL SINGH *v.* JHOGRU PATNEE [11 W. R., 506

117. ——————— *Stay of suit in India against company being wound up in England.*—The High Court will, in the exercise of its general power, stay the proceedings in a suit in India against a company which is being wound up by order of the Court of Chancery in England under the Companies Act, 1862, where the circumstances are such as to render it proper to do so. BANK OF HINDUSTAN, CHINA, AND JAPAN, *v.* PREMCHAND RAICHAND. AHMEDBHAI HABIBHAI *v.* PREMCHAND RAICHAND . . . 5 Bom., O. C., 83

SUPERINTENDENCE OF HIGH COURT—*continued.*

2. CHARTER ACT, 24 & 25 VICT., c. 104, s. 15 —*continued.*

(*a*) CIVIL CASES—*continued.*

Exercise of jurisdiction—*continued.*

118. ——————— *Recorder of Rangoon, Errors in trial before.—Decision against validity of will.*—The mere fact of errors of procedure having been committed in a trial before a Recorder would not warrant the High Court in saying that in pronouncing against the validity of a will after investigation he had acted without jurisdiction, or in interfering with his decision. IN THE MATTER OF MEE TSEE . . . 15 W. R., 351

119. ——————— *Order passed without legal evidence.—Civil Procedure Code, 1859, s. 246.*—A party to a certain proceeding instituted under section 246, Act VIII of 1859, having been summoned to give evidence did not attend. The Court, considering that his absence was without lawful excuse, decided the matter before it with reference to the provisions of section 170 of the Civil Procedure Code. It was then attempted to move the High Court under section 15 of 24 and 25 Victoria, Cap. 104, to set aside the order as passed without legal evidence. *Held* that such action would be substantially a special appeal, which could not be allowed with reference to section 246. DHUNPUT SINGH *v.* INDURCHUNDER DOOGUR [13 W. R., 121

120. ——————— *Execution proceedings.—Refusal of party to attend as witness.*—A principal Sudder Ameen ordered the attendance as a witness of a person seeking by his vakil to enforce the execution of a decree, and on his refusal to attend, sent him to the Magistrate. On an application to have the order set aside, a Division Bench of the High Court was of opinion that, under the circumstances, the order of the Principal Sudder Ameen was arbitrary, vexatious, and unnecessary; but being doubtful, in the absence of any provision in the Civil Procedure Code, of its powers of interference under the Charter, referred the point to a Full Bench. *Held* that the Principal Sudder Ameen had power to make the order, and that the High Court ought not to interfere with it. IN THE MATTER OF THE PETITION OF JANKEE BULLUB SEN [B. L. R., Sup. Vol., 716

S. C. JANOKEE BULLUB SEIN *v.* DUKHINA MOHUN CHOWDHRY. . . . 7 W. R., 519

(*b*) CRIMINAL CASES.

121. ——————— *Refusal of High Court to interfere where right of appeal exists.—Held per* AINSLIE and MCDONELL, *JJ.*, that the High Court, in the exercise of its powers of extraordinary jurisdiction, cannot, in criminal matters, interfere, unless all other remedies provided by law have been previously exhausted. Therefore, where parties who had been convicted of riot by a Magistrate, and who having a right of appeal to the Sessions Court, instead

SUPERINTENDENCE OF HIGH COURT—*continued.*

2. CHARTER ACT, 24 & 25 VICT., c. 104, s. 15 —*continued.*

(*b*) CRIMINAL CASES—*continued.*

Exercise of jurisdiction—*continued.*

of doing so moved the High Court under clause 15 of the Charter, the Court would not interfere until that remedy had been resorted to. EMPRESS ON THE PROSECUTION OF DENONATH GHATTACK *v.* RAJCOOMAR SINGH . . I. L. R., 3 Calc., 573

S. C. RAJCOOMAR SINGH *v.* DINONATH GHUTTUCK [1 C. L. R., 352

122. ——————— *Setting aside valid conviction in case wrongly instituted.—Per* MACLEAN, *J.*—The High Court may without reference to the Local Government set aside a conviction made upon a trial improperly originated. IN THE MATTER OF NOBIN CHUNDRA BANIKYA. EMPRESS *v.* NOBIN CHUNDRA BANIKYA [I. L. R., 8 Calc., 560

S. C. NOBIN CHUNDER BANIKYA *v.* EMPRESS [10 C. L. R., 369

123. ——————— *Order of discharge.—Presidency Magistrates Act (IV of 1876), s. 168.—Case in which there is no appeal.*—The only course to be pursued where it is sought to set aside an order of discharge made by a Presidency Magistrate, is that laid down in section 168 of Act IV of 1877; and as by that section there is no appeal allowed to a complainant who is a private individual, it is not open to him, by invoking the aid of the High Court under section 15 of the Charter, to obtain under the Court's extraordinary powers that which he might obtain had he a right of appeal. IN THE MATTER OF POONA CHURN PAL . . . I. L. R., 7 Calc., 447

124. ——————— *Error in law.—Offence not constituted on facts proved in non-appealable case.*—Where the High Court was of opinion (in a case in which no appeal lay to it) that the facts found by the Court that tried the prisoners, and the Court of Appeal from such Court, did not constitute the offence of cheating of which the prisoners had been convicted, the High Court, in the exercise of its extraordinary jurisdiction, reversed the conviction and sentence. REG. *v.* HARGOVANDAS . 9 Bom., 448

125. ——————— *Act V of 1861, s. 17.—Order of executive nature.*—The High Court, while considering that an order by a Magistrate professing to act under section 17 of Act V of 1861 was illegal, refused to interfere, on the ground that the order was one of an executive nature. IN THE MATTER OF THE PETITION OF ROHOMAN SIRKAR [10 B. L. R., Ap., 4: 18 W. R., Cr., 67

126. ——————— *Orders under Criminal Procedure Code, 1872, s. 518.—Nuisances.*—The extraordinary powers conferred on the High Court by section 15 of the Charter Act extend to the revising of orders passed under the Code of Criminal Procedure, section 518. GOSHAIN LUCHMUN PERSHAD POOREE *v.* POHOOP NARAIN POOREE [24 W. R., Cr., 30

SUPERINTENDENCE OF HIGH COURT—*continued.*

2. CHARTER ACT, 24 & 25 VICT., c. 104, s. 15 —*continued.*

(*b*) CRIMINAL CASES—*continued.*

Exercise of jurisdiction—*continued.*

127. ——————— *Order under Criminal Procedure Code (X of 1872), s. 518.—Nuisances.*—The High Court cannot interfere, under section 15 of the Charter Act, with orders duly passed by a Magistrate under section 518 of the Criminal Procedure Code. IN THE MATTER OF THE PETITION OF CHUNDER NATH SEN . I. L. R., 2 Calc., 293

128. ——————— *Orders under Criminal Procedure Code, 1872, s. 518.—Criminal Procedure Code, 1872, s. 297.—Orders in judicial proceeding.—Held* that orders legally made under section 518 of the Code of Criminal Procedure not being orders made in a judicial proceeding, the High Court had no power to deal with them under section 297 of the Code of Criminal Procedure; but where an order under that section was illegal, the High Court set it aside under section 15 of the Charter Act, 24 and 25 Victoria, Cap. 104. *In the matter of the petition of Chunder Nath Sen, I. L. R., 2 Calc., 293,* followed. BRADLEY *v.* JAMESON [I. L. R., 8 Calc., 580

CHUNDER COOMAR ROY *v.* OMESH CHUNDER MOJOOMDAR . . . 22 W. R., Cr., 78

BANEE MADHUB GHOSE *v.* WOOMANATH ROY CHOWDHRY . . . 21 W. R., Cr., 26

SREENATH DUTT *v.* UNNODA CHURN DUTT [23 W. R., Cr., 34

129. ——————— *Order of Magistrate under s. 518, Criminal Procedure Code, 1872.*—The High Court, in the exercise of the jurisdiction given to it by section 15 of the Charter Act, issued a rule *nisi* at the instance of the party aggrieved calling upon the opposite party to show cause why an order made by a Magistrate which was complained of should not be set aside for want of jurisdiction, although the matter had already been brought to the notice of the Court on a reference made by the Sessions Judge. KALI NARAIN ROY CHOWDHRY *v.* ABDOOL GUFFOOR KHAN . 22 W. R., Cr., 24

130. ——————— *Order of remand Criminal Procedure Code (Act XXV of 1861), s. 224.*—Where a Magistrate had adjourned an inquiry for a cause not contemplated by section 224 of the Criminal Procedure Code, the High Court, in exercise of the power of superintendence conferred by section 15 of 24 and 25 Victoria, Cap. 104, set aside the order of remand. IN THE MATTER OF THE PETITION OF MATHURANATH CHUCKERBUTTY [9 B. L. R., 354: 17 W. R., Cr., 55

131. ——————— *Order by Judge of High Court in its original criminal jurisdiction.*—A Judge of the High Court making an order in the original criminal jurisdiction of the Court, is not a Court subject to the control of the High Court under section 15, 24 and 25 Victoria, Cap. 104. IN

SUPERINTENDENCE OF HIGH COURT—*continued.*

2. CHARTER ACT, 24 & 25 VICT., c. 104, s. 15 —*continued.*

(*b*) CRIMINAL CASES—*continued.*

Exercise of jurisdiction—*continued.*

RE GOVERNMENT OF BENGAL. QUEEN *v.* AMEER KHAN

[7 B. L. R., 250, note: 15 W. R., Cr., 60

132. ——————— *Order by Judge of High Court in its original criminal jurisdiction.*—Where an application was made to the Judge sitting on the Original Side of the High Court to transfer a case from Patna in the exercise of the extraordinary jurisdiction of the High Court, and the application was adjourned, and an order made calling on the Government to show cause why it should not be removed, the High Court on the Appellate Side, on a petition setting forth that the order was without jurisdiction, as the rules of the High Court had appointed a particular Bench to hear cases from Patna, refused to interfere. IN RE GOVERNMENT OF BENGAL. QUEEN *v.* AMEER KHAN

[7 B. L. R., 244, note

133. ——————— *Order of Magistrate for warrant without jurisdiction.*—The High Court has power under its general powers of superintendence to quash an order made by a Magistrate without jurisdiction for the issue of a warrant. IN THE MATTER OF BANKA BEHARI GHOSE

[2 B. L. R., A. Cr., 17: 11 W. R., 26

3. CIVIL PROCEDURE CODE, s. 622.

134. ——————— *Delay in moving Court.*—Where an auction-purchaser applied to the High Court to set aside, in the exercise of its powers under section 622 of the Civil Procedure Code, an order setting aside a sale of immoveable property in execution of a decree, on the ground that such order was illegal, such application being made nearly seventeen months after the date of such order, the Court, having regard to the time that had elapsed before such application was made, refused to interfere. IN THE MATTER OF THE PETITION OF DURGA PRASAD . . . . . I. L. R., 4 All., 154

135. ——————— On the question whether the High Court should refrain from exercising its powers under section 622 by reason of the long time which had elapsed from the date of the decree,—*Held* that the petitioner was not fairly chargeable with laches. BALMAKUND *v.* SHEO JATAN LAL . . . . . I. L. R., 6 All., 125

136. ——————— *Interference without application by a party to suit.*—A High Court can interfere under section 622 of the Code of Civil Procedure without an application made to it by a party to the suit. ANTHONY *v.* DUPONT

[I. L. R., 4 Mad., 217

137. ——————— *Interference without application by party to suit.—Reference from District Judge.*—It is only on the application of a party interested that the High Court can act as a Court of Revision under section 622 of the Civil Procedure Code. Accordingly, where a Munsif, considering that the Subordinate Judge had acted without jurisdiction in setting aside on appeal certain orders made by him, brought the matter to the knowledge of the District Judge, who took the same view, and the latter referred the case to the High Court under that section, it was held that the Court had no power to interfere. MAHOMED FOYEZ CHOWDHRY *v.* GOLUCK DASS . . 7 C. L. R., 191

SUPERINTENDENCE OF HIGH COURT—*continued.*

3. CIVIL PROCEDURE CODE, s. 622—*continued.*

Exercise of jurisdiction—*continued.*

138. ——————— *Case where other specific remedy exists.—Bom. Reg. II of 1827, s. 5.—Certiorari.—Mandamus.—Prohibition.—Specific Relief Act, I of 1877, ch. VIII.*—A Division Bench (PINHEY and NANABHAI HARIDAS, *JJ.*) of the High Court referred the following question for the determination of the Full Bench: "Whether the High Court should exercise its extraordinary jurisdiction under section 622 of the Code of Civil Procedure, or otherwise, on behalf of persons who feel themselves aggrieved by orders passed by Courts below in cases in which it appears the law has specifically prescribed another remedy by suit or otherwise?" *Held* that the question did not admit of a precise categorical reply; that the High Court could not impose on itself limitations without regard to circumstances; but that the general principles governing the exercise, by the High Court, of its visitatorial or superintending powers to be deduced from a general survey of the authorities on the subject might be reduced to the form of the following seven propositions, the fifth of which would ordinarily govern in the class of cases alluded to in the question: (1) The visitatorial or superintending power of the High Court is so necessary and almost indispensable, that it is not to be wholly excluded even by a clause in a statute withdrawing cases under the statute from its control. When such a statute has been made a mere pretext, or has been wholly misapplied, the case will be treated as one not really arising under the statute, but on an evasion or perversion of the statute, and as such, subject to the general control of the Court. (2) The Court, having called up the record or proceedings of a subordinate Court, will itself investigate the facts on which a jurisdiction has been assumed or declined; on which it depends whether the subordinate Court could or could not legally deal with the matter in question, either at all or on the principle to which it has referred the case; or according to which its mode of inquiry or of action may or may not have been in contradiction rather than obedience to the rules of procedure, or the principles implied in them, to such a material extent as to defeat the purpose of the law. (3) If the Court finds that the external conditions of jurisdiction, of investigation, and of command, have been satisfied by the inferior Court, it will not substitute its own appreciation of evidence, or its own judg-

SUPERINTENDENCE OF HIGH COURT—*continued.*

3. CIVIL PROCEDURE CODE, s. 622—*continued.*

Exercise of jurisdiction—*continued.*

ment thereon, for the determination of the inferior Court, in any matter committed by the Legislature to the discretion of such Court. (4) Where an appeal is provided, the Court will not interfere by any peremptory order with the ordinary course of adjudication, save in cases wherein a defeat of the law and a grave wrong are manifest, and are irremediable by the regular procedure. (5) Where a decree or order of a subordinate Court is declared by the law to be, for its own purposes, final or conclusive, though in its nature provisional, as subject to displacement by the decree in another more formal suit, the Court will have regard to the intention of the Legislature that promptness and certainty should, in such cases, be in some measure accepted instead of juridical perfection. It will rectify the proceedings of the inferior Court where the extrinsic conditions of its legal activity have plainly been infringed; but where the alleged or apparent error consists in a misappreciation of evidence, or misconstruction of the law, intrinsic to the inquiry and decision, it will respect the intended finality, and will intervene peremptorily only when it is manifest that by the ordinary and prescribed method an adequate remedy, or the intended remedy, cannot be had. (6) The Court will, in all cases, regard its exercise of the extraordinary jurisdiction as discretional, and subject to considerations of the importance of the particular case, or of the principle involved in it, of delay on the part of an applicant, and of his merits with respect to the case in which the interference of the Court is sought. Should other special causes appear for or against the Court's intervention, due weight is to be given to them, regard being always had to the principles already enunciated. (7) The Court will "sedulously abstain" from making any order or refusing to make it on grounds the appreciation of which is exclusively assigned by law to some other authority, provided the legal competence be exercised in good faith on matters that may reasonably be understood as within its lawful range. SHIVA NATHAJI *v.* JOMA KASHINATH . **I. L. R., 7 Bom., 341**

139. ——————— *Cases in which appeal lies.—"Decree."—Order rejecting memorandum of appeal.*—An order rejecting a memorandum of appeal as barred by limitation is a "decree" within the meaning of section 2 of the Civil Procedure Code; it is therefore appealable, and not open to revision by the High Court under section 622 of the Code. GULAB RAI *v.* MANGLI LAL **[I. L. R., 7 All., 42**

140. ——————— *Civil Procedure Code, 1882, s. 381.—Order dismissing suit on failure to give security for costs.—Held* by the Full Bench that an order passed under section 381 of the Civil Procedure Code, dismissing a suit for failure by the plaintiff to furnish security for costs as ordered, was the decree in the suit, and appealable as such, and consequently was not open to revision by the

SUPERINTENDENCE OF HIGH COURT—*continued.*

3. CIVIL PROCEDURE CODE, s. 622—*continued.*

Exercise of jurisdiction—*continued.*

High Court under section 622 of the Code. WILLIAMS *v.* BROWN . . **I. L. R., 8 All., 108**

141. ——————— *Order amending decree under s. 206, Civil Procedure Code, 1882.—High Court's powers of revision.*—A District Judge, by an order passed under section 206 of the Civil Procedure Code, altered a decree passed by his predecessor in the terms, "I dismiss the appeal," to read "I accept the appeal," on the ground that his predecessor had obviously meant to say that he accepted the appeal, and that the decree as it stood failed to give effect to the judgment. *Per* OLDFIELD, *J.*—That the order passed by the Judge under section 206 could not be made the subject of revision by the High Court under section 622 of the Civil Procedure Code, because there was an appeal from the amended decree, which became the decree in the suit, and superseded the original decree. *Per* MAHMOOD, *J.*—That an order passed under section 206 of the Civil Procedure Code constituted an adjudication separate from that concluded by a decree under the Code passed after the parties had been heard and evidence taken, and that the order in the present case was therefore a separate adjudication, and was not appealable under section 588. Also that, in saying that by "dismissed" his predecessor meant "decreed," the Judge had altered the decree in a manner not warranted by the terms of section 206; that he had therefore exercised his jurisdiction "illegally and with material irregularity," within the meaning of section 622 of the Code; and that the Court was consequently competent to revise his order. *Raghunath Das* v. *Raj Kumar, I. L. R., 2 All., 276,* referred to. SURTA *v.* GANGA . . . . **I. L. R., 7 All., 411**

S. C. on appeal under the Letters Patent reversing the judgment of OLDFIELD, *J.*, and affirming that of MAHMOOD, *J.* SURTA *v.* GANGA **[I. L. R., 7 All., 875**

142. ——————— *Civil Procedure Code, s. 206.—Order amending decree in respect of court fee in pre-emption suit.*—An order as to costs contained in a decree for pre-emption directed that the pleader's fees should be calculated with reference to the value of the claim as set forth in the plaint. Subsequently the Court, professing to act under section 206 of the Civil Procedure Code, passed an order directing the amendment of the decree by calculating the pleader's fees upon the actual value of the property. *Held per* OLDFIELD, *J.*—When an original decree is amended under section 206 of the Civil Procedure Code, it as amended is the decree in the suit; and an appeal therefore lies from it under the provisions of section 540, when the validity of the amendment can be questioned. The matter of amending a decree under section 206 does not by itself constitute a "case" within the meaning of section 622 of the Civil Procedure Code, but forms part of the proceedings in the suit in which the

SUPERINTENDENCE OF HIGH COURT—*continued.*

3. CIVIL PROCEDURE CODE, s. 622—*continued.*

Exercise of jurisdiction—*continued.*

decree is made. *Held*, therefore, *per* OLDFIELD, *J.*, that, where an original decree, which was appealable, was amended by the Court of first instance, under section 206 of the Civil Procedure Code, the High Court had no power to revise such amendment under section 622 of the Code. *Per* MAHMOOD, *J.*, *contra.* RAGHUNATH DAS *v.* RAJ KUMAR [I. L. R., 2 All., 276

Held on appeal under the Letters Patent that the alteration of the decree was improper, and was not an amendment of the kind authorised by section 206 of the Civil Procedure Code. An order passed under section 206 amending a decree is a separate adjudication, and is not merely a part of the original decree, and such an order is not appealable under section 588 of the Code. Such an order, therefore, can be revised by the High Court, under section 622. The judgment of OLDFIELD, *J.*, reversed, and that of MAHMOOD, *J.*, affirmed. RAGHUNATH DAS *v.* RAJ KUMAR . . . . I. L. R., 7 All., 876

143. ——————— *Civil Procedure Code, 1882, s. 44.—Order refusing leave to join claims.—Rejection of plaint.*—In a plaint filed in the Court of a Subordinate Judge, the plaintiff claimed to recover possession of a house, together with some grain which was stored in it. The plaintiff applied to the Subordinate Judge for leave, under section 44, Rule *a*, of the Civil Procedure Code, to join the claim for grain with the claim for possession of the house. The Subordinate Judge refused leave, and returned the plaint, with directions that the plaintiff should institute two suits for recovery of the house and the grain, respectively, in the Court of the Munsif. *Held* that the Subordinate Judge's order was substantially an order rejecting the plaint, on the ground that the plaintiff had joined a cause of action with a suit for recovery of immoveable property; that, although this might have been a misapplication of section 44, Rule *a*, of the Code, its effect was to reject the plaint; that such an order was a decree, with reference to the definition in section 2, and was appealable as such to the District Judge: and that therefore a second appeal lay in the case to the High Court, and that Court was not competent to interfere in revision under section 622. BANDHAN SINGH *v.* SOLHU . I. L. R., 8 All., 191

144. ——————— *Case in which no appeal lies.—Calling for record in case.—Per* PEARSON, *J.*, OLDFIELD, *J.*, and STRAIGHT, *J.*—When, under section 622 of Act X of 1877, the High Court has called for the record of a case in which no appeal lies to it, it may, under that section, pass any order in such case which it might pass if it dealt with the case as a second appeal under Chapter XLII of that Act. *Per* STUART, *C. J.*—The High Court may, under that section, pass in such case any order, whether in regard to fact or law, as it thinks proper. IN THE MATTER OF THE PETITION OF MUHAMMAD *v.* HUSAIN . I. L. R., 3 All., 203

SUPERINTENDENCE OF HIGH COURT—*continued.*

3. CIVIL PROCEDURE CODE, s. 622—*continued.*

Exercise of jurisdiction—*continued.*

145. ——————— *Case in which appeal lies.*—A tenure having been sold in execution of an *ex parte* decree for rent due in respect of it, the judgment-debtor made an application, to which the purchaser was not made a party, to set aside the decree, and the decree was set aside. The decree-holder thereupon applied under section 622 of the Civil Procedure Code to set aside the order of the Munsif. *Held* that inasmuch as an appeal lay, under section 558 (clause 6), from the order of the Munsif, the Court ought not to interfere under section 622. RAM KRISTO ROY *v.* NAIK TARA DASS [12 C. L. R., 449

146. ——————— *Interference of High Court where no appeal lies.*—Where an appeal preferred to the District Court against an order refusing an application for execution of a decree for costs was allowed, the High Court, on a second appeal being instituted, held that no appeal lay either to the District Court or to the High Court, but entertained the matter under section 622 of the Civil Procedure Code, and upheld the order of the District Court. BHOYRUB CHUNDER DOSS *v.* WAJEDUNNISSA KHATOON . . 6 C. L. R., 234

147. ——————— *Objection to attachment of property.—Objection allowed.—Costs.—Suit to establish right.—Appeal.—Refund of costs.—Civil Procedure Code, 1882, ss. 244, 280, 283.*—An objection to the attachment of property attached in execution of a decree was allowed, the decree-holder being ordered to pay the costs of the objector. The decree-holder thereupon brought a suit to contest the order allowing the objection. He did not seek in this suit relief in respect of the costs. He obtained a decree setting aside the order allowing the objection. He then applied to the Court which had made the order to order a refund of the amount of the costs which had been paid to the objector. *Held* that the application being regarded as one with regard to a portion of an order made under section 280 of the Civil Procedure Code, the Court was *functus* in the matter, and could not make or enforce such an order as was sought for; and that its order disallowing the application was not appealable, as it was not one made under section 244, and if taken to be one passed with reference to section 280, an appeal was barred by section 283: the Court therefore would interfere under section 622 of the Civil Procedure Code. IN THE MATTER OF THE PETITION OF RAGHU NATH DAS. RAGHU NATH DAS *v.* BADRI PRASAD . I. L. R., 6 All., 21

148. ——————— *Arbitration.—Illegal procedure on arbitration.—Invalid award.*—Where two of five arbitrators nominated by the parties to a suit and appointed by the Court had not consented before, and, after appointment, declined to act, and the Court appointed two arbitrators in their place against the consent of one of the parties to the

SUPERINTENDENCE OF HIGH COURT—*continued.*

3. CIVIL PROCEDURE CODE, s. 622—*continued.*

Exercise of jurisdiction—*continued.*

suit, and the appointment of the new arbitrators was not warranted by the provisions of section 510 of the Code of Civil Procedure, and the order of reference to such arbitrators, the award made by them, and the decree passed upon the award were consequently illegal,—*Held* that the High Court could set aside the decree under the powers given by section 622 of the Code of Civil Procedure. PUGARDIN RAVUTAN *v.* MOIDINSA RAVUTAN . **I. L. R, 6 Mad., 414**

149. ——————— *Arbitration.—Order refusing to file an award.*—Where an order is made refusing to file an award no appeal lies from it, but the High Court can interfere under section 622 of the Civil Procedure Code. MANA VIKRAMA (MAHARAJA OF CALICUT) *v.* MALLICHERRY KRISTNAN NAMBUDRI . . . **I. L. R., 3 Mad., 68**

150. ——————— *Arbitration.—Order setting aside award for misconduct of arbitrator.*—An order under section 521 of the Civil Procedure Code, setting aside an award, made on a reference to arbitration in the course of a suit, under Chapter XXXVIII of the Code, on the ground of the arbitrator's misconduct, is not subject to revision by the High Court in the exercise of the powers conferred on it by section 622 of the Code. CHATTAR SINGH *v.* LEKHRAJ SINGH . **I. L. R., 5 All., 293**

151. ——————— *Arbitration.—Act VIII of 1859, s. 318.—Award made after time allowed by Court.*—An order of reference to arbitration was made on 21st January. Six weeks' time was allowed for the return of the award. No application was made for extension of time. The award having been returned on 8th May, the Court refused to give judgment in accordance with it under section 522 of the Code of Civil Procedure, on the ground that it was not valid. The plaintiffs then petitioned the High Court under section 622 of the Code of Civil Procedure. *Held* that the award was invalid, and the Court had not failed to exercise jurisdiction within the meaning of section 622 of the Code of Civil Procedure. SIMSON *v.* VENKATAGOPALAM **[I. L. R., 9 Mad., 475**

152. ——————— *Arbitration.—Award.—Error of procedure.—Relief refused on equitable grounds.*—*R. M.*, party to a suit, having authorised his agent to conduct the suit, the agent consented to the case being referred to arbitration by the Court. The arbitration was carried on to the knowledge and with the assent of *R. M.* On an application by *R. M.*, under section 622 of the Code of Civil Procedure, to set aside the award made by the arbitrators, on the grounds (1) that his pleader had not been authorised in writing, as required by section 506 of the Code, to apply for arbitration; and (2) that he himself had not consented to the reference,—*Held* that, under the circumstances, *R. M.* was not entitled to relief. UNNIRAMAN *v.* CHATHAN **[I. L. R., 9 Mad., 451**

SUPERINTENDENCE OF HIGH COURT—*continued.*

3. CIVIL PROCEDURE CODE, s. 622—*continued.*

Exercise of jurisdiction—*continued.*

153. ——————— *Attachment.—Power to set aside order for attachment by another Court.*—No Court, other than a Court of Appeal or a High Court acting under section 622 of the Code of Civil Procedure, can discharge an order of attachment issued by another Court. KOLASHERRI ILLATH NARANIAN *v.* KOLASHERRI ILLATH NILAKANDAN NAMBUDRI . . . **I. L. R., 4 Mad., 13]**

154. ——————— *Commission, Order refusing issue of.—Civil Procedure Code, ss. 130, 387.—Interlocutory orders.*—Under section 622 of the Code of Civil Procedure, interlocutory orders passed under section 367, refusing applications for the issue of a commission to examine witnesses, or under section 130, directing the production of documents, cannot be revised. IN RE NIZAM OF HYDERABAD **[I. L. R., 9 Mad., 256**

155. ——————— *Decree, Construction of.—Order misconstruing decree.*—Where in a case of the execution of a decree in which no second appeal lay to the High Court, the Appellate Court held, on the construction of the decreee, that it awarded interest on the principal amount of the decree, the High Court, under section 622 of Act X of 1877, holding that the Appellate Court had misconstrued the decree, and that the decree did not award such interest, modified the order of the Appellate Court accordingly. IN THE MATTER OF THE PETITION OF MUHAMMAD *v.* HUSAIN . . . . **I. L. R., 3 All., 203**

156. ——————— *Decree.—Order reversing refusal to set aside ex parte decree.*—After a decree had been made *ex parte*, the defendant applied to have it set aside. The Subordinate Judge refused the application, but his order was reversed by the District Judge. *Held* that no appeal lay, nor would the Court interfere under section 622 of the Procedure Code. AUBINASH CHUNDER MOOKERJEE *v.* MARTIN . . . **I. L. R., 8 Calc., 832**

157. ——————— *Discretion, Interference with exercise of.—Collector.—Hereditary Offices Act, (Bom.) III of 1874, s. 10.—Collector's certificate.*—The Collector, when granting a certificate under section 10 of the Bombay Hereditary Offices Act (No. III of 1874), exercises a judicial function, and is subject to the supervision of the High Court; but the High Court will not interfere with his discretion, unless there is violent misuse of authority, obvious bad faith, or reckless disregard or wanton perversion of the law on his part. COLLECTOR OF THANA *v.* BHASKAR MAHADEV SHETH **[I. L. R., 8 Bom., 264**

158. ——————— *Discretion, Interference with exercise of.—Refusal to grant certificate of sale under Madras Rent Recovery Act.—Civil Procedure Code, 1882, s. 4.*—A sale of the tenants' interest in certain land having taken place

SUPERINTENDENCE OF HIGH COURT—*continued.*

3. CIVIL PROCEDURE CODE, s. 622—*continued.*

Exercise of jurisdiction—*continued.*

under sections 39 and 40 of the Rent Recovery Act, the Deputy Collector refused to issue a sale certificate to the purchaser, on the ground that the sale had been irregularly conducted. *Held* that the High Court had no power to review the proceedings of the Deputy Collector under section 622 of the Code of Civil Procedure. VELLI PERIYA MIRA RAVUTHAN *v.* MOIDIN PADSHA RAVUTHAN

[I. L. R., 9 Mad., 332

159. ——————— *Discretion, Interference with exercise of.—Admission by District Court of Appeal presented out of time.*—Where a District Court admitted an appeal presented out of time, on the ground that the appellant, having filed an application for review within the time allowed for an appeal, was entitled to exclude the time occupied in prosecuting the review,—*Held* that the High Court could not interfere on revision. VASUDEVA *v.* CHINNASAMI . . I. L. R., 7 Mad., 584

160. ——————— *Error in law.—Civil Procedure Code, 1882, s. 32.—Interpleader suit, Application to be made a party to.—Power of High Court on revision.—Erroneous construction of Act.*—A merely erroneous construction of the provisions of an Act is not a ground for relief under section 622 of the Civil Procedure Code. *M. J.* instituted an interpleader suit against two rival claimants, *N.* and *A.*, in respect of a sum of R20,000. *R.* subsequently claimed a portion of the money and applied to be made a party to the suit, but was opposed by *M. J.* and *N.* The Subordinate Judge refused the application, on the ground that, though it was probably made under section 32 of the Civil Procedure Code, *R.'s* right or claim not having been admitted by the plaintiff, nor asserted to his knowledge, she was not a necessary party under the special provisions of Chapter XXXIII of the Civil Procedure Code, and referred her to a regular suit. *Held* that the order, though based upon an erroneous construction of the provisions of section 32 of the Code, did not come within the scope of section 622, inasmuch as it could not be said that the Subordinate Judge had failed to exercise a jurisdiction vested in him by law. RABBABA KHANUM *v.* NOORJEHAN BEGUM *alias* DALIM SHAHIBA

[I. L. R., 13 Calc., 90

161. ——————— *Error in law.—Dismissal of suit by Small Cause Court.—Legal Practitioners Act.*—A Small Cause Court having dismissed a suit brought by a pleader to recover from his client a fee claimed for the conduct of a suit, on the ground that such a suit would not lie, because it was based on an oral contract, and such contract could not be enforced by reason of the provisions of the Legal Practitioners Act, the High Court, under section 622 of the Code of Civil Procedure, reversed the decree of the Small Cause Court. RAMA *v.* KUNJI

[I. L. R., 9 Mad., 375

SUPERINTENDENCE OF HIGH COURT—*continued.*

3. CIVIL PROCEDURE CODE, s. 622—*continued.*

Exercise of jurisdiction—*continued.*

162. ——————— *Execution of decree.—Application for execution of decree.—Civil Procedure Code, 1877, s. 244.—Registration Act, 1866, s. 53.*—An application was made to a District Munsif on the 16th July 1877 to issue execution on a decree, dated 6th November 1869, obtained on a bond registered under section 53 of the Registration Act of 1866. He made an order refusing execution, the decree being one passed, not in a regular suit, but in a summary suit, and governed by the period of limitation prescribed by article 166, schedule II, Act IX of 1871. On appeal the Subordinate Judge reversed the order of the Munsif, holding that article 167, schedule II of Act IX of 1871, applied. *Held* that, under section 622 of Act X of 1877, the High Court could not interfere, as the Subordinate Judge had jurisdiction to hear the appeal. SURYAPRAGASA RAU *v.* VAISYA SANNYASI RAZU

[I. L. R., 1 Mad., 401

163. ——————— *Execution of decree.—Civil Procedure Code, 1882, s. 335.—Resistance to execution of decree.*—An order under section 335 of the Civil Procedure Code is subject to revision by the High Court under section 622 of that Code. *Shiva Nathaji* v. *Joma Kashinath, I. L. R., 7 Bom., 341,* followed. SHEORAJ SINGH *v.* BANWARI DAS . . . . I. L. R., 6 All., 172

164. ——————— *Jurisdiction, Exercise of.—Erroneous decision in suit tried with jurisdiction.—Act XII of 1879, s. 92.*—A Court that has decided a suit over which it had jurisdiction, cannot, only on the ground that it has arrived at a wrong decision, be said to have exercised its jurisdiction illegally, or with material irregularity, within the meaning of section 622 of Act X of 1877, as amended by section 92 of Act XII of 1879. AMIR HASSAN KHAN *v.* SHEO BAKSH SINGH

[I. L. R., 11 Calc., 6: L. R., 11 I. A., 237

165. ——————— *Jurisdiction, Interference with exercise of.—Civil Procedure Code, 1882, s. 320.—Transfer of decree to Collector for execution.—Rules made by Local Government.*—A decree passed by a Subordinate Judge upon a bond, in which certain immoveable property was mortgaged, was, in accordance with the rules made by the Local Government under section 220 of the Civil Procedure Code, transferred to the Collector for execution. A sale in execution took place, and the Collector gave the purchaser a certificate of the sale. Upon this certificate the purchaser applied to the Subordinate Judge to give him possession of a larger amount of property than that specified in the certificate, and, upon the refusal of the Court to do so, applied to the Collector to amend the certificate. The amendment having been made as desired, the purchaser again applied to the Subordinate Judge for possession of the amount claimed by him, and the Subordinate Judge again rejected the application, holding that

SUPERINTENDENCE OF HIGH COURT—*continued.*

3. CIVIL PROCEDURE CODE, s. 622—*continued.*

Exercise of jurisdiction—*continued.*

only the lesser amount had been sold in execution of the decree. The Court held that the Subordinate Judge had jurisdiction to decide the question. *Held* that, inasmuch as the Subordinate Judge had jurisdiction to decide the question, and inasmuch as, even if his decision were wrong, the purchaser had a remedy by bringing a regular suit, the matter did not fall within section 622 of the Civil Procedure Code, so as to call for the interference of the High Court in revision. *Shivanathaji* v. *Joma Kashinath, I. L. R., 7 Bom., 341;* and *Amir Hassan Khan* v. *Sheo Baksh Singh, I. L. R., 11 Calc., 6,* referred to. SUNDAR DAS *v.* MANSA RAM

[I. L. R., 7 All., 407

166. ——————— *Jurisdiction, Interference with exercise of.—Limitation.*—A Court which admits an application to set aside a decree *ex parte* after the true period of limitation has expired, acts in the exercise of its jurisdiction illegally and with material irregularity within the meaning of section 622 of the Civil Procedure Code, and such action may therefore be made the subject of revision by the High Court under that section. *Amir Hassan Khan* v. *Sheo Baksh Singh, I. L. R., 11 Calc., 6;* and *Magni Ram* v. *Jiwa Lall, I. L. R., 7 All., 336,* commented on by MAHMOOD, *J.* *Per* MAHMOOD, *J.*—The term "jurisdiction" as used by their Lordships of the Privy Council in *Amir Hassan Khan* v. *Sheo Baksh Singh* must be understood in its broad legal sense signifying the power of administering justice according to the means which the law has provided, and subject to the limitations imposed by the law upon the judicial authority. HAR PRASAD *v.* JAFAR ALI . . . I. L. R., 7 All., 345

167. ——————— *Jurisdiction, Question not relating to.—Alleged errors in decision of suit for pre-emption.*—In a suit to enforce the right of pre-emption in respect of a usufructuary mortgage of immoveable property, the plaintiffs alleged that the consideration-money was less than that stated in the mortgage-deed. The Court of first instance gave the plaintiffs a decree for possession of the property, on payment of an amount less than that mentioned in the deed; and this decree was affirmed on appeal. The mortgagees appealed to the High Court on the following grounds: "(i) Because it was for the respondents to prove that any portion of the consideration was not paid. (ii) Because the lower Court has not considered the evidence of the appellants. (iii) Because the finding of the lower Court is based on conjecture." *Held,* on the question whether, such grounds not being grounds on which a second appeal is allowed by Chapter XLII of the Civil Procedure Code, the appeal should not proceed rather under Chapter XLVI, section 622 of that Code, that the appeal could not proceed under section 622 of the Civil Procedure Code, in consequence of the decision of the Privy Council in *Amir Hassan Khan* v. *Sheo Baksh Singh, I. L. R., 11 Calc., 6,* that only questions relating to the jurisdiction of the Court could be entertained under that section. MAGNI RAM *v.* JIWA LAL

[I. L. R., 7 All., 336

168. ——————— *Jurisdiction, Interference with exercise of.—Second class Subordinate Judge.—Subject-matter of suit under R5,000 and within jurisdiction.—Amount of decree with accumulations of interest exceeding R5,000.—Application for execution.—Second appeal.*—The plaintiffs obtained a decree in the Court of a second class Subordinate Judge for a sum less than R5,000, which with accumulations of interest subsequently exceeded R5,000. The plaintiffs applied in execution to recover the total amount. The application was rejected by the Subordinate Judge, on the ground that the Court had no jurisdiction under section 24 of Act XIV of 1869. On appeal the District Judge made an order confirming the decision of the Subordinate Judge. The plaintiffs filed a second appeal in the High Court. *Held* that no second appeal lay to the High Court from such an order; but, as the Subordinate Judge was wrong in refusing to exercise his jurisdiction, the High Court would give relief under the extraordinary jurisdiction conferred by section 622 of the Civil Procedure Code (XIV of 1882). The subject-matter of the suit was within the jurisdiction of the Subordinate Judge, and his jurisdiction continued, whatever might be the result of the suit, in all such matters in the suit as were within his cognisance, amongst which were matters in execution in the suit. The mere circumstance that the amount actually due by process of accumulation exceeded R5,000 could not oust him from the jurisdiction he hitherto had over the suit. SHAMRAV PANDOJI *v.* NILOJI RAMAJI . . I. L. R., 10 Bom., 200

169. ——————— *Jurisdiction, Interference with exercise of.—Error of Mamlatdar.—Possessory suit in a Mamlatdar's Court.*—The opponents had obtained a decree for the possession of certain land against the brother and father of the applicants in the Court of the Mamlatdar at Karad, in the Satara district. The applicants were not parties to the suit. The decree was executed, and the opponents were put into possession. Thereupon the applicants, on the 19th May 1884, presented a petition in the Mamlatdar's Court, under section 4 of Bombay Act III of 1876, alleging that they had been in actual possession of the lands and had been ousted from them in execution of the decree, and praying that they might be again put into possession. The Mamlatdar was of opinion that the matter was *res judicata,* and dismissed the petition. He relied on a circular of the Executive Government as his authority. The applicants applied to the High Court under its extraordinary jurisdiction. *Held* that it was not a case for the exercise of the extraordinary jurisdiction of the High Court. The Mamlatdar was, no doubt, guilty of a formal error. In the exercise of

SUPERINTENDENCE OF HIGH COURT—*continued.*

3. CIVIL PROCEDURE CODE, s. 622—*continued.*

Exercise of jurisdiction—*continued.*

his judicial functions he was bound to be governed by the law as he understood it, or as it had been expounded by superior judicial authority, not as it was understood or expounded by unjudicial persons. This, however, was merely an irregularity on the part of the Mamlatdar not apparently involving an injustice to the applicants, who might bring a suit on their title if they had a title. NANA BAYAJI *v.* PANDURANG VASUDEV . **I. L. R., 9 Bom., 97**

170. ——————— *Jurisdiction, Interference with exercise of.—Civil Procedure Code, 1882, s. 315.*—Where an order was passed under section 315 of the Code of Civil Procedure directing refund to a purchaser in execution of a decree in a suit in which a second appeal lay to the High Court,—*Held* that, under section 622 of the Code of Civil Procedure, the High Court could set aside the order, because, the judgment-debtor having been found to have a saleable interest, the lower Court had no power to order a refund. KUNHAMED *v.* CHATHU **[I. L. R., 9 Mad., 437**

171. ——————— *Jurisdiction, Interference with exercise of.—Excess of jurisdiction.—Arbitrators exceeding jurisdiction.*—In any case where there is a disregard of the law amounting to an excess of jurisdiction, or a perversion of the purposes of the Legislature, the High Court will interfere under its extraordinary jurisdiction where no other remedy is available. DAGDUSA TILAKCHAND *v.* BHUKAN GOVIND SHET **[I. L. R., 9 Bom., 82**

172. ——————— *Jurisdiction, Interference with exercise of.—Civil Procedure Code, 1882, s. 492.—Civil Procedure Code, 1859, s. 92.—Injunction to stay sale pending suit to establish title.*—A claim by *R.* to certain property which had been attached by *B.* in the course of execution proceedings in the Court of the First Subordinate Judge of Dacca having been rejected, *R.* instituted a suit in the Court of the Second Subordinate Judge to establish his title to the property. In that suit he applied to the Court in which his suit was brought for an injunction under section 492 of the Civil Procedure Code to stay the sale of the property attached by *B.* in the execution proceedings; but that application was rejected, and *R.* thereupon applied for and obtained from the Court of the First Subordinate Judge an order staying the sale of the attached property until the hearing of the suit brought by him to establish his right to it. *Held*, in an application under section 622 of the Code to set the latter order aside, that section 492 of the Code of 1882 has, and was intended to have, a wider application than section 92 of Act VIII of 1859 had, and provides a remedy where property is "in danger of being wrongfully sold:" if the circumstances justified it, an order could have been obtained under that section from the Court of the Second Subordinate Judge to

SUPERINTENDENCE OF HIGH COURT—*continued.*

3. CIVIL PROCEDURE CODE, s. 622—*continued.*

Exercise of jurisdiction—*continued.*

stay the sale. There being this alteration in the law, and such a remedy provided, and no express provision in the Code for stay of execution by a Court executing a decree on the application of a third party, the order of the First Subordinate Judge was made without jurisdiction, and should be set aside. IN THE MATTER OF THE PETITION OF BROJENDRA KUMAR RAI CHOWDHURI. BROJENDRA KUMAR RAI CHOWDHURI *v.* RUP LALL DOSS **[I. L. R., 12 Calc., 515**

173. ——————— *Jurisdiction.—Sale set aside on account of irregularity only.*—Where a Court, professing to act under section 311 of the Code of Civil Procedure, set aside a sale in execution of a decree without proof of substantial injury having been suffered by the applicant,—*Held* that such order was passed without jurisdiction within the meaning of section 622 of the said Code. LAKSHMANA *v.* NAJIMUDIN **[I. L. R., 9 Mad., 145**

174. ——————— *Jurisdiction, Interference with exercise of.—Possession given to purchaser.—Restitution sought in execution by judgment-debtor.—Remedy by suit.*—Certain land having been attached in execution of a decree by a District Court, *S.*, the representative of the judgment-debtor, preferred a claim to the land in his own right, which was rejected, and the land was subsequently sold to a stranger, and the sale was confirmed on the 23rd February 1884. On the same date the High Court, on appeal by *S.*, set aside the order rejecting his claim. The District Court, in ignorance of the order of the High Court, having subsequently put the purchaser in possession of the land, *S.* applied for restitution, but his petition was rejected by the District Judge. In an application under section 622 of the Civil Procedure Code to revise the Judge's order, on the ground that he refused to exercise his jurisdiction to restore *S.* to possession,—*Held* that the order of the District Judge confirming the sale was passed without jurisdiction, and that the District Judge had no power to restore possession to *S.* The High Court therefore could not interfere under section 622. The remedy of *S.* was by a separate suit. SUBBAYA *v.* YELLAMMA **[I. L. R., 9 Mad., 130**

175. ——————— *Jurisdiction, Interference with exercise of.—Trial of case cognisable only by Small Cause Court*—*S.* instituted a suit against *T.* in the Court of an Assistant Collector of the first class, who dismissed the suit. On appeal by *S.* the District Court gave her a decree. On second appeal by *T.* the High Court held that, as the suit was one of the nature cognisable in a Court of Small Causes, a second appeal would not lie in the case, and dismissed it. *T.* thereupon applied to the High Court to set aside, under the provisions of section 622 of Act X of 1877, the proceedings of both

SUPERINTENDENCE OF HIGH COURT—*continued.*

3. CIVIL PROCEDURE CODE, s. 622—*continued.*

Exercise of jurisdiction—*continued.*

the lower Courts, on the ground that both those Courts had exercised a jurisdiction not vested in them by law. *Held* that the High Court was competent to entertain such application and to quash the proceedings of both the lower Courts, under the provisions of section 622 of Act X of 1877, and the proceedings of both those Courts should be quashed. Observations by STUART, *C. J.*, on the powers of revision of the High Court under section 622 of Act X of 1877. SARNAM TEWARI *v.* SAKINA BIBI **[I. L. R., 3 All., 417**

176. ——————— *Jurisdiction, Interference with exercise of.—Beng. Reg. XVII of 1806.—Redemption of mortgage.*—After a mortgage had been foreclosed under the provisions of Regulation XVII of 1806, the representative of the mortgagor deposited the mortgage-money in Court. The District Judge ordered that the money should be paid to the mortgagee, on the ground that the mortgagor had not been personally served with the notice required by section 8 of that Regulation, and that it did not appear that she had been aware of the foreclosure proceedings. The District Judge subsequently ordered the mortgagee, who was in possession of the mortgaged property under the terms of the mortgage, to surrender the property. The mortgagee applied to the High Court to revise these orders under section 622 of Act X of 1877. *Held* that the application was entertainable under the provisions of that section, and that the orders of the District Judge were made without jurisdiction and should be set aside. HAZARI LAL *v.* KHERU RAI **[I. L. R., 3 All., 576**

177. ——————— *Jurisdiction, Interference with exercise of.—Improper refusal of jurisdiction.*—Where a Munsif improperly refused to investigate a claim under sections 278-280, Civil Procedure Code, 1877, he was held to have refused to exercise a jurisdiction he was bound to exercise, and the Court set aside his order and ordered the investigation to be made. JAMEELA *v.* LUCHMUN PANDAY . . . . . **4 C. L. R., 74**

178. ——————— *Appeal against appellate decree by party to suit who did not appeal against original decree.*—*S.* having mortgaged land to *K.* as security for a debt, sold it to *V.*, who undertook to pay the debt. *K.*, alleging that *C.* had undertaken either to make *V.* pay the debt or to execute a mortgage of his own land to secure its repayment, and that *V.* had dispossessed him, sued *S.*, *V.*, and *C.* to recover the debt by sale of the land mortgaged, mesne profits from *V.*, and costs from *S.*, and *V.*, and *C.* The District Munsif decreed payment against *S.*; mesne profits, and, in default of payment by *S.*, a sale of the land against *V.*; and costs against *S.*, *V.*, and *C.* *V.* and *C.* appealed against this decree. The Subordinate Judge found that the debt had been paid and held that, even if the debt had not been paid, *K.* had no cause of action against *V.* or *S.*, but, if at all, against *C.*, and dismissed the suit as against *V.* The Subordinate Judge also held that he had no jurisdiction to interfere with the decree against *S.*, and saw no reason to interfere with the decree against *C.* *S.* appealed against this decree. *Held* that even if *S.* was not entitled to appeal in order to have the decree against him set aside, the error of the Subordinate Judge could be corrected under section 622 of the Code of Civil Procedure by a direction to exercise the discretionary power given by section 544 of the said Code. SESHADRI *v.* KRISHNAN . **I. L. R., 8 Mad., 192**

179. ——————— *Jurisdiction, Interference with exercise of.—Act XL of 1858 (Beng. Minors Act), s. 3.—Refusal to admit person with certificate of administration to defend suit on behal of minor.*—Under section 3 of the Bengal Minors Act (XL of 1858), the Civil Court has no power to refuse to admit a person who has obtained a certificate of administration under the Act, to defend a suit on the minor's behalf, as guardian of such minor. Where a Subordinate Judge had so acted,—*Held* that the High Court had no power to revise his order under section 622 of the Civil Procedure Code. BALDEO DAS *v.* GOBIND SHANKAR . . **I. L. R., 7 All., 914**

180. ——————— *Jurisdiction, Interference with exercise of.—Decree, Refusal to amend.*—Where a Court improperly refused to amend a decree, which was at variance with the judgment, —*Held* that, in so acting, the Court had acted in the exercise of its jurisdiction illegally and with material irregularity, within the meaning of section 622 of the Civil Procedure Code, and its order was consequently subject to revision under that section. BALMAKUND *v.* SHEOJATAN LAL **[I. L. R., 6 All., 125**

181. ——————— *Jurisdiction, Interference with exercise of.—Material irregularity affecting merits of case.*—The words "a material irregularity" in section 622 of the Code of Civil Procedure include an irregularity of procedure materially affecting the merits of the case. An application of a section of the Code to a case to which it does not apply is a material irregularity within the meaning of the section. *Magni Ram* v. *Jiwa Lal, I. L. R., 7 All., 336,* observed on. SEW BUX BOGLA *v.* SHIB CHUNDER SEN . . **I. L. R., 13 Calc., 225**

182. ——————— *Jurisdiction, Interference with exercise of.—"Illegality."—"Material irregularity."*—A suit was instituted in the Court of a Munsif to recover from the defendants a sum of R49, being the amount due under a bond, and which the plaintiff alleged had been recovered on her account by one of the defendants from the obligor. The Munsif, being of opinion that the determination of the plaintiff's right to the bond involved the question of her heirship to the estate of a certain deceased person, and that consequently the case before him

SUPERINTENDENCE OF HIGH COURT—*continued.*

3. CIVIL PROCEDURE CODE, s. 622—*continued.*

Exercise of jurisdiction—*continued.*

raised a question affecting the title to property exceeding R1,000 in value, held that he had no jurisdiction to entertain the suit, and accordingly returned the plaint for presentation to the proper Court under section 57 of the Civil Procedure Code. *Held* by the Full Bench, that the Munsif had acted upon an erroneous view, as the only subject-matter of the suit was the R49; that he had consequently failed to exercise a jurisdiction vested in him, and the High Court was therefore competent to revise his order under section 622 of the Civil Procedure Code. The result of *Amir Hassan* v. *Sheo Baksh Singh, I. L. R., 11 Calc., 6,* and *Magni Ram* v. *Jiwa Lal, I. L. R., 7 All., 336,* is that the questions to which section 622 of the Civil Procedure Code applies are questions of jurisdiction only. The meaning of the decision of the Privy Council in the former case is that, if the Court has jurisdiction to hear and determine a suit, it has jurisdiction to hear and determine all questions which arise in it, either of fact or law, and that the High Court has no jurisdiction under section 622 to inquire into the correctness of its view of the law, or the soundness of its findings as to facts; but that, when no appeal is provided, its decision on questions of both kinds is final. *Per* STRAIGHT and TYRRELL, *JJ.*—Clauses (*a*) and (*b*) of section 584, specifying the grounds on which a second appeal lies to the High Court, embody what section 622 refers to in the word "illegally;" that is to say, to cases where the Court below has, in the exercise of its jurisdiction, come to a decision which is contrary to some specified law or usage having the force of law, or failed to determine some material issue of law or usage. Clause (*c*) of section 584 indicates the meaning of the words "material irregularity" in section 622,—*i.e.*, some material irregularity in procedure, "which may possibly have produced error or defect in the decision of the case upon the merits." *Muhammad* v. *Husain, I. L. R., 3 All., 203,* referred to. BADAMI KUAR *v.* DINU RAI . . . . . **I. L. R., 8 All., 111**

183. ——————— *Jurisdiction, Interference with exercise of.—Meaning of "jurisdiction."—Amendment of decree.—Civil Procedure Code, s. 206.—Act XV of 1877, sch. II, No. 178.*—In execution of a decree for partition of immoveable property passed in 1872, a dispute arose as to the execution in reference to a portion of the property, and in 1881 it was finally decided that the decree was defective in its description of the property, and therefore incapable of execution. In May 1885, on application by the decree-holder, the Court passed an order amending the decree, the amendment having reference to an arithmetical error. The judgment-debtor applied to the High Court for revision of this order, on the grounds that the amendment of the decree was barred by limitation, and that the decree itself being barred by limitation and finally pronounced to be incapable of execution, the Court had acted beyond its jurisdiction in amending it. *Held* that the application for revision must be rejected. *Per* OLDFIELD, *J.*, that the High Court had no power to entertain the application under section 622 of the Civil Procedure Code, with reference to the decision of the Privy Council in *Amir Hassan Khan* v. *Sheo Baksh Singh, I. L. R., 11 Calc., 6,* and of the Full Bench in *Badami Kuar* v. *Dinu Rai, I. L. R., 8 All., 111;* and further that, upon the facts stated, the Court ought not to interfere. *Per* MAHMOOD, *J.*, that the Court was not precluded from entertaining the application for revision under section 622 of the Civil Procedure Code. *Amir Hassan Khan* v. *Sheo Baksh Singh, I. L. R., 11 Calc., 6; Badami Kuar* v. *Dinu Rai, I. L. R., 8 All., 111; Raghunath Das* v. *Raj Kumar, I. L. R., 7 All., 876; Surta* v. *Ganga, I. L. R., 7 All., 411; Magni Ram* v. *Jiwa Lal, I. L. R., 7 All., 336; Har Prasad* v. *Jafar Ali, I. L. R., 7 All., 345,* referred to. *Bhagwant Singh* v. *Jagesher Singh, Weekly Notes, All., 1886, p. 57;* and *Abu Said Khan* v. *Hamid-un-nissa, Weekly Notes, All., 1886, p. 39,* dissented from. The meaning of the term "jurisdiction" used in section 622 of the Civil Procedure Code must not be confined to the territorial or pecuniary limits of the powers of a Court, or to the nature of the class to which the case belongs. It implies, in addition to questions of these kinds, the presence or absence of a positive authority or power conferred by the law upon tribunals in cases which satisfy the other conditions referred to. In framing the section, the Legislature gave to the High Court power to interfere with the action of subordinate tribunals in cases where there is no remedy, either by appeal or otherwise, and where those tribunals have either exceeded or wrongly declined to exercise the authority, the power, and the jurisdiction which the law confers upon them, or, under the pretence of exercising such authority, power, and jurisdiction, have acted against a positive prohibition of the law. *Combe* v. *Edwards, L. R., 3 P. D., 103;* and *Crepps* v. *Durden, 1 Smith's L. C., 8th Ed., 711,* referred to. *Held,* also, *per* MAHMOOD, *J.*, that in the present case the Court below had jurisdiction to entertain the application under section 206 of the Code, that it did so entertain it, and that in making the amendment its action could not be regarded as beyond the limits of its legal power and authority, so as to render it open to the objection of the exercise of jurisdiction "illegally or with material irregularity," within the meaning of section 622. *Lucas* v. *Stephen, 9 W. R., 301; Oomanund Roy* v. *Suttish Chunder Roy, 9 W. R., 471; Zuhoor Hossein* v. *Syedun, 11 W. R., 142;* and *Goluck Chunder Mussant* v. *Ganga Narain Mussant, 20 W. R., 111,* referred to. DHAN SINGH *v.* BASANT SINGH . . **I. L. R., 8 All., 519**

184. ——————— *Jurisdiction, Interference with exercise of.—Alleged irregularity by District Judge in decision of suits.*—*A.* and *B.*, both of whom set up a claim to certain land, brought separate rent suits against the tenants. In none of these suits did the amount claimed exceed R100. After the institution of the rent suits *A.* sued *B.* to

SUPERINTENDENCE OF HIGH COURT—*continued.*

3. CIVIL PROCEDURE CODE, s. 622—*continued.*

Exercise of jurisdiction—*continued.*

establish his title to the land in dispute. The District Judge before whom the rent suits came on appeal allowed them to stand over until the decision in the suit between *A.* and *B.* That suit was decided in favour of *B.*, and the Judge then decided the rent suits instituted by *B.* in his favour, and dismissed the suits instituted by *A.* *Held* that there was no such irregularity on the part of the District Judge in the course which he pursued, of making his decision in the rent suit depend upon the decision in the suit to establish title, as would justify the Court in interfering under section 622 of the Civil Procedure Code. DOORGA NARAIN SEN *v.* RAM LALL CHHUTAR . . . I. L. R., 7 Calc., 330

S. C. DURGA NARAIN MISSER *v.* GOBURDHUN GHOSE . . . . . 9 C. L. R., 86

185. ——————— *Jurisdiction, Interference with exercise of.—Sale in execution of decree against estate of deceased.—Suit against representatives of deceased husband's estate.—Order releasing property from attachment.*—In 1862 a suit for mesne profits was brought against certain persons as being the heirs of one Romanath Lahiry, deceased, among whom were his widow and two infant sons. During the pendency of this suit the two infant sons died, and the widow was made a defendant as representing the estate of her deceased sons. The suit was decreed in favour of the plaintiffs in 1875; and on the plaintiffs applying for execution the widow objected that 5 16ths of the properties, against which execution was sought, was the property of her adopted son, whom she alleged to have adopted in 1874. The adopted son was not made a party to the suit: this objection was overruled, but the same objection was taken by the adopted son through his natural father as his guardian and next friend, and the Court released the 5 16ths share from attachment, and allowed the objection. Against this order some of the plaintiffs appealed, but pending the appeal another of the plaintiffs applied to the High Court, under section 622 of the Code of Civil Procedure, to have the order set aside. The Court refused to interfere with the order, inasmuch as there appeared to be no material irregularity therein. SOTISH CHUNDER LAHIRY *v.* NIL COMUL LAHIRY [I. L. R., 11 Calc., 45

186. ——————— *Jurisdiction, Interference with exercise of.—Civil Procedure Code, 1882, s. 30.—Party added after decree.*—A Subordinate Judge having permitted the junior widow of a Hindu to be made a party to the proceedings in execution of a decree obtained by the senior widow against a debtor of their deceased husband, the High Court declined to interfere under section 622 of the Code of Civil Procedure. LINGAMMAL *v.* CHINNA VENKATAMMAL . . I. L. R., 6 Mad., 227

187. ——————— *Jurisdiction, Interference with exercise of.—Death of sole defendant.*

SUPERINTENDENCE OF HIGH COURT—*continued.*

3. CIVIL PROCEDURE CODE, s. 622—*continued.*

Exercise of jurisdiction—*continued.*

—*Application to add representative.*—In a suit for the recovery of land against a sole defendant, the latter died before the hearing. Sixty-three days after the death of the defendant the plaintiff applied to the Court to enter on the record the legal representative of the deceased defendant. On the 22nd November 1880 the Court rejected the application under the provisions of article 171B of Act XV of 1877, and ordered the suit to abate. On the same day the plaintiff applied to the Court to set aside the order directing the suit to abate, but the application was also rejected on the 20th September 1881. On appeal to the High Court,—*Held* that no appeal lay against the latter order, and an appeal against the order of November 1880 was out of time, but that the High Court would take cognisance of the case under section 622 of the Civil Procedure Code. BENODE MOHINI CHOWDHRAIN *v.* SHARAT CHUNDER DEY CHOWDHRY . . . I. L. R., 8 Calc., 837 [10 C. L. R., 449 12 C. L. R., 421

188. ——————— *Transfer of interest pending suit.—Lis pendens.—Application to bring transferee upon the record—Civil Procedure Code, s. 244.*—A decree of the High Court, giving possession of certain shares in a bank to the plaintiff, *R.*, was reversed on appeal by the Privy Council. The defendant then applied to the Court of first instance to order restitution of the shares, which had been realised by the plaintiff. Upon being ordered to produce the shares, *R.* made an application to the Court, professedly under section 244 of the Civil Procedure Code, in which he alleged that, pending the appeal to the Privy Council, he had transferred the shares to *G.*, his counsel in the case, who had failed to restore them, and he prayed "that the said person might be brought upon the record, and that execution for recovery of the said shares might be given against him." The Court passed an order upon this application, calling on *G.* to show cause why he should not be called upon to restore the shares made over to him by *R.*, and he thereupon filed an answer denying that he was the custodian of the shares, and alleging that he was their purchaser for value. The Court passed an order directing that *G.'s* name should be placed on the record, so that the decree might be executed against him. *Held* that the application by *R.* was meant to be and actually was one praying that, in respect of the scrip, restitution of which was being enforced against him, the person to whom some interest in it, more or less, had come pending the suit, might, in addition to himself, in so far as such interest had passed from him, be brought under the operation of the execution proceedings; that this was an application under section 372 of the Civil Procedure Code; and the order passed on it, being appealable under section 588 (21), was not open to revision by the High Court under section 622. RAYNOR *v.* MUSSOORIE BANK [I. L. R., 7 All., 681

SUPERINTENDENCE OF HIGH COURT—*continued.*

3. CIVIL PROCEDURE CODE, s. 622—*continued.*

Exercise of jurisdiction—*continued.*

189. ——————— *Interlocutory order.—Rejection of application to appeal as a pauper.*—An application for permission to appeal as a pauper was presented, not by the applicant personally, but by his pleader, and was on that ground rejected. *Held*, on an application to the High Court for revision, that section 622 of Act X of 1877 did not apply to a proceeding of so purely an interlocutory a character as mentioned in section 592, and such application therefore could not be entertained. HARSARAN SINGH *v.* MUHAMMAD RAZA **[I. L. R., 4 All., 91**

190. ——————— *Rejection of application to sue as a pauper.—Refusal on ground of suit being barred.*—An application to sue as a pauper having been refused, on the ground that the suit was barred by limitation, the High Court, on revision, permitted the applicant to renew his application to the Court below. The Subordinate Judge verbally rejected this second application, stating that he would deliver a written judgment. Before the written judgment was delivered, the applicant offered to pay the usual court fees (although not actually tendering them at the time), and asked that the petition might be taken as a plaint filed on the date of the first application: this offer was mentioned and refused in the written judgment. *Held*, on the case coming up to the High Court under section 622 of Act X of 1877, that the circumstances of the case were not such as would justify the Court in interfering under that section. RAM SAHAI SING *v.* MANIRAM . **I. L. R., 5 Calc., 807: 6 C. L. R., 223**

191. ——————— *Rejection of application to sue in formâ pauperis.—"Right to sue."—Limitation.*—Where an application for leave to sue as a pauper was rejected with reference to section 407 (c) of the Civil Procedure Code, on the ground that the claim was barred by limitation, and therefore the applicant had no right to sue,—*Held* by the Full Bench that the Court had acted within its powers, and that its jurisdiction not having been exercised illegally or with material irregularity, the High Court had no power of interference in revision under section 622 of the Civil Procedure Code. *Amir Hassan Khan* v. *Sheo Baksh Singh, I. L. R., 11 Calc., 6*, referred to. *Per* MAHMOOD, *J.*—The word "case" as used in section 622 of the Civil Procedure Code should be understood in its broadest and most ordinary sense, including all adjudications which might constitute the subject of appeal or revision subject to the rules governing the exercise of the appellate and revisional jurisdictions respectively; and it comprehends adjudications under section 407, which fall under the same general category of adjudications as the rejection of an ordinary plaint under section 53 or section 54. *Phul Singh* v. *Jagan Nath, Weekly Notes, All., 1882, p. 39; Bhulneshri Dat* v. *Bidiadhis, Weekly Notes, All., p. 69;* and *Sital Sahu* v. *Bachu Ram, Weekly Notes, All., 1882, p. 92*, referred to. Also *per*

SUPERINTENDENCE OF HIGH COURT—*continued.*

3. CIVIL PROCEDURE CODE, s. 622—*continued.*

Exercise of jurisdiction—*continued.*

MAHMOOD, *J.*—The provisions of section 407 must be interpreted strictly, inasmuch as they operate in derogation of the right possessed by every litigant to seek the aid of the courts of justice; and an exercise of jurisdiction under that section, when such exercise of jurisdiction is open to the objection of illegality or material irregularity, would form a proper subject of revision by the High Court. *Har Prasad* v. *Jafar Ali, I. L. R., 7 All., 345;* and *Ammal* v. *Nayudu, I. L. R., 4 Mad., 323*, referred to. CHATTARPAL SINGH *v.* RAJA RAM **I. L. R., 7 All., 661**

192. ——————— *Res judicata, Erroneous decision on.*—A wrong decision on a question of *res judicata* is not a subject for the interference of the High Court under section 622 of the Code of Civil Procedure, Act XIV of 1882. HARI BHIKAJI *v.* NARO VISHVANATH . **I. L. R., 9 Bom., 432**

193. ——————— *Sale in execution of decree.—Fraud.—Setting aside order confirming sale.*—The purchaser at a sale by public auction succeeded, by the exercise of fraud and collusion with the agent of the execution-creditors (though without the creditors' personal knowledge), in becoming the purchaser at a depreciated value. There was no material irregularity in publishing or conducting the sale. *Held* that the High Court had power under section 622 of Act X of 1877 to rescind the order made by the Court of first instance confirming the sale. SUBHAJI RAU *v.* SRINIVASA RAU **[I. L. R., 2 Mad., 264**

194. ——————— *Sale in execution of decree.—Pre-emption.—Civil Procedure Code, 1877, ss. 310, 311.—Locus standi of pre-emptor in execution proceedings.*—A person claiming to be a co-sharer in certain undivided immoveable property, a share of which had been sold in execution of a decree, objected to the confirmation of the sale in favour of the person recorded as the auction-purchaser, and prayed that it might be confirmed in his favour, with reference to the provisions of section 310 of the Civil Procedure Code. The Court disallowed the objection and confirmed the sale in favour of the auction-purchaser. The objector thereupon applied to the High Court for revision of the order of the lower Court under section 622 of the Civil Procedure Code. *Held* that, having been allowed to object to the confirmation of the sale, and treated as a party to the proceeding held therein, it was competent for him to make such application, notwithstanding that he was not one of the persons mentioned in section 311 of the Code; that there being no appeal in the case, so far as he was concerned, the High Court was competent to entertain the application under section 622 of the Code; but that, as he was not one of the persons who was competent to avail himself of the provisions of section 311, he had no *locus standi* to justify his application to the lower

SUPERINTENDENCE OF HIGH COURT—*continued.*

3. CIVIL PROCEDURE CODE, s. 622—*continued.*

Exercise of jurisdiction—*continued.*

Court, and the application for revision must therefore be dismissed. BISHESHAR KUAR *v.* HARI SINGH [I. L. R., 5 All., 42

195. ——— *Distribution of assets.—Application of decree-holder struck off.*—Where a rateable distribution was ordered among decree-holders whose applications had been struck off the file prior to realisation of assets,—*Held* that it was open to the party injured to apply to the High Court under section 622 to reverse the order. TIRUCHITTAMBALA CHETTI *v.* SESHAYYANGAR [I. L. R., 4 Mad., 383

196. ——— *Execution proceedings.—Rateable distribution.—Application for further execution.—Notice.*—*A.* and subsequently *B.* obtained decrees against *X.*, in execution of which the same land was attached, and *B.* obtained an order for rateable distribution. Neither decree was satisfied. *A.* then applied for attachment of other property, and the sale was fixed for 28th September. On 25th September *B.* filed a petition for further attachment under sections 250, 274, and also a petition for rateable distribution under section 295 of the Code of Civil Procedure. The District Judge rejected the application for execution as being too late, and then the application under section 295, because no application for execution was pending. *Held*, on appeal, that the petition for execution was wrongly rejected, but that the High Court could not, under section 622 of the Code of Civil Procedure, revise the order rejecting the application under section 295 for rateable distribution. VENKATARAMAN *v.* MAHALINGAYYAN . I. L. R., 9 Mad., 508

197. ——— *Sanction for prosecution.—Act X of 1872 (Criminal Procedure Code), ss. 468, 469.*—The discretionary power of a Civil Court, before or against which an offence mentioned in section 468 or 469 of Act X of 1872 is alleged to have been committed, to grant or withhold sanction to the prosecution for such offence, is not subject to revision by the High Court under section 622 of Act X of 1877. IN THE MATTER OF THE PETITION OF MADHO PRASAD [I. L. R., 3 All., 508

198. ——— *Power of revision over Small Cause Court, Calcutta.—Alleged excess of jurisdiction by Small Cause Court.—Trespass to immoveable property.*—The plaintiff brought a suit in the Calcutta Court of Small Causes to recover damages for trespass to certain immoveable property of which he proved he was in possession. The defendant contended that such a suit was one for the determination of a right to or interest in immoveable property, and was therefore not maintainable in the Small Cause Court. The Small Cause Court decided the case, and the High Court, on an application under section 622, granted a rule to show cause why the judgment should not be set aside as being without jurisdiction. *Held*, on such application, that the Court had jurisdiction to entertain such a suit. PEARY MOHUN GHOSAUL *v.* HARRAN CHUNDER GANGOOLY . I. L. R., 11 Calc., 261

199. ——— *Civil Procedure Code, 1882, s. 43.—Cause of action.—Splitting a claim.—Separate suits for rent due for successive years.*—Petitioners filed two suits in a Small Cause Court on the same day to recover rent due for two successive years under the same lease. The sum of the two claims exceeded the pecuniary limit of the Court's jurisdiction. The suit for the rent of the first year was dismissed under section 43 of the Code of Civil Procedure, on the ground that the claim ought to have been included in the suit for the second year's rent. *Held*, in an application under section 622 to the High Court to set aside the order, that although section 43 did prevent the maintenance of the two suits, yet as the petitioners had no intention of abandoning either claim, the proper course was to allow them to withdraw both suits and file a fresh suit in a competent Court. ALAGU *v.* ABDOOLA [I. L. R., 8 Mad., 147

200. ——— *Civil Procedure Code, s. 25, Order under, for transfer of suit.*—*Held* that an order under section 25 of the Civil Procedure Code, transferring a suit in which an appeal would lie from the decree made therein, was not subject to revision by the High Court under section 622. FARID AHMAD *v.* DULARI BIBI [I. L. R., 6 All., 233

201. ——— *Court Fees Act, 1870, s. 6, and sch. II, art. 17 (1).—Stamp—Valuation by subordinate Court.—Practice.—Civil Procedure Code (Act XIV of 1882), s. 622, and Rom. Reg. II of 1827, s. 5.*—A decision by a subordinate Court on a question of valuation, determining the amount of a court fee, is, notwithstanding its declared finality, subject to revision by the High Court under section 622 of the Civil Procedure Code (Act XIV of 1882) and section 5 of Regulation II of 1827. VITHAL KRISNA *v.* BALKRISHNA JANARDAN [I. L. R., 10 Bom., 610

202. ——— *Order dismissing suit for insufficient stamp.*—In a suit instituted upon a ten-rupee stamp for an account, the removal of the original trustee and the appointment of a new trustee, where the value of the trust property was 5 lakhs of rupees, the Court below directed that the stamp should be calculated upon the value of the trust property, and ordered that the deficiency should be made up within a particular time. Before the time expired a rule was obtained from the High Court under section 622 of the Civil Procedure Code to show cause why the order should not be set aside. *Held* that the rule must be discharged, inasmuch as if

SUPERINTENDENCE OF HIGH COURT—*continued.*

3. CIVIL PROCEDURE CODE, s. 622—*continued.*

Exercise of jurisdiction—*continued.*

the suit had been dismissed on the expiration of the time limited, on the ground that the relief was not properly valued, there would have been an appeal. OMRAO MIRZA *v.* JONES . **12 C. L. R., 148.**

SUPERSTITIOUS USES.

——— **Bequest for—**

See WILL—CONSTRUCTION.
[5 B. L. R., 433

——— **Statute of—**

See ENGLISH LAW—SUPERSTITIOUS USES, STATUTE OF . . **1 Bom., Ap., 9**

SUPPLEMENTAL SUIT.

——— *Suit in Zillah Court simultaneous with suit in Supreme Court.*—The mere pendency of a suit in the Supreme Court does not operate as a bar to the prosecution of a suit in a Zillah Court intended to be simply in furtherance of and supplemental to the suit in the Supreme Court. NAZIR ALI KHAN *v.* OJOODHYARAM KHAN
[5 W. R., P. C., 83 : 10 Moore's I. A., 540

SUPREME COURT, BOMBAY.

See JURISDICTION—ADMIRALTY JURISDICTION . . **5 Moore's I. A., 137**

See JURISDICTION—MATRIMONIAL JURISDICTION . . **4 W. R., P. C., 91**
[6 Moore's I. A., 348

1. ——— **Charter of Supreme Court.**—*Construction of statute.—Statute limiting prerogative of the Crown.—Power to grant leave to appeal in criminal case.*—Under the Bombay Charter of the Supreme Court, 8th December 1823, that Court was invested with full and absolute powers to allow or deny an appeal in criminal cases, and no power was reserved to the Crown by such Charter to grant leave to appeal in such cases, such power being only reserved as to civil cases. The case of *Christian* v. *Cowan, 1 P. W., 329,* observed on. QUEEN *v.* STEPHENSON . . . **3 Moore's I. A., 488**

QUEEN *v.* EDULJEE BYRAMJEE
[3 Moore's I. A., 468

The Charter having been granted by the Crown by force of an Act of Parliament, must be construed with reference to the powers conferred by the Act, even though the prerogative of the Crown were limited by such construction. QUEEN *v.* EDULJEE BYRAMJEE . . . **3 Moore's I. A., 468**

2. ——— *Construction of Charter.—Law of limitation.—English law.*—The Charter of 8th December 1823, which created the Supreme Court at Bombay, provided by section 29 that "in cases of Mahomedans or Gentoos their inheritance, and succession to lands, rents and goods, and all matters of contract and dealing between party and party, should be determined, in cases of Mahomedans, by the laws and usages of the Mahomedans; and where the parties are Gentoos, by the laws and usages of the Gentoos, or by such laws and usages as the same would have been determined by if the suit had been brought in a native Court;" and the 37th section directs that "the Court shall frame such process, and make such rules and orders for the execution of the same, in all suits, civil and criminal, to be commenced, sued, or prosecuted, within their jurisdiction, as shall be necessary for the due execution of all or any of the persons thereby committed thereto, with an especial attention to the religion, manners, and usages of the native inhabitants living within its jurisdiction, and accommodating the same to their religion, manners and usages, and to the circumstances of the country, so far as the same can consist with the due execution of law, and the attainment of substantial justice." *Held,* upon a construction of these sections, that as the law of limitation is a matter of procedure, and the Supreme Court at Bombay had power to frame its procedure different from the native Courts, the Court was right in allowing the plea of the English statute of limitations, in an action between Hindus upon a Hindu contract, as the judgment of the Court on such plea was no determination relating to any right arising out of any contract or dealing involved in the cause of action. *Semble,*—The mere allegtion in the plaint that the parties are Hindus is a sufficient averment of the fact to raise an objection to the cause being decided by the English law of limitations. RUCKMABOYE *v.* LULLOOBHOY MOTTICHUND . **5 Moore's I. A., 234**

3. ——— **Jurisdiction.**—*Admission of attorneys.*—The Supreme Court, Bombay, had no jurisdiction to admit persons as attorneys and solicitors to practise in the Courts there, except such as were qualified in the manner pointed out in the Bombay Charter and Letters Patent of 1823 establishing the Court—*viz.,* those who had been admitted in the Courts at Westminster or were practising in the Recorder's Court, Bombay, at the time of the publication of the Charter. MORGAN *v.* LEECH
[2 Moore's I. A., 428

4. ——— *Suit for partition of property out of jurisdiction.*—The late Supreme Court (Bombay) had no power to decree a partition of ancestral property situate beyond the limits of its jurisdiction. RAMCHANDRA DADA NAIK *v.* DADA MAHADEV NAIK . . . **1 Bom., Ap., 76**

5. ——— *Suit concerning revenue.—Government quit-rent.—Suit against Collector of Revenue for distraint.*—By the Charter of the Supreme Court, Bombay, of December 1825, that Court was prohibited from entertaining any suit in any matter concerning the revenue under the management of the Governor and Council or any act done in the collection thereof. In an action of trespass brought against the Collector of Revenue at Bombay for distraining for arrears of Government "quit-rent,"

SUPREME COURT, BOMBAY.—Jurisdiction—*continued.*

—*Held*, reversing the judgment of the Bombay Court that the "quit-rent" was part of the revenue of the Company at Bombay, and the Court, therefore, had no jurisdiction. SPOONER *v.* JUDDOW
[4 Moore's I. A., 353

SUPREME COURT, CALCUTTA.

1. ——— *Carrying on business.*—An inhabitant of Benares, trading at Calcutta and having a house of business there, held to be subject to the jurisdiction of the Supreme Court. JANOKEY DOSS *v.* BINDABUN DOSS
[3 Moore's I. A., 175

2. ——— **Jurisdiction of Criminal Court.**—*Party privy to misdemeanour committed within jurisdiction.*—Under the general jurisdiction of the Supreme Court at Calcutta, a person, though resident at Benares, was liable to its jurisdiction, if privy to, and co-operating in, a misdemeanour committed within it. Where, therefore, a party resident at Benares was indicted with others before the Supreme Court for a conspiracy in procuring the prosecutor to be arrested in a fictitious action at law, and the instructions for the arrest were proved to the satisfaction of the jury to have originated with the appellant, it was held by the Judicial Committee that the offence having been completed within the jurisdiction of the Supreme Court at Calcutta, that Court had rightly assumed jurisdiction over the parties privy to it, though from the slight nature of the evidence they directed a new trial. JANNOKEE DOSS *v.* KING ON THE PROSECUTION OF BINDABUN DOSS . . . . 1 Moore's I. A., 67

SUPREME COURT, MADRAS.

See HIGH COURT, JURISDICTION OF—HIGH COURT, MADRAS—CIVIL.
[I. L. R., 8 Mad., 24

1. ——— **Jurisdiction.**—*Order allowing Registrar to institute suit on behalf of infants.—Officer of Court entitled to commission.—Personal interest in conduct of suit.—Stat. 2 and 3 Will. IV., c. 34.*—An order was made on the equity side of the Supreme Court at Madras by which the Registrar, an officer who under the practice of the Court was entitled to a commission of 5 per cent. on all sums of money paid into Court, was allowed by consent of the Court or a Judge to institute proceedings for the benefit of infants where it appeared their property was unprotected. *Held*, in a case in which he was allowed to file a bill on behalf of certain such infants, that the order being made under the general jurisdiction of the Supreme, Court, and not under the Statute 2 and 3 Victoria, Cap. 34, was void, it being against public policy to allow an officer of the Court to institute suits in the conduct of which he might have a direct personal interest. KERAKOOSE *v.* SERLE
[3 Moore's I. A., 329

2. ——— *Equitable jurisdiction in suits relating to charitable funds.*—The Supreme Court, Madras (established by the Madras Charter, 1800), had an equitable jurisdiction similar to, and corresponding with, the equitable jurisdiction exercised by the Court of Chancery in England over charities. ATTORNEY GENERAL *v.* BRODIE
[4 Moore's I. A., 190

SURBORAKARI TENURE.

See LAND TENURE IN ORISSA.
[I. L. R., 11 Calc., 699

SURETY.

Col.
1. LIABILITY OF SURETY 5974
2. ENFORCEMENT OF SECURITY . . 5976
3. DISCHARGE OF SURETY 5981
4. MISCELLANEOUS CASES . . . 5982

See EXECUTION OF DECREE—MODE OF EXECUTION—PRINCIPAL AND SURETY.
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See MORTGAGE—REDEMPTION—RIGHT OF REDEMPTION . . 1 Bom., 135

See CASES UNDER PRINCIPAL AND SURETY.

See CASES UNDER RECOGNISANCE TO APPEAR.

——— **Agreement to become, on deposit of security.**

See CONTRACT ACT, S. 23—ILLEGAL CONTRACTS—GENERALLY.
[I. L. R., 1 All., 751

——— **Discharge of—**

See BILL OF EXCHANGE.
[I. L. R., 3 Calc., 174

See CASES UNDER PRINCIPAL AND SURETY—DISCHARGE OF SURETY.

——— **Liability of—**

See BOND . . . . 9 B. L. R., 364

——— **of defaulting tenant, Suit against—**

See RES JUDICATA—PARTIES—PRO FORMÂ DEFENDANTS . . 3 B. L. R., Ap., 37

——— **Suit by, against principal for money paid on his account.**

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—CONTRIBUTION.
[B. L. R., Sup. Vol., 691

1. LIABILITY OF SURETY.

1. ——— **Duration and extent of liability.**—A surety must be taken to have entered into his contract only for the time during which the relation created by the instrument of suretyship exists, and with reference only to the person to whom he made himself responsible. MOHIP NARAIN *v.* SHAW . . . . . 25 W. R., 250

SURETY—*continued.*

1. LIABILITY OF SURETY—*continued.*

Duration and extent of liability—*continued.*

2. ——————— *Security bond for restitution of property taken under decree.—Liability of surety where decree is reversed on appeal.—Act XXIII of 1861, s. 36.*—A surety, who executed a security bond (in Form No. 82 of the High Court Circulars) under section 36 of Act XXIII of 1861, was liable for the fulfilment of the decree, not only of the Court of Regular, but also of that of the Court of Special Appeal. NARAYAN DEV *v.* GAJANAN DIKSHIT . . . . . **10 Bom., 1**

3. ——————— *Liability of guarantor for gomashta.—Death of surety.*—Where a party engaged to be surety for a gomashta and to make good all defalcations proved to have been made by him, the engagement was held to refer to defalcations shown to have been made by the gomashta during the period of the guarantor's life, and not to apply to a time after the guarantor's death, when all power of advising or controlling the gomashta had ceased. LYALL & CO. *v.* AMORABUTTY DOSSEE . . . . . **20 W. R., 12**

4. ——————— *Civil Procedure Code, 1859, s. 338.—Remand of case and final decree on remand.*—A decree-holder having taken out execution of a decree held by him, and the judgment-debtor having appealed to the District Court, the two opponents became sureties, under section 338 of Act VIII of 1859, that the judgment-debtor would "obey and fulfil all such orders and decrees as should be given against him in appeal;" and, in default of his so doing, they bound themselves "to pay jointly and severally, at the order of the Court, all such sums as the Court should, to the extent of R812-8, adjudge." *Held* (PINHEY, *J., dissentiente*) that the obligation of the sureties to fulfil the decree of the Appellate Court was not confined to the first decree of that Court, but extended to the final decree which it passed upon the case being remanded by the High Court in special appeal. SHIVLAL KHUBCHAND *v.* APAJI BHIVRAV . . **I. L. R., 2 Bom., 654**

Held in the same case on appeal under the Letters Patent that the obligation of the sureties was not confined to the first decree of the Appellate Court, but extended to the final decree which it passed upon the case being remanded by the High Court in special appeal. APAJI BHIVRAV *v.* SHIVLAL KHUBCHAND **[I. L. R., 3 Bom., 204**

5. ——————— **Extent of liability.**—*Security bond given for faithful discharge of duties by mohurrir.—Misconduct other than misappropriation.*—The defendant executed a bond which, after reciting that the President of the Allahabad Municipal Committee required security to the extent of R100 from Sheikh Akbur Ali, mohurrir in the Octroi Department, for the honest and faithful discharge of his duties to Government, went on to say that the defendant of his own free will and pleasure pledged a certain dwelling-house in lieu of security for the mohurrir, and to promise that if any sort of embezzlement or misappropriation was proved against the mohurrir in Court the property might be seized. There was a proviso that if he deposited R100, the money and not the property would be liable; if he failed to deposit the money, the property was to be liable for the payment of the amount of the security. The mohurrir fraudulently allowed certain goods to pass the choongee without payment of duty, whereby he caused the Municipality a loss of R8. He was convicted under section 161 of the Penal Code. The plaintiff sued to recover the amount of the security. *Held* that the defendant could only be liable under the bond for sums shown to have been misappropriated, and that he could not be held liable for losses which accrued to the Municipality from misconduct on the part of the mohurrir other than misappropriation; and that in any case he could only be liable for the actual damage sustained by the Municipality. TORAB ALI *v.* PRESIDENT OF THE MUNICIPAL COMMITTEE OF ALLAHABAD . . . . **6 N. W., 170**

6. ——————— *Withdrawal of security placed with sureties to indemnify co-sureties.*—Where a surety, without taking precautions to see to its proper application, permits the party for whom he is surety to get possession of money, which by an arrangement with that party and the co-sureties had been placed in his (the surety's) hands for the purpose of indemnifying the co-sureties, he loses his remedy against the co-sureties to the extent of the security thus allowed to be withdrawn. Where money is permitted to remain in the hands of sureties in order to its being applied to the purpose to secure which they become sureties, it is the duty of each as between himself and co-sureties to see that the money is not misapplied. WOON CHIT POE *v.* WEE CHANG . . . **15 W. R., 185**

7. ——————— *Suit against surety of Nazir by party whose property has been misappropriated by Nazir.*—The surety of a Nazir who had entered into the usual bond of indemnity with the Collector of the district against all loses caused by the Nazir during the tenure of his office, was held not liable, at the suit of a person whose property had been misappropriated by the Nazir, to make good any loss sustained by such person. BOCHA GOPE CHOWDHRY *v.* BRAJAGABIND DAS **[9 B. L. R., Ap., 26 : 18 W. R., 259**

2. ENFORCEMENT OF SECURITY.

8. ——————— **Mode of enforcement.**—*Act XXIII of 1861, s. 8.—Surety bond.—Execution.*—A surety bond taken by the Court under section 8 of Act XXIII of 1861, after judgment had been pronounced, could be enforced under section 204 of Act VIII of 1859. ABDUL KARIM *v.* ABDUL HUQ KAZEE . . **8 B. L. R., 205 : 15 W. R., 21**

9. ——————— *Execution of decree against surety.—Surety bond for payment of costs under s. 342.*—A bond given as security for

SURETY—*continued.*

2. ENFORCEMENT OF SECURITY—*continued.*

Mode of enforcement—*continued.*

costs under section 342 of Act VIII of 1859 could be enforced in a summary way by proceedings in execution. CHUTTERDHAREE LALL *v.* RAMBELASHEE KOER . I. L. R., 3 Calc., 318: 1 C. L. R., 347

10. ——————— *Civil Procedure Code, 1859, s. 204.—Execution of decree against surety.—Stay of execution on security being given.*—Where a sale in execution of a decree was stayed on the security given by a third party,—*Held* that on default by the defendant, the decree could not be summarily enforced against such surety under section 204 of Act VIII of 1859. GAJENDRANARAYAN ROY *v.* HEMANGINI DASI [4 B. L. R., Ap., 27: 13 W. R., 35

11. ——————— *Civil Procedure Code, 1859, s. 204.—Sureties under Civil Procedure Code, 1859, ss. 76, 83.—Sureties after decree.*—Section 204, Act VIII of 1859, applied to cases such as that of parties who became sureties under section 76 or section 83, but not to parties who became securities after a decree was passed. RAM KISHEN DOSS *v.* HURKHOO SINGH . . . 7 W. R., 329

Rejecting a review in HURKHOO SINGH *v.* RAM KISHEN . . . 6 W. R., Mis., 44

12. ——————— *Civil Procedure Code, 1859, s. 204.—Compromise embodied in decree.—Execution against surety.*—A compromise embodied in a decree was to the effect that defendant should pay to plaintiff the principal sum within a specified period, and that if he (defendant) were successful in another suit against a different party, he would also pay the interest. He succeeded in his suit in the first Court, but his suit was dismissed on appeal. The judgment-debtor subsequently paid the principal, but was afterwards arrested, and *M. H.* became surety for his production and for the payment of the interest, if the order of the Munsif releasing the judgment-debtor were set aside on appeal. *Held* (by MARKBY, *J.*) that the decree on the compromise was not one upon which execution could be carried out, at any rate for the sum which was only conditionally due, as the inquiry relative to the fulfilment of the condition could only be made in a regular suit; and that execution could not be taken out against *M. H.*, the surety, the arrangement between him and the judgment-creditor not falling within section 204, Act VIII of 1859, which applied to persons who had become security for the performance of a decree or any part thereof. BOLAKEE LALL *v.* MAHOMED HOSSEIN KHAN [14 W. R., 63

13. ——————— *Civil Procedure Code, 1859, s. 204.—Surety for performance of decree.—Suit on surety bond.*—When a person has become liable as security for the performance of a decree, section 204 of Act VIII of 1859 gives a remedy to the decree-holder against the surety in addition to any remedy which he may have on the surety bond. It does not prevent the decree-holder

SURETY—*continued.*

2. ENFORCEMENT OF SECURITY—*continued.*

Mode of enforcement—*continued.*

from bringing a suit on the surety bond to enforce the contract made with him by the surety, and the lien on the property mortgaged to secure the performance of that contract. ABDUL KADIR *v.* HURREE MOHUN . . . . 6 N. W., 261

14. ——————— *Civil Procedure Code, 1859, s. 204.—Surety executing bond for payment of decree by instalments.—Alteration of terms of decree.*—Where, by an arrangement sanctioned by the proper Court, the terms of a decree were varied, and provision was made for its payment by instalments, for the payment of a portion of which instalments a surety executed a bond hypothecating his property,—*Held* that the terms of section 204 of the Civil Procedure Code were not applicable to such an arrangement. CHUNDEE DEEN *v.* HUSSUN ALI [3 N. W., 88

15. ——————— *Civil Procedure Code, 1877, ss. 210, 253.—Execution of decree against surety.—Payment of decree by instalments.*—A judgment-debtor, whose property was about to be sold, appeared before the officer appointed to conduct the sale, and applied for its postponement, producing a surety and a bond, in which such surety promised to pay the amount of the decree within one year, if the judgment-debtor did not do so. Such officer thereupon applied to the District Judge to postpone the sale, stating that such surety was willing to pay the amount of the decree by instalments within one year, and forwarding such bond. The District Judge ordered the sale to be postponed and the papers to be sent to the Munsif who had made the decree and ordered the sale of the property. The Munsif made no order regarding the security, but merely made an order that the amount of the decree should be paid by instalments within one year. The judgment-debtor did not pay the amount of the decree within the time fixed, and the decree-holder therefore applied for execution of the decree against such surety. *Held* that inasmuch as the decree-holder had not been a party to the proceedings of the sale-officer or of the District Judge, and as the parties had not appeared before the Munsif, and as such surety had not agreed to pay the amount of the decree by instalments, the provisions of section 210 of Act X of 1877 were not applicable, and such surety had not become a party to the decree as altered by the Munsif; that such surety had not made himself a party to the decree by promising to pay its amount within one year; and that, therefore, his liability was not one which could be enforced in execution of the decree under section 253 of Act X of 1877. CHANDAN KUAR *v.* TIRKHA RAM [I. L. R., 3 All., 809

16. ——————— *Civil Procedure Code, 1882, s. 253.—Surety for execution of appellate decree, Remedy against.*—In 1874 the execution of the decree of an Appellate Court was stayed pending an application for review of judgment, upon the judgment-debtor giving security for the execu-

SURETY—*continued.*

2. ENFORCEMENT OF SECURITY—*continued.*

Mode of enforcement—*continued.*

tion of the decree, and a surety was accepted on his behalf. *Held* that the judgment-creditor could not proceed summarily against the surety under the provisions of section 253 of the Code of Civil Procedure, 1882. BALAJI *v.* RAMASAMI

[I. L. R., 7 Mad., 284

17. ——— **Right to enforce security.**—*Civil Procedure Code, 1859, s. 204.—Order cancelling security bond.*—Where a person became a surety, in the course of the proceedings on an appeal, to pay all such sums as might be decreed against the plaintiff on appeal, the decree when passed could be executed against the surety under section 204 of the Civil Procedure Code, and an appeal would lie from an order made in execution of such decree against the surety. Where a person became surety, and gave a security bond undertaking to pay all sums of money that might be decreed against the plaintiff on the defendant's appeal, and the appeal was dismissed for default, and on the application of the plaintiff the Recorder made an order cancelling the bond, and returned it to the surety without notice to the defendant, and afterwards the defendant's appeal was on application restored, and a decree passed against the plaintiff,—*Held* that the Recorder's order was invalid, and execution could issue against the surety notwithstanding that order. AKHUT RAMANA *v.* AHMED YOUSAFEJI . . 7 B. L. R., 81: 15 W. R., 538

18. ——— *Security for restitution of property taken in execution.—Reversal of decree.—Execution against surety.—Civil Procedure Code, 1882, ss. 253, 545, 546.*—Section 258 of the Civil Procedure Code contemplates a suit pending at the time security is given for performance of the decree, and does not apply to a case where the litigation in the Courts of first instance and of first appeal has ended, and no second appeal has been instituted in the High Court when security is given. The holder of a decree affirmed on appeal by the District Court took out execution to recover costs awarded. Costs were deposited by the judgment-debtor and paid to the decree-holder, and a surety gave a bond by which he undertook to refund the amount to the judgment-debtor in the event of the latter succeeding in appeal to the High Court and of the decree-holder failing to repay him. The judgment-debtor subsequently filed an appeal to the High Court and was successful, and he then applied in the execution department to recover the amount from the surety. *Held* that the Court executing the High Court's decree had no jurisdiction to execute it against the surety. HARDEO DAS *v.* ZAMAN KHAN . I. L. R., 8 All., 639

19. ——— *Execution of decree against surety pending appeal.—H.* obtained a decree in the High Court against *S.* for certain moveable and immoveable property. *S.* appealed to the Privy Council. While that decree was pending, *H.* applied for the execution of her decree, and *N.* became her surety for R10,000. The decree, however, was not executed. The Privy Council reversed the decision of the High Court and dismissed the suit

SURETY—*continued.*

2. ENFORCEMENT OF SECURITY—*continued.*

Right to enforce security—*continued.*

of *H.* with costs. *S.* then sought to execute his decree for costs against *N.*, the surety. *Held* that *N.* was not liable. IN THE MATTER OF THE PETITION OF NAFAR CHAND PAL CHOWDHRY

[6 B. L. R., Ap., 126

S. C. NUFFER CHUNDER PAUL CHOWDHRY *v.* SOORENDRO NATH ROY . . 14 W. R., 410

20. ——— *Execution of decree against surety.—Civil Procedure Code, 1859, s. 204.*—In consideration of the plaintiffs being allowed to proceed with the execution of a decree which they had obtained in the High Court, *A.* became surety upon a bond for the payment of what might be due to the defendants by such plaintiffs in the event of their decree being reversed or modified by the Privy Council, to which an appeal was then pending. *Held* that the summary procedure under section 204 of Act VIII of 1859 might be enforced against *A.* as such surety. Compare Act X of 1877, section 253. CHUNDER KANT MOOKERJEE *v.* RAM COOMAR COONDOO . . . 3 C. L. R., 505

21. ——— *Civil Procedure Code, 1877, s. 253.—Execution of decree against surety.—Execution of decree of Privy Council.—Security for costs of respondent.—Civil Procedure Code, 1877, s. 618.*—An appeal was preferred to Her Majesty in Council from a final decree passed on appeal by the High Court, and *B.* and certain other persons on behalf of the appellant gave security for the costs of the respondent. Her Majesty in Council dismissed the appeal, and ordered the appellant to pay the costs of the respondent. The respondent applied to the Court of first instance for the execution of that order against *B.* and the other persons as sureties. *Held* by STUART, *C. J.*, PEARSON, *J.*, and OLDFIELD, *J.*, that, under sections 610 and 253 of Act X of 1877, such order could be executed against the sureties. *Per* SPANKIE, *J.*, and STRAIGHT, *J.*—*Contra.* BANS BAHADUR SINGH *v.* MUGHLA BEGAM

[I. L. R., 2 All., 604

22. ——— *Appeal to Privy Council.—Security for costs of respondent.—Execution of decree against surety.—Civil Procedure Code (Act XIV of 1882), ss. 253, 602, 603, 610.*—A plaintiff, having preferred an appeal to Her Majesty in Council, was called upon to furnish security. Thereupon *A.*, on behalf of the appellant, executed a security bond for the costs of the respondent. The appeal was dismissed with costs by Her Majesty in Council. On an application (by the respondent in the appeal) for execution to issue against the estate of *A.*, the surety (who had died in the meantime),—*Held* that the liability of the surety under the security bond could not be enforced in execution of the decree of Her Majesty in Council. *Bans Bahadur Singh* v. *Mughla Begam, I. L. R., 3 Mad., 107*, dissented from. RADHA PERSHAD SINGH *v.* PHULJURI KOER

[I. L. R., 12 Calc., 402

SURETY—*continued.*

2. ENFORCEMENT OF SECURITY—*continued.*

Right to enforce security—*continued.*

23. ———— *Execution of decree.—Surety.*—A suit was instituted by *C.* against *H. S.* in the Hooghly Court, and was dismissed with costs. On appeal by the plaintiff, the defendants obtained an order in the High Court calling on *C.* to give security for costs in the Court below and on appeal, and one *R.* had, as surety, charged his house in Calcutta with the payment of costs to the extent of R2,000. The appeal was dismissed with costs amounting to more than R2,000. On an application by the defendants for execution against *R.* under section 204, Act VIII of 1859, by attachment and sale of the house, the Court granted the application. HIRALAL SEAL *v.* CARAPIET [9 B. L. R., Ap., 17

3. DISCHARGE OF SURETY.

24. ———— **Appearance of debtor.**—*Act XXIII of 1861, s. 8.—Discharge of defendant on bail.*—Where a Court, during the pending of an inquiry under Act XXIII of 1861, section 8, allowed the defendant to be at large upon security for his appearance when called upon, and when the Court had concluded the inquiry it was found that the defendant had appeared, the liability of the surety was held to be at an end. BALMER, LAWRIE, & Co., *v.* HUREE NARAIN PODDAR . . 24 W. R., 292

25. ———— **Change in circumstances under which security was given.**—*Guarantee for good conduct of gomashta.—Transfer of property guanranteed.*—Where two parties executed a surety bond addressed to *J.*, *R.*, and *M.*, owners of certain property, binding themselves to be answerable for the good conduct and proper discharge of duties of their gomashta, *B.*, and the property was afterwards transferred to *R.* alone, it was held that when *J.* and *M.* ceased to have any interest in the property, there was such entire change in the nature of the service that the sureties' liability did not continue, and they were not liable to be sued upon their bond. RAJ KRISTO MOOKERJEE *v.* ISSUR CHUNDER MOOKERJEE . . . . . 23 W. R., 90

26. ———— *Alteration of position and risk of salt darogah.—Liability of surety for performance of duties.*—When a salt dárogah deposits security for the due performance of his duties, to be appropriated by Government in case of loss to the State from his failure to perform them, and the Government, without his consent, alters his position and risk, such alteration relieves him from his engagement as surety. SHIB NARAIN BANERJEE *v.* GOVERNMENT . . . W. R., 1864, 138

27. ———— **Acceptance of further security.**—*Security signed by surety.—Security bond.*—A security, voluntarily signed, existing upon the record, and even taken off the file, is a valid and subsisting security. The intentions and motives of the obligor in giving the security must be judged by what is mentioned in the instrument. The acceptance of the separate security of one surety is not invalidated by the acceptance of separate securities of five other sureties. GOPAL INDER NARAIN ROY *v.* JAGAR NATH GURG [5 W. R., P. C., 129 : 2 Moore's I. A., 311

SURETY—*continued.*

3. DISCHARGE OF SURETY—*continued.*

Acceptance of further security—*continued.*

28. ———— **Notice of intention to cease to be surety.**—*Security for payment of rent.*—A surety for the due payment of rent by a third person must, if he wish to discharge himself, give notice to the person to whom the guarantee has been given. GUNESH KOOER *v.* OOMDUTOONNISSA BEGUM [6 N. W., 77

4. MISCELLANEOUS CASES.

29. ———— **Surety of lessee afterwards becoming his partner.**—*Suit by surety for illegal ejectment of lessee.—Suit for damages.*—Where a person became surety for the due performance by the lessee of the obligations contained in a lease for a term of years, and afterwards became a partner with the lessee, and the lessor evicted the lessee before the expiration of the lease,—*Held* that a suit would lie by the surety for damages arising from the illegal ejectment, although the surety was not a party to the original contract with the lessor. BURRODAKANT ROY *v.* RAM TUNNOO BOSE . 7 W. R., P. C., 15

S. C. BURDAKANTH ROY *v.* ALUK MUNJOOREE DASIAH . . . 4 Moore's I. A., 321

30. ———— **Suit by surety after satisfaction of bond.**—*Cause of action.—Limitation.*—The plaintiff executed a bond jointly with a servant of the defendants on 10th July 1861. The proceeds were expended for the defendant on the 30th August 1864. The creditor obtained a decree upon the bond for principal and interest, which the plaintiff satisfied by two payments made on 4th July 1866 and 30th June 1868, respectively. He brought a suit against the defendant for the amount on 22nd June 1869. *Held* that the plaintiff could maintain his suit against the defendant for the amount paid by him, and that the suit was not barred by the law of limitation. BHAGIRATH ADHIKARI *v.* TARINI CHANDRA PAKRASI . 7 B. L. R., 35 : 15 W. R., 413

Reversing on appeal S. C. BHOGEERUTH ADHIKAREE *v.* TARINEE CHUNDER PAKRASSEE [14 W. R., 174

SURETY BOND.

See. PRINCIPAL AND SURETY—LIABILITY OF SURETY . I. L. R., 1 All., 487

SURVEY.

1. ———— *Survey proceedings, Power of Collector to reopen.*—Where a survey is once concluded, the map completed, and the thakbust proceedings brought to a close, a Deputy Collector has no authority to reopen the proceedings; and if he does so on the application of one party and issues

SURVEY—*continued.*

a notice to the opposite party, the latter is not bound to appear. KALEE NARAIN BOSE *v.* ANUND MOYEE GOOPTA . . . . . **21 W. R., 79**

2. ———— **Excess lands found after survey.**—*Presumption.*—Where the admitted mileek lands of a ryot were found by survey to be somewhat in excess of the land re-leased to him by resumption proceedings based on a former survey, it was held that the excess could not be assumed as a matter of course to be mâl lands. DINOBUNDHOO SUHAYE *v.* COURT OF WARDS . **11 W. R., 347**

SURVEY ACT (BOMBAY).

See BOMBAY ACT I OF 1865.

SURVEY AWARD.

See CASES UNDER ACT XIII OF 1848.

See CASES UNDER LIMITATION ACT, 1877, ARTS. 45, 46 (1859, S. 1, CL. 6).

1. ———— **Requisites for survey award.**—*Decision on bonâ fide contention.*—To constitute a survey award there must be a decision on a *bonâ fide* contention between the parties after a proper investigation into the points of issue between them. NUBO KISHEN ROY *v.* GOBIND CHUNDER SEIN **[6 W. R., 317**

RADHAPERSHAD SINGH *v.* RAMJEEWUN SINGH **[11 W. R., 389**

2. ———— **Decision on fact not disputed.**—*Beng. Reg. VII of 1822.—Summary award.*—The finding of a Survey Deputy Collector that a party has been in possession of certain land for more than a year, where the fact is not disputed, is not a "summary award" under Regulation VII of 1822. RADHAPERSHAD SINGH *v.* RAMJEEWUN SINGH . . . . . **11 W. R., 389**

3. ———— **Striking off complaint in Survey Department.**—On a complaint being made in the Survey Department as to a demarcation of land, the Deputy Collector, instead of investigating the circumstances, ordered a local inquiry by an Ameen, and, on the plaintiff omitting to deposit the Ameen's fees, struck the case off his file. *Held* that the decision was not an award on which a cause of action could be based. KRISTO CHUNDER DOSS *v.* SOUDAMONEE DOSSEE . . . **12 W. R., 174**

4. ———— **Order of settlement officer without inquiry.**—An entry made in the settlement papers was objected to on the merits. The objection was disallowed summarily without inquiry, on the ground that the papers had been drawn out more than a year before the objection was taken. *Held* that such an order was not "an award," inasmuch as it did not adjudicate on the rights of the parties or on the question of possession, and therefore that it was not an order on which a Court could found its judgment rejecting the suit without disposal of the point at issue upon the evidence HEERA DASS *v.* HURMOO SINGH **[1 N. W., Part II, p. 17: Ed. 1873, 77**

SURVEY AWARD—*continued.*

5. ———— **Act XIII of 1848, Operation of.**—*Effect of award.*—Act XIII of 1848 operates in certain cases to give to a survey award the full effect of a decree of a Civil Court, by taking away from the Courts the power of entertaining any suit for contesting the justice of such award after a limited time. MOKUND MOORAREE BISWAS *v.* WOOMA CHURN MOOKERJEE . **23 W. R., 173**

6. ———— **Sanction by Collector.**—*Acceptance of proceedings as correct.*—To make a survey demarcation effective, it is not absolutely necessary that there should be any more special sanction by the Collector than a general acceptance of the survey proceedings as correct. HUNOOMAN CHOWBAY *v.* BINDHOO TORABA . . . **10 W. R., 336**

7. ———— **Right to benefit under award.**—*Persons representing party to award.*—The representatives of a party to a survey award are entitled to the benefits thereof. RAJMOHUN MITTER *v.* COMMISSIONER OF THE SOONDERBUNS **[1 W. R., 344**

ALI ASHRUF *v.* CHONGA GOBIND ROY **[5 W. R., 220**

8. ———— **Effect of award.**—*Act IV of 1840, Award under.—Evidence of title.*—An award under Act IV of 1840 between an intervenor and a party other than the plaintiff was no evidence against the plaintiff. AMEEROONISSA KHATOON *v.* JUGGUR NATH ROY . . . . **11 W. R., 113**

9. ———— *Effect of on purchaser.—Evidence of title.*—A purchaser is bound by a survey award passed against the persons from whom he derived his title. ALLYAT *v.* JUGGUT CHUNDER ROY . . . **5 W. R., 242**

10. ———— *Act IV of 1840, Award under.—Semble,*—Where a Zemindar let his estate in farm for a term of years, and so delegated the whole of his rights, privileges, and immunities to another person, he was held to become himself bound by an adverse decision under Act IV of 1840, to which the farmer was a party. LEKHRAJ ROY *v.* COURT OF WARDS . . . **14 W. R., 395**

11. ———— *Act IV of 1840, Award under, failure to set aside.—Held* that the plaintiff having failed to set aside an award made under Act IV of 1840 within the period of limitation, could not claim in opposition to the award. GOPAL NATH *v.* ABDOOL GHANEE . **1 Agra, 120**

12. ———— *Notice of survey proceedings.—Joint proprietors.*—A co-proprietor of a joint undivided estate was held to be bound by a survey award and compromise to which the other joint proprietors were parties when notice of the survey proceedings was served on the proprietors jointly, and not on him individually. HUR LAL ROY *v.* SOORUJ NARAIN ROY . . . **3 W. R., 7**

13. ———— *Proceedings under Act IV of 1840.—Evidence of possession.*—Proceedings under Act IV of 1840, to which both

SURVEY AWARD.—Effect of award—*continued.*

litigants have been parties, was held to be properly treated as evidence between them on the question of possession. RADHA CHURN DASS GOSSAMEE *v.* AKRANKHOOTEA . . . **20 W. R., 420**

KASHEE KISHORE ROY CHOWDHRY *v.* BAMA SOONDAREE DEBIA CHOWDHRAIN **[23 W. R., 27**

14. ——— *Effect as against decree for possession.*—A survey award cannot override the decree of a competent Court awarding possession. HURO NATH ROY *v.* ANUND CHUNDER ROY . . . . . **1 W. R., 329**

15. ——— *Evidence of possession.—Evidence of title.*—Survey proceedings are evidence of actual possession, and must be regarded as correct, so far as the appearance of the country is recorded thereon; but if questioned in time, are not conclusive on the question of title. LEELANUND SINGH *v.* MOHENDRO NARAIN SING **[13 W. R., P. C., 7**

16. ——— *Proof of possession.—Suit to set aside survey award.*—In a case for setting aside a survey award which declared the plaintiff and the opposite party entitled to certain chur lands to the extent they had respectively lost by diluvion, and the residue to be held jointly according to their shares,—*Held* that the opposite party had no right to sue for rents on the plea of joint possession, for he must first have fixed what lands are to be appropriated by him, and what by the intervenor separately, for the loss suffered by each party by diluvion; and after that how much, and what, of the remainder is entitled to be held jointly. TARINEE KANT LAHOORY *v.* HANEE MUNDUL . . . . . **7 W. R., 203**

17. ——— *Award by superintendent of survey.—Evidence of title.*—An award by the superintendent of survey is not conclusive evidence of a contested right in a regular suit. KOYLASH CHUNDER GHOSE *v.* RAJ CHUNDER BANERJEE . . . . . **12 W. R., 180**

18. ——— *Decision on Act IV of 1840.—Evidence of title.*—A decision in an Act IV of 1840 case was no evidence of title one way or the other. GUDADHUR KOONDOO *v.* RAMKOOMAR BOSE . . . . . **6 W. R., 155**

19. ——— *Award under Act IV of 1840.—Proof of title.*—An award under Act IV of 1840 was not sufficient proof of title when the person in whose favour it was given did not maintain his possession under the award before the survey authorities, and allowed his adversary to take actual possession. JOOGUL KISHORE SHAHA *v.* RAJ KISHEN SURMAH . . . . **3 W. R., 129**

20. ——— *Suit to set aside award under Act IV of 1840.—Proof of title.*—In a suit to set aside an award under Act IV of 1840,—*Held* that the plaintiff ought to furnish some decisive proof of his title, to justify the Court in disturbing the award of a competent authority, and that resumption proceedings instituted by Government which declared only that the lands were unfit for resumption, and therefore left them in the plaintiff's possession, were not such convincing proof of title. BAMA SOONDEREE DABEA CHOWDHRANEE *v.* BHUGRUTTEE DABEA CHOWDHRANEE. GREESH CHUNDER CHOWDHRY *v.* BHUGRUTTEE DABEA CHOWDHRANEE **[1 Hay, 495**

21. ——— *Award under Beng. Reg. VII of 1822, s. 33.—Power of Court to set aside award.—Held* that an award of arbitrators under section 33, Regulation VII of 1822, could not be set aside by the Courts of Judicature. FURZUND ALI *v.* AHMED HOSSEIN . . . **1 Agra, 267**

22. ——— *Award for more than amount of land claimed.*—A survey award, if given for more than is claimed, is not binding as to the excess. It is not conclusive as to title. LULEET NARAIN SINGH *v.* NARAIN SINGH . **1 W. R., 333**

SURVIVORSHIP.

See GRANT—POWER OF ALIENATION BY GRANTEE . . **I. L. R., 11 Calc., 1**

See CASES UNDER HINDU LAW—INHERITANCE—JOINT PROPERTY AND SURVIVORSHIP.

See HINDU LAW—INHERITANCE—SPECIAL HEIRS—FEMALES—DAUGHTERS. **[I. L. R., 6 Bom., 85**
15 B. L. R., 10

See HINDU LAW—JOINT FAMILY—POWERS OF ALIENATION BY MEMBERS—OTHER MEMBERS . **3 B. L. R., F. B., 31**
[6 B. L. R., 555
I. L. R., 1 Calc., 226

See HINDU LAW—PARTITION—SHARES ON PARTITION—GENERAL MODE OF DIVISION . . **I. L. R., 5 Calc., 142**

See WILL—CONSTRUCTION. **[I. L. R., 5 Calc., 59**

1. ——— **Joint tenancy.**—*Joint speculation on improving land.—Real and personal property.*—A joint speculation in improving land on a hazard of profit and loss is treated in equity as in the nature of merchandise and *jus accrescendi* not allowed. The survivorship in the case of joint tenancy is not an incident to it in the case of leasehold property and personal estate. WEBBE *v.* LESTER **[2 Bom., 55; 2nd Ed., 52**

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